

LOCKED BEHIND POVERTY: THE BARRIERS TO BAIL FOR IMPOVERISHED INDIVIDUALS

Chetan Sreenadhu*

Suraj Naick Rajavath**

ABSTRACT

“Poverty is the parent of revolution and crime” – Aristotle

Aristotle felt that poverty is a key source of many criminal actions, affecting both the impulse to commit crimes and the capacity to secure bail. Bail, as described in Black's Law Dictionary, provides for temporary release upon the presentation of a personal bond or security. However, access to bail is not equitable for everyone, particularly the underprivileged. This lack of access can result in unlawful and protracted pretrial confinement, leading to job loss, housing instability, and loss of family support. Financial limitations provide a major obstacle to bail for the poor since they typically lack the wherewithal to pay bail amounts established by the gravity of the violation. Consequently, they are more likely to be detained until their trial and incur harsher sentences. Systemic difficulties within the criminal justice system, such as racism and bigotry, also contribute to the hindrances experienced by the poor in gaining bail. Impoverished individuals, particularly those from marginalized areas, can suffer harsher treatment and larger bond amounts or outright refusal of release. Limited access to resources and support, particularly transportation and childcare, further complicates the capacity of the poor to satisfy bail conditions. Failure to overcome these hurdles maintains an unjust and inefficient system, continuing the cycle of inequality and poverty.

Keywords: *Bail; Poverty; Impoverished; Money- Bonds; Expensive.*

* Student, BA.LLB, Damodaram Sanjivayya National Law University, Email: Chetan.Srinadu@Dsnlu.Ac.In.

** Student, BA.LLB, Damodaram Sanjivayya National Law University, Email: surajnaick@dsnlu.ac.in

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Introduction

The most evident flaw in the current money-based bail system is that it discriminates against impoverished defendants, going against the law's stated goal of treating all defendants equally. In the current money-based bail system, the judge determines the amount of bail in accordance with a master bail schedule based only on the gravity of the criminal accusation without taking the defendant's financial situation into account. The poor defendant forfeits his right to early release and is held in prison while awaiting trial because he is unable to pay the bail amount or even the normal ten per cent surcharge to a bondsman. In our criminal justice system, the rights of the poor have been acknowledged and protected in an extensive number of instances. He is given access to legal representation during interrogation, is given a defence attorney throughout his trial, and is given equal treatment during the appeals process. Furthermore, he cannot be jailed for failing to pay a fine. The issue of whether the current money-based bail system denies the impoverished equal protection remains unresolved, despite the acknowledgement and protection of indigents' rights in various areas of the criminal processes. Also, if he / She is unable to execute such bond or fine, again will be imprisoned for default of payment of fine under section 31 of Criminal Procedure Code 1973.

Bail Under the Indian Legal System

Definition- According to Black's Dictionary, "bail is the process of obtaining a person's release from custody by promising that they would appear at the designated place and time and submit to the jurisdiction and decision of the court.¹ Bail is the provisional release of a suspect from custody in return for a quantity of money that serves as a promise that the suspect will appear in court when it is scheduled. The person paying the payment is the surety. Bail is one of the rights of the accused in a civil action; in a criminal case, the bail issuing authority has the last word.

¹ BLACK, H.C., NOLAN, J.R. AND CONNOLLY, M.J, BLACK LAW DICTIONARY: DEFINITIONS OF THE TERMS AND PHRASES OF AMERICAN AND ENGLISH JURISPRUDENCE, ANCIENT AND MODERN (St. Paul, MN: West Publ. Co. 1979).

Historical Background - Bail was first used in 399 BC when Plato tried to create the first bond to free Socrates. Throughout the Middle Ages, the British circuit courts created a bail system. The rules governing bail in the Middle Ages had a significant impact on the concept of bail today. The concept of bail was also relatively popular in ancient India since it was recommended in Kautilya's Arthashastra that people avoid pre-trial imprisonment. Bail was utilised during the Mughal period in the 17th century in the forms of 'Muchalaka' and 'Zamanat.' Today, bail is governed by the Code of Criminal Process Act 1973. Although Section 2.(a) of the Act defines aailable crime and a non-bailable offence, the Act does not define bail precisely. The provisions of Chapter XXXIII dealing with bail requirements under the Act are Sections 436-450.²

Types of Bail - Bails and bonds are covered in Chapter XXXIII (S. 436-450) of the Code of Criminal Procedure. There are three types of bail existing in India namely regular, interim and anticipatory bail.

Regular Bail – A person can be released on regular bail when he has been arrested and kept in custody under sections 437 and 439 of CrPC. Section 437- According to the law, if a person is arrested by a police officer without a warrant for a non-bailable offence or if there are grounds to suspect that the evidence against the person is insufficient to establish that the person has committed any non-bailable violation, the person may be released. If he appears in a court other than the Court of Sessions or the High Court, the above procedure may be followed. The individual cannot be released on bond if there are grounds to suspect that he is responsible for any crime punishable by death or life imprisonment or if he has previously been found guilty of a crime with a similar punishment.³

Section 439 – The section grants the High Court and the Court of Sessions exceptional authority. It permits these courts to grant bail to anyone accused of the crimes listed in Section 437(3) of the CrPC. The court has the authority to impose any requirements that it deems appropriate. It further states that if the High Court grants bail after notifying the public prosecutor, whatever conditions the Magistrate sets may be overturned. In this instance, the bail should be offered if the offence carries a life sentence and can only be prosecuted by the

² The Code of Criminal Procedure Act, 1973, § 436-450.

³ The Code of Criminal Procedure Act, 1973, § 437.

Court of Sessions.⁴ They should reasonably believe that the accused can be granted bail with the conditions as mentioned by the judges. The courts may once more order that person's arrest in accordance with both of these provisions.⁵

Interim bail -These are generally granted for a temporary period of time during the pendency of the trial. Interim bail is offered prior to the process of granting a normal bail or anticipatory bail. It is granted for a little time. This is because the High Court or Court of Session must wait for paperwork from lower courts to be sent, which adds time to the process of granting bail. Hence, provisional bail is offered for the time being.

If the interim bail expires, the person to whom it was granted must be placed back in custody. The interim bail can be extended.

Anticipatory bail - In accordance with Section 438 of the Criminal Process Code, everyone anticipating an arrest is given instructions. It states that anyone who believes they will be arrested after being accused of a crime for which there is no provision for anticipatory bail may apply.⁶ Either the High Court or the Court of Sessions must receive an application. The following conditions will apply if a person is released in accordance with this Section: The individual is obligated to be present throughout the investigation whenever necessary, is not allowed to coerce another person into disclosing information against him during the procedures, and is not allowed to leave India without the court's prior approval. Furthermore, it was stated that anyone who is detained by a police officer without a warrant may be released on bond.

Procedure to obtain bail - When someone is found guilty of a crime, they are entitled to request bail. The stage of the case determines whether or not you should apply for bail. As an example, a manager of an office may apply for anticipatory bail if he believes he will be arrested for harassment, which a female employee has said occurred in his workplace. To date, if the person is taken into custody, his first move will be to call you, his criminal defence lawyer, and request bail. We now understand that there are two categories of crimes: those that are subject to bail and those that are not. When a crime qualifies for bail, the accused must submit an application

⁴ K.N. CHANDRASEKHARAN PILLAI, R V KELKAR'S CRIMINAL PROCEDURE (6th Edition 2016).

⁵ The Code of Criminal Procedure Act, 1973, § 439.

⁶ The Code of Criminal Procedure Act, 1973, § 438.

using the Form-45⁷ included in the second schedule.⁸ This has to be submitted to the court that will be hearing the case. The bail must be authorised by the court. The suspect must complete out the same form and submit it to the court where his case will be heard when the offence is non-bailable; the only difference is that in this situation, the judge has the option of granting bail. Also, each bail application should be unique because every case has unique scenarios and a lot of unusual data.⁹

The judge will decide the issue of bail based on many facts, circumstances and consequences of granting such bail. Finally, judges at their discretion grants bail and set out the conditions to get a bail.

Conditions Under Bail Can Be Granted in India

Bails and bonds are covered in Chapter XXXIII (S. 436-450) of the Code of Criminal Procedure. Bail may be granted under specific circumstances, which we will go through in the following paragraphs:

Conditions for a bail-in bailable offence

The terms under which bail may be granted for offences covered by the Indian Penal Code are outlined in Section 436(1) of the Criminal Procedure Code.¹⁰ “A person who has been detained or arrested by the police for an infraction for which there is no specified amount of bail may be released on bail if they are taken before the court and are ready to post a bond. The police officer who made the arrest in this case or the court where the prisoner has been taken may issue bail. In this situation, bail is often granted in return for the accused posting a surety. Nevertheless, if the arresting officer or the court are convinced that the individual is agitated and unable to offer surety, he may be freed on bail after signing a bond without sureties for his appearance.

This section also discusses how indignation is expressed. The defendant will be deemed an angry person and eligible to be released on the execution of a bond without sureties if he fails

⁷ The Code of Criminal Procedure Act, 1973, Form 45.

⁸ RATANLAL AND DHIRAJLAL, CRIMINAL PROCEDURE CODE (23rd ed. 2020).

⁹ Ibid.

¹⁰ The Code of Criminal Procedure Act, 1973, § 436(1).

to post bail within a week after being arrested.” Before releasing a person on bond, the bail granting authority must be persuaded of the following:

Since the accused seems to be innocent, it is very probable that he did not commit the crime. that further research into the offence is required to establish if he truly committed the crime. The crime cannot be punished with death, life in prison, or even a 10-year sentence since it is not a severe one.

Subsection (2) of this section describes the situations in which bail may be refused, even though the charge is one that is bailable. Bail may be refused if an individual is detained or brought before the court on a second occasion in the same case and does not adhere to the appearance requirements outlined in the bail bond.

In India, legal proceedings can drag on for many years. The trial court's decision may take a while to render for a variety of reasons. To prevent excessive detention of an accused individual, Section 436A was added to the Criminal Procedure Code.¹¹ Any individual who has been held for more than half the maximum punishment specified for an offence shall be freed under the terms of a bail bond throughout the investigation period, except for crimes for which the prescribed sentence is death. If the court is satisfied, the clause does allow for an extension of the sentence beyond this time frame, but under no circumstances may it go above the maximum sentence set down for the offence. So, the accused will be serving under the presumption of obtaining the bail and it can be granted for the type of less serious offences.

Conditions for a bail-in non-bailable offence

In order to determine whether an accused person can be given bail in relation to an offence that is not punishable by bail, it is necessary to consider both the right to liberty and the Constitution's guarantee of that right parallelly. “The Court has to strike a balance between the two. The Hon. Supreme Court stated in *Shahzad Hasan Khan v. Ishtiaq Hasan Khan*¹² that liberty must be secured through a legal process that is carried out while taking into account the interests of the accused, the loved ones of the victim who lost his life and who feel helpless and

¹¹ The Code of Criminal Procedure Act, 1973, § 436A.

¹² *Shahzad Hasan Khan v. Ishtiaq Hasan Khan*, AIR 1987 SC 1613.

think there is no justice in the world, as well as the general interest of the community, in order to prevent parties from losing faith in the institution and acting in a privatised manner.

Bail may even be granted for crimes that are not entitled to bail, as per Section 437 of the 1973 Code of Criminal Procedure. However, the Court in this instance has the last say, and the accused is not entitled to it. A person who has been wrongfully imprisoned and brought before a court in accordance with the terms of this section may be granted bail by any court other than the High Court or the Court of Sessions. If the court has good reason to think that the defendant committed a crime carrying a death or life sentence, it may refuse to grant bail. If the offence is cognizable and the defendant has a prior conviction for a crime carrying a mandatory minimum sentence of seven years in prison or death, or two or more prior convictions for a crime carrying a mandatory minimum sentence of three years in prison, the court may additionally deny bail.

In addition, the court may issue bail if the defendant is a woman or a minor, there is insufficient evidence to convict, warranting additional investigation, the FIR has not been filed immediately, and the defendant is very ill or infirm. Bail cannot be denied for the petty reason that a witness is required for the accused's examination. The Public Prosecutor will be given a chance to hear arguments against bail before it is granted for offences carrying a death sentence or a sentence of at least seven years in prison.”

The following requirements must be met before the accused can be released on bail if they are believed to have committed, abetted, conspired, or attempted to commit an offence punishable by seven years or more in prison: the bail bond's requirements for attendance, the pledge to refrain from committing a similar crime, and the commitment not to offer any enticement, threat, or promise to anybody who knows the case's specifics.

Further, section 438 states about Anticipatory bail as stated above and it can only be granted by High court or Court of Session in anticipation of arrest. The other portion that is from section 440 to 450 speaks about bail bonds in CrPC. These provisos empower the High court or Court of sessions to fix the bail amount (Shouldn't be excessive in nature). The court may ask for sureties and may also directs the accused and sureties to execute the bonds. Further, the bail granted can be cancelled by the court if the money imposed in regards to the bond is not sufficient or breached any conditions as thereby imposed by the court. People were denied their

basic right by the way of economic criteria to obtain a bail with furnishment of a monetary guarantee. The other reason might be lack of awareness to poor in regards to under trail prisoners.

Is Bail Anti-Poor?

There are two major reasons to call it as anti-poor i.e., lack of awareness and Inability to pay as the major constraints which are as follows:

Lack of Awareness

This is perhaps the first hurdle that has to be overcome if the nation's bail system is to be improved in any manner. One of the most common reasons for the large number of persons now involved in legal proceedings is a lack of awareness of their legal rights. Five-year prisoner Angela Sontakke said that when convicts sought even the most basic amenities, jail staff utilised force rather than making an effort to help them. This illustrates how little even prison staff personnel, much alone prisoners themselves, know about their rights. "According to Article 39A of the Constitution¹³, the State is required to offer free legal assistance to those who are unable to pay for it owing to financial hardship. It can scarcely be contested that legal assistance is one of a citizen's most fundamentally important rights, according to the court in the case of Dineshbhai Dhemrai v. State of Gujarat¹⁴, which the court referred to as the guiding star and stated that it was relevant to the case. Also, according to Section 436A of the Code of Criminal Procedure, inmates who have served more than half the maximum sentence allowed for that offence must post a personal bond with or without sureties in order to be freed.

The majority of inmates, however, are unaware of this information, thus they believe they have no legal options because they are incarcerated. Because they have nothing to fall back on, individuals who are severely afflicted by poverty have an even worse predicament. Many persons who are detained are totally dependent on the courts, prison staff, and jail visiting attorneys to not only discover their legal options as soon as possible but also to follow through on that information by giving them strong legal counsel that would keep them out of jail. Less

¹³ The Constitution of India, 1950, Art. 39A.

¹⁴ Dineshbhai Dhemrai v. State of Gujarat, Unreported case.

than 3% of Indians who benefit from legal aid programmes are inmates, partly because they are unaware of the choices that are legally open to them.¹⁵

The Supreme Court also ruled in *Sanjay Dutt v. State through CBI*¹⁶ that the right to claim bail must be exercised at a specific period and that it would be null and void if it were done before the charge sheet was filed. If the issue of bail is brought up later, it can only be decided on the basis of the merits of the accused. The main problem is ignorance; if people in poverty do not realise, they have a right to bail when they are arrested, they will not be able to use it, which paints an inaccurate picture. As it is the foundation from which society may readily access the right to bail, legal knowledge is an issue that needs thorough examination. While it's true that illiteracy is a major issue for those living in poverty, what is more alarming is their inability to actually pay the bond.¹⁷

Inability to pay the bond

Even in situations when the defendants in custody are aware of their entitlement to bail, they may experience financial difficulties making the necessary payment. According to a recent report, the richest 1% of Indians own 73% of the country's wealth, with 67 crore people making up the poorest half. These figures demonstrate the extreme economic gap among India's population. This implies that those who are impoverished will continue to suffer in prison because they cannot afford the fine. As a result, they could need to rely on loans from different agencies to be able to afford bail¹⁸. While this may seem entirely reasonable in principle, the fact that the accused will now have a new debt is problematic from a practical standpoint since it will put pressure on him and his family to struggle to pay it back, which will negatively impact how they live their lives.¹⁹

In the case of *Nanu Gordhan v. State of Gujarat*²⁰, the judge ruled that requiring a poor individual to post an unreasonable sum of money is equivalent to forbidding him from posting

¹⁵ SCOTT-HAYWARD, CHRISTINE S., AND HENRY F. FRADELLA, PUNISHING POVERTY: HOW BAIL AND PRETRIAL DETENTION FUEL INEQUALITIES IN THE CRIMINAL JUSTICE SYSTEM (1st ed., University of California Press, 2019) *JSTOR*, <https://doi.org/10.2307/j.ctvpb3wzb>. Accessed 2 June 2023.

¹⁶ *Sanjay Dutt v. State through CBI*, Special Leave Petition (crl.) 1834-35 of 1994.

¹⁷ *Id.*

¹⁸ Landes, William M, *The Bail System: An Economic Approach*, *JOURNAL OF LEGAL STUDIES*: (Vol. 2: No. 1, Article 3, 1973), Available at: <https://chicagounbound.uchicago.edu/jls/vol2/iss1/3>

¹⁹ Dobbie, Will and Crystal Yang, *The Economic Costs of Pretrial Detention*, *BROOKINGS PAPERS ON ECONOMIC ACTIVITY*, SPRING, 251-291(2021).

²⁰ *Nanu Gordhan v. State of Gujarat*, 2 GLR 1698 1985.

bail. The *Hussainara Khaton and Ors. v. Home Secretary*²¹, State of Bihar case in-depth examined the poor's incapacity to pay bail. In the petition, it was brought up that those accused of misdemeanour crimes frequently spent time in jail because they lacked the money to post bail, and that the justice system unfairly targets the poor by failing to account for inequalities in convicts' financial means. Despite having committed the identical act, a rich guy would be able to leave prison while the poor man would be kept behind bars. The verdict made clear that some convicts awaiting trial were either uninformed of their entitlement to apply bail or were too impoverished to do so and pay the required fee.”

In relation to *Maneka Gandhi v. Union of India*²², Bhagwati said that any system where the poorest prisoners are unable to receive legal assistance due to their economic situation cannot be considered to be fair reasonable and just. Furthermore, he contends that those inmates who have been wrongfully detained for a longer period of time than necessary should get legal aid so they may attempt to be freed on bail. He cautioned that this would have a domino effect, causing the public to lose faith in the administrative system and harbour feelings of resentment and frustration towards society as a whole for imprisoning them without offering them any legal recourse, turning the system into one of exploitation and human rights violations.²³

President Lyndon B. Johnson's statement, made in 1966 when he signed the Bail Reforms Act, provides a good summary of this topic. A less wealthy defendant cannot afford the fine. Before his trial, he spends weeks, months, and maybe even years behind bars. He is guilty, yet he is not imprisoned. Because no punishment has been given, he is released from custody. He is not kept behind bars since he is more likely to leave before his case is heard. He is impoverished, and that is the sole reason he is incarcerated.²⁴

The Supreme Court ruled that certain conditions had to be met before a person may be granted bail in the case of *State of Maharashtra v. Sitaram Popat Vital*²⁵. These circumstances are:

- a) The nature of the charge, the severity of the penalty in the event of a conviction, and the type of evidence used to support it;

²¹ *Hussainara Khaton and Ors. v. Home Secretary*, AIR 1369 1979.

²² *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

²³ *Id.*

²⁴ JANAK RAJ JAY, *THE DEATH PENALTY* (Regency Publications 2005).

²⁵ *State of Maharashtra v. Sitaram Popat Vital*, 2004 AIR SC 4258.

- b) A plausible suspicion that the witness has been tampered with or that the complaint is in danger, and
- c) The charge has received the court's prima facie approval.

The character, means, standing, and status of an individual are a few more factors that could be taken into account in some circumstances.²⁶

Therefore, it would seem that the person's capacity to pay is not a required consideration when evaluating a bail application, which gives the system the appearance of being problematic and anti-poor. A person is essentially sentenced to many years in prison by the court when he posts a large amount of bail. This may lead to the problem of harsh approaches that injure more people than they help. All around the country, there have been reports of professional sureties offering their services in return for cash. They will want a certain portion of the bail set by the court.²⁷ Although financially constrained undertrial criminals may see this as a gift, these sureties engage in murky business, and since the courts are typically overburdened, they are unable to pay enough personnel to check these organisations' efficacy. In 2001, there were 57 occasions when these sureties were found, and 25 people were imprisoned for submitting false information. The behaviour is well-known throughout the country, and as many authorities have highlighted, it is an issue that has to be looked into. A 36-year-old man was arrested in 2013 after receiving Rs 2,000 from two intermediaries to act as a guarantee for an estate agent. The cops apprehended their helpers before this incident and discovered a total of 1.3 lakh rupees.

Judicial Trend in Regards to Bail Bonds

The majority of Bail bonds that were levied are quite costly. Magistrates often levy and determine bonds without any enquiry, especially in terms of the economic status of an individual. This kind of gesture had an enormous impact on the poor and downtrodden which forces them to remain in jails or prisons for longer periods due to their unaffordability. Below are some of the instances where the lapses of these bail bond structure came into the limelight.

²⁶ SK VERMA & AFZAL WANI, RIGHT TO BAIL, (The Indian Law Institute, Ed. 2000, at 166).

²⁷ *Id.*

In the case of *Moti ram and others v. State of MP*²⁸, A poor mason was the petitioner in a case, and the magistrate ruled that he must provide a security of Rs. 10,000. In this instance, the Supreme Court noted that the amount was enormous and declined to grant the mason bail for two reasons: Mason was unable to produce such a large quantity of money. The magistrate issued an unexpected decision refusing to accept the petitioner's brother as a guarantee due to the fact that his assets and residence were in a different area. It was noted that a convict (someone who has been found guilty) may be released by the court of appeal on his own bail without sureties. It cannot be the case that a defendant who is still awaiting trial has a worse case than a convicted person or that the court has more discretion to grant freedom when guilt is confirmed. The important factor is the applicant's guilt status, not the court's standing. A *reductio ad absurdum* (reduced to absurdity) is when something is made so absurd that a convicted man may claim judicial freedom without sureties but an undertrial cannot.

Variables determine when sureties should be requested and how much should be required. However, impoverished men—particularly Indian men—are weak groups economically, and judges should be lenient in releasing them on their own recognisances with any reasonable conditions you see fit. The magistrate's demand for sureties (people with property) from his own area was insulting, the court said, and it was startling to require the petitioner—a mason—to provide sureties for Rs 10,000. The magistrate must release the petitioner on his own bail in the sum of Rs 1,000, the court further directed. The court has no jurisdiction to reject a surety because of the location of his or her land in a separate area. Here, the person's employment and capacity were taken into consideration while reducing the bond.

Further in the case of *State of Rajasthan, Jaipur v. Balchand*²⁹, The petitioner-respondent was found guilty and given a sentence by the Sessions Court but was freed following the High Court's ruling. The petitioner requested bail and appeared before the trial court as required by Order XXI rule 6 of the Supreme Court Rules after the State was granted permission to appeal the High Court's acquittal. In this case, the Indian Supreme Court declared that, unless there is a danger that the accused may evade the law, obstruct the administration of justice, commit new crimes, or intimidate witnesses, the fundamental rule should be bail rather than imprisonment. The general norm is bail, not incarceration, unless there are factors that point to

²⁸ *Moti ram and Others v. State of MP*, 1979 SCR (1) 335.

²⁹ *State of Rajasthan, Jaipur v. Balchand*, 1978 SCR (1) 535.

the petitioner escaping from justice, obstructing the course of justice, or causing other problems, such as committing the same offence repeatedly intimidating witnesses, etc. The severity of the offence and the heinousness of the act that is likely to lead the petitioner to evade the course of justice must be taken into account by the court when deciding whether to grant bail. This petitioner will be granted bail upon executing a bond for Rs. 5,000/- with himself and one surety that satisfies the Additional District & Sessions Judge, Baren. Although the pecuniary bail system has a long history, it is time to reconsider the issue as highlighted by the judgement

In the case of Rudul shah v. State of Bihar³⁰, The facts of the case were that it involves a person who served more time in jail than was required by law. Rudul Sah, was taken into custody after his wife was killed. After serving his term, he was declared not guilty on June 3, 1968 by the District Court in Muzaffarpur, Bihar. Nonetheless, he was released from jail in October 1982 following a 14-year sentence. He presented a writ of jurisdiction based on the habeas corpus, demanding his release from custody was based on the claim that the petitioner had been held longer than the allotted time in custody and that the session court had ruled in June 1968 that his continued detention was unlawful. In his claim, the petitioner asked the court for compensation for his unlawful detention. In addition, he asked the state of Bihar to pay for his medical care. -funded. He was already released from jail when the petition was brought before the court on November 22nd. Nonetheless, the court sent the state a show-cause notice in relation to the extra remedy. The petition was granted by the judge, who determined that Mr. Rudul Shah's (the petitioner's) continued confinement was wholly unlawful. Whenever a person's basic rights listed in part III of the constitution are violated, the apex court has the authority to make orders and carry out writs under Article 32 The Court found that the State's actions were excessive and lacking in evidence. The Court concluded that the petitioner's detention was unreasonable as a result.

Consequences of Bail on Poor

Bail has a significant impact on a defendant who is awaiting trial. Yet, when a person is the only bread-winner for the family and the future of the family is at stake, getting bail is much

³⁰ Rudul Shah v. State of Bihar, 1983 SCR (3) 508.

more crucial. When we consider the repercussions and their impact on his family, the need for bail becomes even more pressing.

In the case of *R.D. Upadhyay v. State of AP*³¹, the court ruled that parents whose children are younger than 6 years old will have their youngsters stay with them in prison. Only children under the age of 6 are permitted here due to concerns about the child's mental health if he is forced to live in such conditions after that age. As a result, the court ordered that the children who are older than 6 to be moved from their parents to a better facility. The majority of parents who worry about their children's health and education also worry about their separation from their children when they are arrested and placed in jail, which complicates the child's well-being and upbringing. Also, it has been noted that there is no law or other policy that requires the police to take action to ensure that a kid whose parents are in prison is placed in the best possible care, including physical care as well as mental and moral upbringing.

There are many NGOs in this area that work to preserve relationships between parents and kids strong. While their parents are in custody, it can be seen that some laws and regulations must be properly followed. The circumstances imply that when parents have a child older than the age of six, he must threaten the Child Welfare Centre or the State Ministry for Child Welfare about the arrest as well as the status of the family's financial situation and what assistance and support they need. Also, both parents must have access to the children on a regular basis so that they can maintain a connection with them and be fully informed about who is caring for them.

When the family's primary provider, the father, is confined behind bars, it might be difficult for the mother to care for the children, or vice versa, when even the father is unable to care for the children alone. In other words, multiple studies have shown that it becomes extremely difficult for the other parent to care for the child and implant the values that both of them must survive together when one parent is held behind bars.

Children also experience mental stress because living away from their parents affects both their physical and mental health. Their upbringing as a good child, all of their human rights, and moral principles are all kept in jeopardy. If these children are not raised in a healthy environment, it is possible that they will grow up to become criminals as well because they

³¹ *R.D. Upadhyay v. State of AP*, W.P. 559 of 2004.

will learn from their surroundings and society will view them in the same light as how their parents were viewed by society. Another issue that young kids have is how other people in society treat them. An American study titled *Incarcerated Moms and Fathers: A Comparison of Hazards for Children and Families*³² addressed the challenges, risks, and conditions that such parents' children must deal with. This study highlighted the consequences of bail on poor and especially the children who were succumbed to such conditions and the mental trauma of those parents in regards to their upbringing.

Recommendations

In order to protect the parents of a kid, a simple suspension of them must be viewed as insufficient justification for their arrest; further investigation must be conducted before they are taken into custody. The advantages of the current bail system make it quite evident that the accused should not have their freedom taken away from them, not even for a short time, because liberty and freedom are priceless elements of the right to human dignity.

In a situation where a farmer receives a loan through one of the government's many programmes for rural development, the money instead of going to the panchayat for development work should be used as bail security for those who are Panchayat or block members. All of these sums will help ease the burden of jail overcrowding in some way. By constructing new jails, which will somewhere stop cynical criminals from implementing their detrimental effects on individuals awaiting trial, the attitude of jail authorities could be transformed.

Petty criminals who are awaiting trial may be ordered to reside in reformatory facilities and advised to perform useful labour, such as volunteer work until they are granted bail. Those who are illiterate could also be given access to educational resources.

The 268th Law Commission Report addresses the current issues with bail arrangements in India. The report's conclusions suggest that factors including colour, gender, wealth, and social position shouldn't be taken into account when deciding whether to issue bail. The court has the discretion to deny bail if it considers that the individual who is granted bail will abuse his

³² H. Dallaire D, *Incarcerated Mothers and Fathers: A Comparison* (Wiley Online Library & It); <<https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1741-3729.2007.00472.x>> accessed on March 18, 2023.

freedom, waste the court's time by missing scheduled hearings, or cause harm to anyone outside.³³ Yet if the person's innocence has not yet been established, keeping him in jail would violate his right to liberty and burden the government with providing for his housing and food while he is being held.

There should be more reforms in respect to the provisions related to bail as many poor and downtrodden people couldn't afford the bonds asked by the courts to furnish which leads to inordinate delay in acquittal. There should be certain criteria to determine the bail bound amount based upon the socio and economic conditions of the accused.

Conclusion

In order to build a more just and equitable criminal justice system, there are a number of obstacles that the poor face while trying to post bail. The financial burden that bail places on people who lack the resources to pay it is one of the main issues. This may result in the unfair and needless imprisonment of people who don't constitute a flight risk or a danger to the public. Additionally, because marginalised populations are disproportionately impacted by bail requirements, structural biases in the criminal justice system can make these problems even worse. This may have long-term detrimental effects on people and their families by feeding poverty and prison cycles.

Policymakers and stakeholders must take into account alternative pretrial release strategies, such as community-based supervision programmes, and modify bail practises to ensure they are not sustaining injustice in order to solve these obstacles. By implementing these actions, we can progress towards a criminal justice system that is more just and equitable that prioritises the rights and dignity of every person, regardless of their socioeconomic situation.

³³ 268th Law Commission Report on Bail Arrangements.