

MAPPING THE LEGAL PROCESS IN DETERMINATION OF BAIL IN INDIA: THE NEED FOR AN URGENT OVERHAUL

Atish Chakraborty¹

ABSTRACT

The system of bail forms a quintessential part of the criminal justice system in India, reflecting the enduring constitutional doctrine that liberty must prevail over detention. However, contemporary practice reveals a marked departure from this principle, with pre-trial incarceration increasingly replacing bail as the norm. This paper critically examines the evolution, conceptual foundations, and current challenges in the legal process governing bail in India. Beginning with the historical development of bail and its eventual adaptation within the Indian legal system during the British rule of India and thereafter, the study traces the trajectory leading to its statutory recognition under the *Bharatiya Nagarik Suraksha Sanhita, 2023*. The paper explores the constitutional dimensions of bail through the lens of Articles 20 and 21, analysing the Supreme Court's jurisprudence on the balance between individual liberty and societal interest. It further evaluates the factors guiding judicial discretion in bail decisions such as the gravity of offence, *prima facie* evidence, risk of absconding, and potential threat to public order and highlights the inconsistencies that undermine uniformity and fairness. The analysis underscores the restrictive impact of special legislations and the socio-economic barriers that continue to impede access to justice. In conclusion, the paper proposes a framework for systemic reform through technology-enabled judicial processes, structured guidelines, and improved prison administration to uphold the constitutional promise that "bail is the rule and jail is the exception."

Keywords: Bail, Criminal Justice System, Liberty, Judicial Discretion, Prison Reform

¹ Ph.D. Research Scholar and Academic Fellow, West Bengal National University of Juridical Sciences, Kolkata.

I. INTRODUCTION

The term 'bail' has now become a term which is synonymous with the criminal justice system of any country. Even though the term 'bail' is used in the legal parlance but it can be said to have been a term that has acclaimed usage by "*both law men and laymen*"² and is one of the most vital institutions of our criminal justice system. It would thus be safe to say that bail forms the basic structure of our criminal justice system given the humongous importance it holds both from the perspective of ensuring liberty or personal freedom for the accused as well as from the perspective of the promotion of greater public interest.³ While the notion that bail should be treated as the rule and its refusal is to be treated as an exception has been accepted by the Indian judiciary, the actual practice today often seems to be far from this vision. Even then, 'bail' continues to be the most cherished right to freedom from incarceration for every person who is suspected or accused of committing a criminal offence.⁴ Hence, it has become imperative to align the objective of the criminal justice system in India which was aimed at fostering the vision of bail as a rule and jail as the exception.⁵ In the recent years, one can safely say that there is a deviation from this notion as we observe that jail is becoming the norm of today which in turn goes against the notion of presuming an accused as innocent until proven guilty⁶. This change does not do any good for either our criminal jurisprudence or to our society. The problem is further exacerbated owing to a wide array of factors which tends to act as a fork in the road in this regard, *inter-alia*, the number of applications which are filed for bail and the economic condition of the accused to get an able counsel or afford the bond required for release, the lack of sureties required for the release of the accused as well as knowledge of the accused that a bail can be obtained for the alleged offence.⁷ Through this paper, the author aims to dissect the origin and concept of bail. Further, the author also undertakes to delve into the constitutional rights of the accused to a fair and speedy trial and the practical realities in this regard. Furthermore, the author also intends to analyse the factors which courts take into consideration while granting or rejecting bail applications. Additionally, the

² S.K. Verma (Ed.), *Right to Bail* 3 (Indian Law Institute 2000).

³ *Kamlapati Trivedi v. State of West Bengal*, (1980) 2 SCC 91.

⁴ Justice SS Saron, *Bail: Origin, Significance and Trends* in Talha Abdul Rahman, *Bail Laws and Poverty* in Salman Khurshid, Sidharth Luthra et. al. (Eds.) *Taking Bail Seriously* 285 (Lexis Nexis 2020).

⁵ *State of Rajasthan v. Balchand*, AIR 1977 SC 2447. See also, *Dataram Singh v. State of Uttar Pradesh*, (2018) 3 SCC 22.

⁶ *Dataram Singh v. State of Uttar Pradesh*, (2018) 3 SCC 22.

⁷ Maj. Gen. Nilendra Kumar and Kush Chaturvedi, *Law, Poverty and Development* 44 (Universal Law Publishing 2014).

author aims to analyse the judicial trends among the courts today while assessing bail applications and changes which have ushered in with the coming in of special laws. Finally, the author shall formulate recommendations which can help in upholding the aim of bail in the Indian criminal justice system and how an equilibrium can be achieved between rights of the accused and promoting the greater public good for the society.

II. ORIGIN AND CONCEPT OF BAIL

The concept of bail, like several other legal principles, owes its origin from English law. In particular, the concept of bail originated from the intense debates on the right to bail in Europe and more particularly, in the United Kingdom. While the criminal justice system operated in the nature of jury trial, there was no provision for conducting a prior enquiry before holding the jury and deciding the matter.⁸ These processes usually had a varied timeline which could range from a few days to couple of days to a few years thereby making it necessary to formulate a procedure where they could be provisionally released from confinement. These considerations eventually led to a debate during the Norman period owing to the sufferings and demands of the alleged accused persons thereby prompting the development of the concept of bail.⁹ Such debates ultimately culminated in the formulation of the provision on bail in the Magna Carta of 1215. In the said charter, by virtue of clause 39 it was provided that, “*No free man shall be seized or imprisoned or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land.*”¹⁰ Further, during the reign of the Stuarts, King Charles I believed in divine right and clashed with Parliament. In 1628, the House of Commons denied him funds, leading him to impose forced loans. The “*Five Knights*”, who refused to pay were imprisoned and sought habeas corpus. The Chief Justice denied bail, sending them back to

⁸ J. Richard Smith, *Bail or Jail: Toward an Alternative*, 21 Fla. L. Rev. 59 (1968). Available at: <https://scholarship.law.ufl.edu/flr/vol21/iss1/3>

⁹ *Bail: An Ancient Practice Reexamined*, <https://openyls.law.yale.edu/server/api/core/bitstreams/5ed0d3d2-20ea-4dca-a7dd-eab995bd263a/content> (last visited Aug 07, 2025).

¹⁰ *Nikesh Tarachand Shah v. Union of India and Anr.*, (2018) 11 SCC 1.

prison. Parliament invoked Magna Carta and the Statutes of Westminster. This led to the Petition of Right (1628), asserting that *no free man shall be detained without authority of law*.¹¹

These views were further consolidated when Sir James Fitzjames Stephen, regarded the right to bail in his writings on the criminal laws of England as a concept which has been recognised ever since the earliest writings on the subject.¹² Further, the right to bail has also been recognised by Ranulf de Glanvill, a notable legal scholar in his seminal work "*Tractatus de legibus et consuetudinibus regni Angliae*" which translates to Treatise on the Laws and Customs of the Kingdom of England.¹³ This right was further recognised in the nature of a release by Royal Writ, the Statute of Westminster I of 1275, the Bail Statute of 1554 and other legal provisions which influenced the development of modern bail jurisprudence in England.¹⁴

In India, the origins of bail can be traced back to the Hindu jurisprudence, which evolved during the ancient period and required, *inter-alia*, a practical and expedient disposal of disputes by the functionaries responsible for administration of justice. Further, during this time, any delay in trial owing to laxities were regarded as inabilities on the part of the functionaries and were penalised.¹⁵ During the medieval period, the Indian legal system witnessed developments in the criminal justice system in particular. The writing of this time has been recorded to have an institution of bail with the system of releasing an arrested person upon furnishing a surety. The first recorded instance of bail in India is found in the 17th-century travelogue of Italian traveller Niccolao Manucci. He was imprisoned on a false charge of theft and subsequently released on bail by the then ruler of Punjab, after furnishing a surety to the Kotwal.¹⁶ Further, during this time, an interim release could be actuated upon the consideration that there had been delays in the dispensation of justice and a compensation could be claimed against the judge for such delay.¹⁷

During the British rule of India, the criminal justice system too saw the influence of English common law. Soon thereafter, the English East India Company started gaining control over the

¹¹ *Nikesh Tarachand Shah v. Union of India and Anr.*, (2018) 11 SCC 1.

¹² Sir James Fitzjames Stephen, *A History of the Criminal Law of England* 333 (Macmillan & Co 1883)

¹³ Ranulf de Glanvill, *Tractatus de legibus et consuetudinibus regni Angliae* xiv (Londini : Prostant venales apud J. White et E. Brooke, 1780).

¹⁴ *Nikesh Tarachand Shah v. Union of India and Anr.*, (2018) 11 SCC 1.

¹⁵ A.N. Chaturvedi, *Rights of the Accused Under Indian Constitution* 283 (Deep and Deep 1984).

¹⁶ S.K. Verma, *Right to Bail* 4 (Indian Law Institute 2000).

¹⁷ *Id.* at 5.

Nizamat Adalats and Faujdari Courts in the mofussils, thereby strengthening the application of the English criminal law in India while replacing the indigenous practices of zamanat and muchalka. While zamanat stood for judicial release based on surety, muchalka on the other hand used an obligatory penal bond which was furnished as a guarantee of appearance or conduct. These practices were gradually replaced through statutory provisions that were introduced during the nineteenth century ultimately leading to the codification of criminal law under British rule, which came to be known as the Code of Criminal Procedure.¹⁸

While the term 'bail' occupied a significant importance in the criminal justice system, it was a recognised concept and its procedure stood codified. But, the term 'bail' was not defined statutorily. However, it is for the first that under the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS') the term 'bail' stands statutorily defined. The BNSS defines the term bail as "*release of a person accused of or suspected of commission of an offence from the custody of law upon certain conditions imposed by an officer or Court on execution by such person of a bond or a bail bond*".¹⁹ While the statutory definition of bail is now in place, it is profitable to rely on some of the definitions which help us expound the idea and conceptualise bail more exhaustively. The Wharton's Law Lexicon has regarded bail as a process of setting at liberty a person who is arrested or imprisoned, on security being taken for his appearance.²⁰ The Black's Law Dictionary has defined bail as "a security such as cash or bond, especially security required by a court for the release of a prisoner who must appear at a future date"²¹. Further, the Webster's Law Dictionary has defined bail as "a temporary release of a person in exchange for security given for the prisoner's appearance at a later hearing"²². Thus, it is certain from these definitions that bail connotes the process of procuring the release of an accused who is charged with a certain offence by ensuring his future attendance in the court for trial and for compelling the accused to remain within the jurisdiction of the court.²³

¹⁸ *Judicial Academy Jharkhand, Regional Conference on Key Issues of Remand & Bail Jurisprudence*, at 13, HRD Auditorium, BSL, Bokaro (Aug. 6, 2023), available at

<https://jajharkhand.in/wp-content/uploads/2023/08/Bail-and-Remand-Final.pdf#page=13>

¹⁹ The Bharatiya Nagarik Suraksha Sanhita, 2023, § 2(1)(b), No. 46, Acts of Parliament, 2023 (India).

²⁰ A.S. Oppe, Wharton's Law Lexicon 106 (Sweet and Maxwell Limited 1938).

²¹ Henry Campbell Black, Black's Law Dictionary 47 (West Publishing Company 1990).

²² Merriam-Webster's Dictionary of Law (Merriam-Webster Incorporated 1996).

²³ *Natturasu v. State*, 1998 Cri LJ 1762 (Mad.).

III. EXPLORING THE CONSTITUTIONAL DIMENSIONS OF BAIL AND LIBERTY

Our criminal justice system regards the system of bail to be of paramount importance since, the system of bail is based on our belief that a person is to be regarded as innocent until proven guilty beyond reasonable doubt.²⁴ Therefore, any imprisonment on allegation being made for committing a criminal act is regarded as an act that deprives a person of liberty without a just cause. Hence, the constant challenge which is faced by a constitutionally controlled nation like ours is to maintain liberty of individuals on one hand and the greater public interest and safety on the other.²⁵ This is a clear indication that, only in cases of extreme threat, real or perceived to national security, the balance shifts from upholding individual liberty, but historically such tendencies have been approved by courts on a limited basis. Despite India's deep commitment to civil liberty and human dignity, preventive detention i.e. detention without trial has seemed to have assumed greater acceptance thereby, virtually ruling out the grant of bail by courts.²⁶

While the courts in India have on umpteen occasions underscored the significance of bail wherein, it has been recognised that in India, 'bail is the rule and jail is the exception'.²⁷ Further, any pre-conviction or custody is not only unnecessary but also unwarranted. The Supreme Court of India has consistently made an attempt to delicately balance liberty and societal imperatives. A consistent concern in this regard has always been regarding an individual being incarcerated for prolonged periods without trial or hearing of appeal. Further, an indirect concern which can be said to have stemmed consistently is the aspect of overcrowding and resultant pitiable conditions. Furthermore, during the early years of independent India, the courts observed a passive role and did not interfere as long as a law backed state action of incarceration. This view began changing with the decision in *Maneka Gandhi*²⁸, wherein a creative judicial interpretation was made of Article 21 of the Indian Constitution and the concept of due process for taking an accused into custody was discussed. The first major challenge to the liberty jurisprudence was posed during the

²⁴ *Goverdhan and Anr. v. State of Chattisgarh*, 2025 INSC 47.

²⁵ *Siddharam Satlingappa Mhetre v. State of Maharashtra*, (2011) 1 SCC 694.

²⁶ Hon'ble Mr. Justice Y.V. Chandrachud, V.R. Manohar and Hon'ble Mr. Justice Bhagabati Prosad Banerjee, Acharya Dr. Durga Das Basu's Shorter Constitution of India 273 (Wadhwa and Company 2001)

²⁷ *State of Rajasthan v. Balchand*, AIR 1977 SC 2447.

²⁸ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

1986 emergency, which led to the suspension of Fundamental Rights and endorsement of draconian measures by the Supreme Court in the *ADM Jabalpur*²⁹ case. Post emergency, the Supreme Court made several strides in developing the liberty jurisprudence and the want for comprehensive guidelines especially in respect of bail and sentencing have been emphasised for time and again given the discretion such decisions involve. In the case of *Gudikanti Narsimbulu*³⁰, it was observed that given the extent of discretion which is necessary for grant or refusal of bail, the reasonableness of such discretion must be maintained which would ensure unreasonable deprivation of freedom being meted out by framing guidelines. Further, the court also took into account the deplorable and inhumane conditions of Indian prisons and how unreasonable deprivation of freedom defeats the purpose of the bail system. Thereafter, in *Babu Singh*³¹, a second application after rejection of bail by the High Court was opened up thereby trying to uphold the cause of liberty which courts in India since long had been striving to uphold.

In the recent years, a milestone in bail jurisprudence was set by *Sanjay Chandra*³², wherein the Court emphatically observed that all bail orders are based on certain conditions and that whether the duration of trial was prolonged and the economic nature of the crime. This was further refined in *Tarun Tejpal*³³, wherein the Court observed that bail can be granted as a matter of right when the conditions which were looked into while granting bail can be used to cancel it as and when they stand violated. These approaches were further revisited in *Neeru Yadav*³⁴, wherein the Court further reiterated the importance to look at criminal antecedents of the accused to assess their risk to the society when released on bail and emphasized the need to balance liberty based considerations as against the threat they may pose when released on bail. Once again in *Siddharam Satlingappa Mhetre*³⁵, the court emphasised the need to create a balancing approach between the liberty of the accused and the collective interests of the society and threats to the existing social order. Further, the court also criticised the gross abuse of power by the police in making arrests and disallowing such accused persons to get bail despite them extending full cooperation in the

²⁹ *ADM Jabalpur v. Shivkant Shukla*, AIR 1976 SC 1207.

³⁰ *Gudikanti Narsimbulu v. Public Prosecutor, High Court of Andhra Pradesh*, AIR 1978 SC 429.

³¹ *Babu Singh v. State of UP*, AIR 1978 SC 527.

³² *Sanjay Chandra v. CBI*, (2012) 1 SCC 40.

³³ *Tarun Tejpal v. State of Goa*, SLP (CrI) No 3149-3150 of 2014 (Decided on July 01,2014).

³⁴ *Neeru Yadav v. State of UP*, (2016) 15 SCC 422.

³⁵ *Siddharam Satlingappa Mhetre v. State of Maharashtra*, (2011) 1 SCC 694.

investigation process. Additionally, in the *Arnesh Kumar*³⁶ case, the Court observed that an arrest should not be made merely because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so. While there is power to arrest, but the justification for the exercise of such power is completely different and must not be done in violation of the constitutional as enshrined under Article 20 and 21 of the Indian Constitution.

IV. CONDITIONS AND FACTORS CONSIDERED BY COURTS IN GRANT OR REJECTION OF BAIL APPLICATIONS

It is trite law that the practice of bail is intrinsically connected with upholding of access to justice and the Fundamental Rights as enshrined under the Indian Constitution. Further, the belief of the criminal justice system in India that bail is the rule and jail is the exception can be regarded as a measure to give effect to Article 21 of the Indian Constitution, which disallows any person to be deprived of his life or personal liberty without following the procedure established by law.³⁷

However, it has been pointed out in umpteen occasions that Indian courts exercise a wide discretion, subject to principles laid down by them through their vibrant decisions rendered in a catena of cases in this regard. It is pertinent to note that the courts consider six key factors while granting or rejecting bail applications. Firstly, the courts tend to consider as to whether there is any *prima facie* ground to believe that the accused had committed the offence.³⁸ This is because bail cannot be granted if, on reading of the case diary or the charge sheet, the court finds strong, *prima facie* evidence against the accused.³⁹ Secondly, the nature of the crime and the gravity of the accusation is an important factor in deciding the allowance or rejection of a bail application. The more heinous the offence is, the greater is the magnitude of risk of releasing such a person on bail.⁴⁰ The courts while granting bail must be wary of factors like the nature of the accusation, role ascribed to the accused concerned, possibilities/chances of tampering with the evidence upon being released on bail and/or witnesses, antecedents, flight risk etc.⁴¹ Thirdly, the courts also take into

³⁶ *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.

³⁷ *Prem Prakash v. Union of India through the Directorate of Enforcement*, (2024) 9 SCC 787.

³⁸ *Prasanta Kumar Sarkar v. Ashish Chatterjee and Anr.*, (2010) 14 SCC 496.

³⁹ *National Investigation Agency v. Zahoor Ahmad Shah Watali*, (2019) 5 SCC 1.

⁴⁰ *Ajwar v. Waseem and Anr.*, (2024) 10 SCC 768.

⁴¹ *Manik Madhukar Sarve & Ors. v. Vitthal Damuji Meher & Ors.*, 2024 SCC OnLine SC 2271.

account the seriousness of the charge and the severity of the punishment if proven to be guilty while granting bail.⁴² Fourthly, the courts need to assess the risk of flight when released on bail and endeavours made to escape justice or avoid trial which is usually gathered taking into account past conduct, grievous nature of the offence and the likelihood of evasion, tampering of evidence, intimidating the witnesses or chances of recidivism if released on bail.⁴³ Fifthly, the courts also take into account the character, behaviour, means, position and standing of the accused to ascertain whether the person is likely to misuse the liberty if released on bail.⁴⁴ Sixthly, the likelihood of the offence being repeated is a relevant factor in bail, since releasing an accused who shows a tendency to engage in recidivism endangers society and undermines the system of justice.⁴⁵ Further, in the case of *Anil Tuteja*⁴⁶, it was observed that in addition to the factors mentioned, the courts must also look at the genuineness of the application and must look at applications unfavourably which appear to be frivolous prosecutions.

The courts have been cognizant of the fact that bail applications are often made with an intention which may defeat its purpose. In cases, where the bail application is filed by the accused to misuse the liberty that bail warrants by committing acts that pose a risk to public order and community safety⁴⁷, the courts are usually not amenable to accept the bail application. Further, in cases of accused persons who commit socially abhorrent crimes, interfere with the course of administration of justice⁴⁸, posing the likelihood of evading trial⁴⁹ etc. the courts are less likely to grant bail to the accused. The conditions for bail have been made further nuanced by the enactment of the special laws like the Narcotic Drugs and Psychotropic Substances Act, 1985, Unlawful Activities (Prevention) Act, 1967, Protection of Children from Sexual Offences Act, 2012 etc. which has put restrictive conditions and any case of non-fulfilment allows the courts to reject the application for grant of bail.

⁴² *Mahesh Kumar @Mahesh Bansal v. State of Haryana*, 2024:PHHC:065634.

⁴³ *State of Rajasthan, Jaipur v. Balchand @ Baliay*, AIR 1977 SC 2447.

⁴⁴ *State of U.P. through CBI v. Amarmani Tripathi*, (2005) 8 SCC 21.

⁴⁵ *Prasanta Kumar Sarkar v. Ashis Chatterjee*, (2010) 14 SCC 496.

⁴⁶ *Anil Tuteja v. State of Chattisgarh*, MCRC No. 6496 of 2024 (Decided on December 04,2024).

⁴⁷ Patrick R. Anderson and Donald J. Newman, Introduction to Criminal Justice 204 (Mc. Graw Hill Inc. 1993)

⁴⁸ *State of U.P. v. Amarmani Tripathi*, (2005) 8 SCC 21.

⁴⁹ *Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh*, (1978) 1 SCC 240.

V. INQUEST INTO THE JUDICIAL TRENDS IN GRANT OR REJECTION OF BAIL APPLICATIONS

The judiciary has been instrumental in the development of the bail jurisprudence through its vibrant judgments which it has pronounced from time to time. Bail has always been regarded as an essential element of the Indian criminal justice system which guarantees a right to fair trial and has regarded that bail must be the rule and jail must act as an exception thereby furthering the 'right to life and personal liberty' as guaranteed under the Indian Constitution.⁵⁰ Further, the fundamental principles as put forth in the Universal Declaration of Human Rights provides that a person is assumed to be innocent unless proven guilty.⁵¹ The Indian courts too have been instrumental in shaping a structured and principled approach towards granting applications for bail. While attempts to legislate on bail have been made from time to time, yet such bills have not been enacted thereby leaving it entirely to the courts to decide and allow the bail jurisprudence to evolve.⁵² The trends reflected by the judiciary in the grant and rejection of bail is broadly divided into three categories namely the factors that court needs to take into account while rendering their decision, the role of the nature of offence which the person is accused of and the changes brought forth by the COVID-19 pandemic and thereafter.

The *Vijay Kumar*⁵³ case has set an important precedent by criticising the High Court for granting bail to a convict under Section 302 Indian Penal Code without assigning any reasons or identifying exceptional circumstances. It noted that the the court should consider the relevant factors like the nature of the accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, and the desirability of releasing the accused on bail after they have been convicted for committing the serious offence of murder. Further, in the case of *Sitaram Popat Vetal*⁵⁴, the court laid down a three-pronged test for deciding bail matters, namely the nature of accusation and the severity of punishment in case of conviction and the nature

⁵⁰ *State of Rajasthan v. Balchand*, AIR 1977 SC 2447. See also, *Dataram Singh v. State of Uttar Pradesh*, (2018) 3 SCC 22.

⁵¹ Universal Declaration of Human Rights, Art. 11 U.N. Doc. A/774, at 77 (1948). See also, *Shyamchand Mondal v. The State of West Bengal & Anr.*, CRR 3593 of 2023 (Decided on December 20,2024).

⁵² Rajya Sabha Debates, *The Bail Bill, 2016*, 373, Session Number 239, 29th April, 2016, available at https://rsdebate.nic.in/bitstream/123456789/662398/2/PD_239_29042016_p373_p373_31.pdf (Last visited on August 30,2025).

⁵³ *Vinay Kumar v. Narendra and Ors.*, (2002) 9 SCC 364.

⁵⁴ *State of Maharashtra v. Sitaram Popat Vetal*, (2004) 7 SCC 521.

of supporting evidence, reasonable apprehension of tampering with the witness or apprehension of threat to the complainant and *prima facie* satisfaction of the court in support of the charge. These factors have been relied upon by the court in a catena of cases⁵⁵ until the decision was rendered in the case of *Amarmani Tripathi*⁵⁶ which went on to expound further on this three pronged test. The court in this case provided there needs to be a check as to whether there is any *prima facie* or reasonable ground to believe that the accused had committed the offence. Further, the court needs to look into the nature and gravity of the charge along with the severity of punishment in the event of a conviction. Furthermore, the court also needs to look into the danger of the accused absconding or fleeing⁵⁷, if released on bail, the character, behaviour, means, position and standing of the accused as well as any likelihood of the offence being repeated. Additionally, the courts must also look into the reasonable apprehension of the witnesses being tampered with and any potential danger of justice being thwarted by grant of bail. However, the court in this case also clarified that vague apprehensions of tampering or threats cannot be grounds for refusal of bail and any concrete material showing that the accused might misuse bail to subvert justice must weigh heavily against bail. This decision deepened the earlier three-factor test into a more detailed and balanced framework, signalling the judiciary's intent to bring reasonableness and greater consistency and caution in bail decisions. This view was further expounded in the *Chenna Boyanna Krishna Yadav*⁵⁸ case which also went on to say grant or refusal to bail in addition to the aforementioned factors must also look at the larger interest of the public or the state and must refrain from granting bail if the accused upon release on bail can hinder such interests.

In cases of serious offences as highlighted in the case of *Suman Pandey*⁵⁹, the court observed that for serious offences there is a need to indicate in the order, the reasons for *prima facie* concluding why bail was being granted and any exercise of discretion must be done in a judicious manner.

⁵⁵ *Chaman Lal v. State of U.P.*, (2004) 7 SCC 525. See also, *Kalyan Chandra Sarkar v. Rajesh Ranjan*, (2004) 7 SCC 528; *Anwari Begum v. Sher Mohd.*, (2005) 7 SCC 326.

⁵⁶ *State of U.P. v. Amarmani Tripathi*, (2005) 8 SCC 21. See also, *Anil Kumar Yadav v. State (NCT of Delhi)*, (2018) 12 SCC 129; *Arnab Manoranjan Goswami v. State of Maharashtra*, (2021) 2 SCC 427; *XXX v. Union Territory of Andaman & Nicobar Islands*, 2023 SCC OnLine SC 1062.

⁵⁷ *Dipak Shubhashchandra Mehta v. CBI*, (2012) 4 SCC 134.

⁵⁸ *Chenna Boyanna Krishna Yadav v. State of Maharashtra*, (2007) 1 SCC 242. See also, *Arnab Manoranjan Goswami v. State of Maharashtra*, (2021) 2 SCC 427.

⁵⁹ *Kumari Suman Pandey v. State of Uttar Pradesh and Anr.*, (2007) 12 SCC 364. See also, *Khilari v. State of Uttar Pradesh*, (2009) 4 SCC 23; *Prasanta Kumar Sarkar v. Ashis Chatterjee*, (2010) 14 SCC 496; *Sanghian Pandian Rajkumar v. CBI*, (2014) 12 SCC 23; *Neeru Yadav v. State of UP*, (2015) 16 SCC 422; *Prem Giri v. State of Rajasthan*, (2018) 12 SCC 20; *State of Orissa v. Mahimananda Mishra*, (2018) 10 SCC 516.

However, it has also been clarified that in order to grant bail, the court may not need to exhaustively explore the merits of the case and the same must be left for the trial.⁶⁰

During the COVID-19 pandemic, the Supreme Court of India had taken proactive steps to decongest its prisons by relaxing conditions for the release of undertrial detainees. In its order dated March 23, 2020, the Court directed all States and Union Territories to constitute High Powered Committees to identify categories of prisoners who may be considered for release on parole or interim bail. This extraordinary measure stemmed from the Court's concern over the high risk of virus transmission in overcrowded jails.⁶¹ The measure during the pandemic reflected the evolving judicial sensitivity to the right to life enshrined under Article 21 of the Indian Constitution, thereby prioritizing humanitarian grounds while balancing the interests of justice. This also marked a shift in the bail jurisprudence where public health concerns influenced decisions on personal liberty.

In recent years, the Supreme Court has consistently emphasized the need for reasoned, principle-based orders when exercising discretion under Section 439 CrPC. The following judgments illustrate a firm judicial stance that bail is not to be granted casually, particularly in grave offences such as murder, economic offences, or cases involving national interest. In the case of *Mahipal*⁶², the court observed that while the grant of bail is discretionary, it must not be granted as a matter of routine. The more heinous the crime, the greater is the chance of rejection of the bail, though, however, the outcome is dependent on the peculiar factual matrix of the matter⁶³ and in consideration of the factors which were formulated through a catena of cases earlier.⁶⁴ Further, in the case of *Ishwarji Nagaji Mali*⁶⁵, the court delved into the issue of habitual offenders and observed that habitual offenders often misuse the liberty when released on bail by either committing further crimes and hence courts must place reliance on the criminal record of the accused before granting a bail application.

⁶⁰ *Subhash Chandra Singh v. Dheemant Singh*, (2009) 11 SCC 169. See also, *Sanjay Chandra v. CBI*, (2012) 1 SCC 40; *Ms. Y v. State of Rajasthan*, Criminal Appeal No. 649 of 2022 (Decided on April 19, 2022).

⁶¹ *In Re: Contagion of COVID 19 Virus in Prisons*, Suo Motu Writ Petition (C) 1/2020 (Order dated March 23, 2020).

⁶² *Mahipal v. Rajesh Kumar*, (2020) 2 SCC 118.

⁶³ *Myakala Dharmarajam v. State of Telangana*, (2020) 2 SCC 743.

⁶⁴ *P. Chidambaram v. CBI*, (2020) 13 SCC 337.

⁶⁵ *Ishwarji Nagaji Mali v. State of Gujarat*, (2022) 6 SCC 609.

At present, the case of *Dhanya M*,⁶⁶ reflects the accountability which the Supreme Court takes in respect of preventive detention and regards it as an inappropriate remedy and rather holds that if the accused violates their bail conditions, it is only in such cases that the liberty of the accused can be taken away. Further, in the case of *Aftab*⁶⁷, the Court reiterated the importance of both individual liberty and state accountability in matters relating to bail. In this case, the court granted ₹5 lakh as compensation to an accused who spent 28 days in prison after the Court had granted him bail. Aftab, also born of inter-faith parents, was accused of attempting forceful conversion of a hindu woman under the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021. His bail plea was rejected by the Allahabad High Court, but later granted by the Supreme Court on April 29, 2025. However, Aftab was released only on June 24, 2025.

VI. CONCLUSION AND RECOMMENDATIONS

The paper has delved into how the concept of bail originated and how the practices with respect to grant and refusal of bail have evolved over the years either statutorily or through judicial decisions. Through an analysis of the evolution of law as well as the judicial trends, it is abundantly clear that we have matured in terms of the factors of consideration and have eventually adopted a pragmatic approach to reduce pendency as far as practicable. The changes that have been brought about are aimed at upholding the principle of bail as the rule and jail as the exception. Further, the evolution is also a testament to the fact as to how the judiciary tries to strike a balance between liberty of an accused until proven guilty and overall well-being and safety of the members of the society. Further, the testimony to the pragmatic approach is the timely initiative of the Supreme Court wherein it is identifying and disposing of matters that tend to become infructuous, particularly in the context of bail where if the accused has either been arrested or has been granted a regular bail or has been discharged.⁶⁸ This indeed ensures that the judicial delays and the extent of preventive detention can be curbed significantly. However, the dockets in our country are consistently on the rise and hence topical steps like introducing modern day technology like

⁶⁶ *Dhanya M v. State of Kerala and Ors.*, Criminal Appeal No. 2897 of 2025 (Decided on June 06,2025).

⁶⁷ *Aftab v. State of Uttar Pradesh*, SLP (Crl.) No. 5365/2025 (Decided on April 29,2025).

⁶⁸Kriti Sharma, Padma Ladol, Shubham Kumar and Vrishti Shami, *Unclogging the Docket: Tackling Short, Infructuous and Old Cases 77* (Centre for Research and Planning, Supreme Court of India 2025).

artificial intelligence algorithms when trained on time tested principles which the Indian criminal justice system has developed through vibrant judicial precedents for assisting courts in the grant of bail could also be considered. Further, the courts could also set up committees in order to ensure cases involving delayed release of accused persons despite grant of bail, overcrowding of under-trial prisoners by ensuring timely hearing and prison management by segregating habitual offenders with those who have offended once. These steps, when coupled with the present initiatives taken by the judiciary to unclog dockets, would definitely go a long way towards being able to uphold the intent of the criminal justice system of our country with respect to bail. Further, this shall also enable us in achieving the reformatory intent which continues to be the broader goal of our criminal justice system in addition to achieving the goal of decongestion of prisons, better use and allocation of resources and upholding the strived intent of bail and the Indian criminal justice system.