

CHAPTER 10

Bail and Recognizance

1. Principles governing grant of bail—It must be understood that for every bailable offence bail is a right not a favour. In demanding bail from an accused person, Magistrates should bear in mind the social status of the accused and fix the amount of bail accordingly, care being taken that the amount so fixed is not excessive. The amount of bail and the offence charged, with the section under which it is punishable, should always be stated on the face of an order directing the accused to be detained in the lock-up in default of his furnishing bail. Bail may be tendered and must be accepted at any time before conviction.

Bail may also be tendered and accepted even after conviction in accordance with the provisions of sub-section (2-A) of Section 426 of the Code of Criminal Procedure, [*See* Section 389(3) of new Code], when a person other than a person convicted of a non-bailable offence satisfies the Court that he intends to file an appeal.

2. Recognizance—When any person other than a person accused of a non-bailable offence is brought before a Criminal Court, the Court may, if it thinks fit, instead of taking bail, discharge him on his executing a bond without sureties for his appearance (Section 496 Criminal Procedure Code). [Section 436(1) of new Code].

3. Bail in non-bailable cases—Even in the case of non-bailable offence there are circumstances under which the accused may be admitted to bail. These are described in Section 497 of the Code [Section 437 of new Code]. Sub-section (3-A) has been inserted by the Amendment Act No. 26 of 1955 and provides that if the trial has not been concluded within sixty days of the first date fixed for evidence in the case and the accused person has been in custody during the whole of the said period, he shall be released on bail, unless for reasons to be recorded in writing, the Magistrate directs otherwise.

4. Cash or Government promissory notes may be accepted in lieu of bail—Under Section 513 of the Code of Criminal Procedure [*See* Section 445 of new Code], a deposit of cash or Government promissory notes may be made in lieu of bail, except in the case of a bond for good behaviour.

5. Bail to be granted promptly—It is a hardship to detain parties under trial in prison an hour longer than the law requires. They are prejudiced in their means of defence; if respectable and

innocent, they are exposed to the indignity of imprisonment for which no subsequent order of discharge or acquittal can atone.

6. Release on bail by superior Court—Under Section 498 of the Code [Section 439, 440 of new Code], the Sessions Judges may, whether there be an appeal on conviction or not, direct that any accused person be admitted to bail, or that the bail required by a Police Officer or Magistrate be reduced. The Sessions Judges may, similarly, cause, any person who has been admitted to bail by him to be arrested and may commit him to custody as provided in sub-section (2). Section 438 [Section 400 of new Code] enables a Court of Sessions or District Magistrate in referring a case to a High Court, if it is recommended that the sentence be reversed, to direct that the person under sentence be admitted to bail. It should also be remembered that, under Section 426 of the Code of Criminal Procedure, [Section 389 of new Code], an Appellate Court may, for reasons to be recorded in writing, order that the convicted person be released on bail or on his own bond.

7. Bail applications on holidays—Sessions Judges should allow urgent applications for bail to be presented to them at their residence on holidays at a fixed hour, when such applications cannot be presented in Court on a working day owing to unavoidable circumstances.

8. Disposal of bail applications in the absence of Sessions Judge—When Sessions Judges are unavoidably absent from the station, they should take action under Section 17(4), Criminal Procedure Code [Section 10(3) of old Code] for the hearing of urgent bail applications.

9. Inquiry about sufficiency of bonds—Considerable diversity of practice exists in carrying out the provisions of the law in regard to the taking of bonds from accused persons and their sureties, and the result of the diversity is not only to cause Police officers to be employed in needless inquiries, but also to keep the accused person in custody pending the result of the inquiry into the sufficiency or otherwise of the bail offered. Sub-section (3) of Section 499 [Section 499 of new Code] now enables the Court to accept affidavits for the purpose of determining whether the sureties are sufficient or not. At the same time, however, it is the duty of Magistrates to satisfy themselves that the sureties are, in point of substance, persons of whom it may reasonably be presumed that they can, if necessary, satisfy the terms of the bail-bond.

10. Forfeiture of bail bonds—Section 514 of the Code [Section 446 of new Code] lays down the procedure to be adopted to compel payment of the penalty mentioned in the bond from the person executing the personal recognizance and from his sureties.

11. Form of bond for appearance before High Court—When a person is enlarged on bail by order of the High Court, or when bail is to be taken for his appearance before the High Court, the bonds to be executed by such person and his sureties shall be in the following forms which have been prescribed by the High Court with the sanction of the State Government, under powers conferred by Section 554(2) of the Code of Criminal Procedure.

Form of Bond and Bail Bond

I,, son of, caste resident of having to the Punjab High Court at Chandigarh and being required to

give security for my attendance before the High Court and for my surrender before the Court of the District Magistrate of. if required, do bind myself to attend said High Court every day of the hearing of my appeal/petition by the High Court and on such other day or days as I may be ordered to attend, and, should the High Court order my internment or commitment to prison, to appear and surrender myself before the District Magistrate of. and in the case of my making default therein, I bind myself to forfeit to the Government the sum of rupees

Dated this day of. 19

Surety Bond

Whereas, son of., caste resident of having to the Punjab High Court at Chandigarh is being

required to give security for his attendance before the High Court and for his surrender before the Court of the District Magistrate of. if required, I., son of.resident of.do bind myself to produce

the said High Court on every day of the hearing of his by the High

Court and on such other day or days as I may be ordered to produce him, and, should the High Court order his internment or commitment to prison, to produce and surrender him before the District Magistrate of. and in the case of my making default therein, I bind myself to forfeit to the Government the sum of rupees

Dated the day of. 19

12. Date of hearing to be communicated to the accused and sureties—The District Magistrate on accepting the sureties shall inform them that the person released on bail must be present at the hearing in the High Court. He shall also inform the person released on bail to the same effect.

13. Discretion of High Court—On the date of hearing in the High Court, the Judge or Judges hearing the appeal may order that:

(a) the bail-bond should be cancelled at once, and the man re-arrested, or

(b) he should appear on a certain day to hear judgment pronounced, or

(c) he should attend daily (excluding holidays) until judgment is pronounced, or

(d) he should be discharged from his bail-bond.

14. Re-arrest on cancellation of bond—If the person who has been released on bail is not arrested on the day of hearing in accordance with paragraph (13)(a) above he will ordinarily be re-arrested in the High Court immediately judgment has been pronounced against him.

Notes—(1) The foregoing instructions will apply *mutatis mutandis* to the case of persons enlarged on bail by a Court of Sessions.

(2) Except in very special cases, the Judges of the High Court decline to entertain applications for bail unless the Sessions Judge or the Court trying the case has already been applied to and has rejected application. Sessions Judges should conform to this practice.

15. Bail applications to be treated as urgent—All applications for bail in criminal cases including appeals should be treated as urgent.

16. It is irregular for Criminal Courts to forward original bail applications presented to the Court and other documents connected therewith to the Prosecuting Agency for report. If and when it is considered desirable to issue notice to the Prosecuting Agency, a definite date should be fixed for the hearing of the bail application, so that all concerned may have due notice.