BLOGS

Learn in a Minute- Bail under Criminal Procedure Code

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Bail under Criminal Procedure Code

Bail is a legal mechanism that allows an accused person to be released from custody, under specified conditions, pending trial or investigation. Its primary objective is to ensure that the accused appears in court while also respecting the individual's right to liberty. The principal statute governing bail in India is the **Code of Criminal Procedure, 1973 (CrPC)**. The CrPC distinguishes between bailable and non-bailable offenses, dictating different approaches to bail in each case.

Bailable Offences under CrPC

According to **Section 2(a) of the CrPC**, a bailable offence is an offence in which granting bail is a matter of right. In these cases, bail can be granted by the police or the court, and the accused has the right to secure bail upon fulfilling the specified conditions. **Section 436 of CrPC** mandates that any person accused of a bailable offence must be released on bail, subject to furnishing a bond, with or without sureties.

Non-bailable Offences under CrPC

The term "non-bailable offence" is defined in Section 2(a) of the CrPC as any offence other than a bailable offence. In other words, if an offence is not listed as bailable in the First Schedule of the CrPC or under other applicable laws, it is considered non-bailable.

Section 437 of the CrPC governs bail in cases of non-bailable offences. The discretion to grant bail lies with the court, based on various factors like the severity of the offence, the possibility of flight risk, and the probability of the accused tampering with evidence.

Section 439 of the CrPC, 1973 governs the special powers of High Courts and Sessions Courts in matters of bail for non-bailable offenses. It provides a higher level of discretion to these courts in granting or denying bail, and also in setting conditions or modifying bail orders.

Landmark Cases on Bail in India

Hussainara Khatoon v. Home Secretary, State of Bihar is a landmark case in Indian legal history that fundamentally influenced the discourse on the right to a speedy trial and undertrial prisoners' rights. The case originated from a public interest litigation (PIL) filed in 1979 on behalf of several undertrial prisoners who had been languishing in jails in Bihar for periods much longer than the maximum sentences for the offenses they were accused of. The petition highlighted the deplorable conditions under which these undertrials were held, drawing attention to the broader systemic issue of excessive delays in the criminal justice process. The court affirmed that the right to a speedy trial is a fundamental right implicit in Article 21 of the Constitution. It emphasized that any prolonged detention without trial violates this right.

Sanjay Chandra v. CBI

Sanjay Chandra, a high-profile businessman and a key accused in the 2G spectrum allocation scam, was arrested by the Central Bureau of Investigation (CBI) and faced charges of conspiracy, cheating, and corruption. The Supreme Court, in its decision, granted bail to Sanjay Chandra, emphasizing several important points. The court reiterated that bail should generally be granted unless there are compelling reasons to deny it. Pre-trial detention should not be punitive, and an accused is presumed innocent until proven guilty.

The court also outlined key factors that should guide the decision to grant bail such as the nature and seriousness of the offence, the possibility of the accused absconding or fleeing from justice, the likelihood of the accused tampering with evidence or influencing witnesses, and the potential threat to public order.

Ritu Chhabaria v. Union Of India

Ritu Chhabaria filed a Special Leave Petition (SLP) in the Supreme Court, challenging a previous decision by the Bombay High Court. She sought bail under **Section 167(2) of the Code of Criminal Procedure (CrPC)**, a section that allows for bail if the investigation is not completed within the stipulated time frame (usually 60 or 90 days, depending on the offence).

The court stated that under Section 167(2) of the CrPC, the investigating agency must complete its investigation and file a charge sheet within the stipulated period (60 or 90 days). If it fails to do so, the accused has a statutory right to bail.

The court further reaffirmed the right to “default bail” when the investigation is not completed within the statutory period, emphasizing that this right cannot be undermined by filing incomplete or supplementary charge sheets.

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