



BAIL LAWS WITH ECONOMIC OFFENCES IN DIFFERENT COUNTRIES: A COMPARATIVE STUDY

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Abstract

The philosophy of bail was developed to resolve the clash among police power and to compromise the right to life or liberty of individual alleged of a crime having presumption of aliveness. The Bail finds its advent in the French word Baillier, sense to provide, deliver or give. The thought of bail in Common law, means to free a person restrained on some security being provided either by his own bond or on by some surety, for securing his/her attendance on the day decided by the competent court. The bail regulation implies releasing of the accused person before the date of beginning of trial either on deposit of some amount or attachment of property which might be given back to the under trial if the attendance is safe.

The judge or the law court was obligation to grant bail excluding in special cases. The exceptions were that, the attendance would not be secured or there can be tampering with the evidence. The bail cannot be granted to the so-called criminals of certain class of offences, which we discussed in the research work.

Keywords: Meaning Of Bail, Security Bond, Appearance In Court, Right To Life And Personal Liberty.

Introduction

Bail in Common law means to free a person restrained on some security being provided either by his own bond or on by some surety, for securing his/her attendance on the day decided by the competent court.

Bail Laws of United States

In the U.S the bail regulation implies discharging of the accused person before the date of commencement of trial either on deposit sum or attachment of property which might be given back to the under trial if the attendance is secured.

The alleged offence is punishable with life and limb, or the offence is of mans laughter and the court of law has good reasons to have faith in that the under trial has committed the alleged offence formerly the bail would not be allowable.¹

Currently the Bail Reform Act of 196 was replaced by United States Code, Title 18, Sections 3141-3150, 1984. This code acquaints with the new basic for granting bail to the under trials. The basic was “danger to the community” which was replaced by the “risk of flight”. This Code takes a certain classes of offenders whom the bail was not granted, also has a provision that the offences punishable with death or life imprisonment and drug related offences which has punishment of more than 10 years, or there is higher flight risk or risk of tempering of evidence or manipulation of witnesses then the judge after recording explanations finds the under trial in these classes then the bail is rejected.²

The concept to bailer form says that the existing bail policies and legislature are required to be reread and reexamined because of their biased and uncertain nature. It has been observed that the present bail policies tend to discriminate towards the under trial who have a low socio-economic status.

¹How Does Bail Work, (2016)

²Eric Helland& Alexander Tabarrok, The Fugitive: Evidence on Public versus Private Law Enforcement from Bail Jumping., The Journal of Law and Economics (2004)



Also, the current bail laws are vague because more than one interpretation can be made therefore; there are situations where the economic status outweighs in release of bail. Also, the bail laws depend upon the security of money rather than character of person. Hence, this vagueness in the bail system shows ineffectiveness of the bailaws.

Therefore, it can be concluded that, the bail laws are not too strict towards economic offenders. As the economic offenders by using the ambiguity of present bail laws and having money power and having the power to manipulate the witnesses and by tampering the witnesses, takes the bail. Therefore, the ultimate objective of bail laws and criminal jurisprudence is defeated.³

Bail Laws of England

The Bail Act of 1976 was presented with the main intention of characterizing conditions where the person can be denied of bail and reformulating the criteria or framework of granting bail. The Statute states that, the judge or the law court were duty bound to grant bail except in special cases. The exceptions were that, the appearance would not be secured or there can be tampering with the evidence. The other exception was that the enough evidences could not be collected for granting of bail. The legislation invalidated the recognizance type of bail. It is observed that this legislation gave more power to the court in deciding the custody and regulated the courts for unnecessary detention. The Criminal Justice Act of 2003 states that, the bail cannot be granted to the alleged offenders of certain class of offences. The three types of bails given in England are:

1. Police Bail- In this the alleged offender is released by police without charge being formed and at the condition that he should appear at the stipulated time.
2. Police to Court- In this charges are formed against the alleged offender, and the bail is given at the condition that he or she should appear on the first date of hearing.
3. Court Bail- Here the alleged offender is already in court and is released on bail when the investigation is pending.

Bail Provisions in India-Supreme Court's Approach

The Supreme Court in the celebrated case of *Maneka Gandhi V. Union of India*⁴, highlighted on speedy trials as a constitutional right which is part of right to life and personal liberty which is well-preserved in Article 21 of the Constitution of India. The broad interpretation of the principle 'bail not jail' by the Supreme Court in case of *State of Rajasthan V. Balchand*⁵, is favoring the presumption of innocence, at the same time harmonizing the society by confining the accused.

The case was of *Pappu Yadav v. C.B.I.*⁶. In this case, a former MP was charged with conspiracy to murder of a political rival. Both the trial and appellate Court rejected the 10-bail application although the accused had been in jail for more than seven years⁷.

The Supreme Court though keeping in mind the interest of the society and despite delay in proceedings set the reasonable restriction part of Article 21 i.e. right to life and liberty observed that, even in the cases where the trial had been partly covered but the allegations in contradiction of the bail applicant are of grave and severe nature it would be appropriate for the court to reject the bail application. Also, it avoided the presumption of innocence and rejected the argument that the extended detention of the accused as defense and observed that, if the argument is duly taken into consideration then in every case bail would be approved.

³Larry J Siegel, Corrections Today, 2nd ed, (2012)

⁴(1978) 1SCC 248

⁵(1977) 4SCC 308

⁶Rajesh Ranjan Yadav @ Pappu Yadav v. C.B.I. (2007) 1 SCC 70

⁷Rajesh Ranjan Yadav @ Pappu Yadav v. CBI, (2008) 1 SCC 667



The Supreme Court while deviating from the principle laid down in the CrPC under Section 439 which states that, specific power of higher court and court of sessions in the capital offences, therefore the higher judiciary using this pretrial confinement as a corrective measure without giving due process. Even the confinement can be sanctioned if the *prima facie* case recognized or the charges are serious in nature or there is danger involved in release of accused or there are enough evidences preset to hold pretrial detention.“the Supreme Court ousted the jurisdiction of the subordinate courts, contrary to statutory intent, directing the accused to present all future bail applications to itself ”in the event any occasion arises. The denial of bail, presumably to prevent the accused from being released by the High Court, which had earlier granted bail, reflects the Supreme Court's pre-judgment in this regard.⁸”

The case which will be discussed is of Sanjay Chandra V.C.B.I. which is popularly known as 2G Spectrum Case⁹. In the 2G scam case:

The false distributions of 2G bandwidth band to private individuals in the telecom industry affected the state and costed the loss of estimate Rs. 30,000 crores. Accusations of enormous amount of corruption and conspiracy resulted in the detention of the ex-telecom minister, influential administrators and most powerful business administrators.

On May 2012, the Delhi High Court in this case rejected the bail application and allowed the pretrial confinement though there was no further investigation left and there was no allegation regarding tampering with the evidences.

The High Court While Refusing The Bail Application Held That

In this instant matter the allegations are of serious economic offence related to thousands of dollars, hence, only on this ground the bail should be refused. Furthermore, it is not to be considered and is of no conclusive proof that such individual would not alter the evidences and obstruct the course of justice.

Further the High Court made more observations on the guilt of the accused prior to the judgment and therefore the Court deviated from the principle “bail not jail”¹⁰. Moreover, the High Court commenting on the ‘impact on society’, the Supreme Court while allowing the bail application in this case observed that, “that the right to life and personal liberty was the most basic of all fundamental rights. The Court reversed the High Court's order by taking cognizance of the completion of investigation, prospective delay in concluding the trial and the six-month incarceration, stating that the right to bail isn't to be denied merely due to the emotions of the community against the accused”.¹¹

Therefore, the Supreme Court's liberal interpretation of bail provisions in 2G Spectrum case takes back the presumption of innocence. Though this case is in disparity with the case of Pappu Yadav where the Article 21 was not reasonably considered, and situations and facts were taken into consideration. And, the fact that the accused has spent more than 7 years in jail was unnoticed.

Even though the Supreme Court in the 2G Spectrum case acknowledges the rights of pretrial period, giving importance to presumption of innocence, it fails to deal with its scope. Moreover, the Supreme Court unsuccessful in understanding how this assumption is enshrined in the Indian legal system which allows confinement for certain class of offences in the name of public order and national security.

⁸Rajesh Ranjan Yadav @ Pappu Yadav v. CBI Review Petition (Cr.) No. 9/2007 in Criminal Appeal No. 1172/2006 decided by the Supreme Court of India on April 27, 2007

⁹(2012) 1SCC 40

¹⁰Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh, (1978) 1 SCC 240

¹¹Sanjay Chandra V. CBI, (2012) 1 SCC 40