

BAIL UNDER BNSS

Bail is a fundamental concept in the criminal justice system that allows the temporary release of an accused person awaiting trial, balancing the presumption of innocence with the necessity of ensuring justice. Historically, Indian bail law has been governed by the CrPC, 1973. However, the BNSS, 2023, brings sweeping changes aimed at addressing contemporary challenges in criminal justice, such as reducing frivolous bail applications and preventing misuse by both the accused and prosecution. This section will outline the evolution of bail laws, leading to the need for these reforms.

Objective:

The primary objective of this paper is to examine the provisions related to the grant and cancellation of bail under BNSS, 2023. It will analyze how these provisions differ from previous laws, their impact on judicial discretion, and their potential effectiveness in maintaining a balance between individual rights and public safety.

Scope of Study:

This research will focus on analyzing the changes in bail provisions under BNSS, 2023, and their implications. It will explore both the procedural and substantive aspects of the law, comparing it with the CrPC and international practices. The paper will also highlight potential challenges and criticisms that may arise with the implementation of these provisions.

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) is a modern legislative initiative aimed at replacing the colonial-era Indian Penal Code (IPC), Criminal Procedure Code (CrPC), and Indian Evidence Act. This new legislation introduces various reforms, including changes in

the provisions relating to the grant and cancellation of bail. Below is an overview of these aspects under the BNSS, focusing on the key principles and procedures related to bail.

The BNSS retains the fundamental principles of bail from the existing criminal law framework but introduces new provisions to enhance the efficiency and fairness of the process. The primary objective of bail remains to ensure the presence of the accused during trial while balancing the rights of the accused and the interest of society.

Types of Bail:

Regular Bail: Granted to an accused after arrest and during the pendency of the trial.

Anticipatory Bail: Granted to a person who apprehends arrest on an accusation of a non-bailable offense.

Interim Bail: Temporary bail granted for a short period until the regular or anticipatory bail application is decided.

Bail in Non-bailable Offenses:-

For non-bailable offenses, BNSS follows a more structured approach. Courts retain the discretion to grant bail considering factors such as the nature and gravity of the offense, the likelihood of the accused fleeing from justice, and the potential for the accused to tamper with evidence or influence witnesses.

Bail in Bailable Offenses:-

For bailable offenses, the right to bail is almost absolute, subject to the execution of a bond with or without sureties. BNSS simplifies this process to reduce delays and ensure that individuals accused of minor offenses do not suffer undue incarceration.

BNSS lays down specific grounds that courts must consider while granting bail. These include:

1. **Nature of the Accusation:** The seriousness of the crime plays a significant role in determining bail. Heinous crimes are less likely to result in bail.
2. **Evidence Against the Accused:** Courts assess the prima facie evidence available against the accused. Weak evidence may favor the granting of bail
3. **Previous Criminal Record:** An accused with a clean record may be more favorably considered for bail compared to a habitual offender.
4. **Possibility of Tampering with Evidence:** If the court believes that the accused may interfere with the investigation or intimidate witnesses, bail may be denied.

5. **Risk of Flight:** If the accused poses a flight risk, bail may be denied to ensure their presence during the trial.

6. **Judicial Discretion:** One of the significant areas impacted by BNSS, 2023, is judicial discretion in bail matters. The Act introduces more rigid guidelines, which may limit the flexibility of judges in certain cases. However, it also provides room for discretion in exceptional circumstances. This section will explore the extent of judicial discretion under the new law, supported by case laws and precedents that illustrate the practical implications of these changes.

Anticipatory Bail:-

BNSS retains anticipatory bail provisions, allowing individuals to seek pre-arrest bail if they apprehend arrest for a non-bailable offense. However, the Act introduces stricter scrutiny for granting anticipatory bail. The applicant must satisfy the court that:

1. There is no prima facie case of involvement in the offense.
2. The apprehension of arrest is genuine and not merely speculative.
3. There is no likelihood of the accused fleeing or tampering with evidence.

Courts can impose conditions on the grant of anticipatory bail, such as requiring the accused to cooperate with the investigation or refrain from leaving the jurisdiction without permission.

Cancellation of Bail:-

- Conditions for Cancellation:

The BNSS, 2023, outlines specific conditions under which bail can be cancelled. These include violations of bail conditions, interference with the investigation, or new evidence suggesting the accused poses a threat to public safety.

- Judicial Role in Cancellation:

The judiciary plays a pivotal role in balancing the rights of the accused with the need to ensure justice. This section will focus on the procedural safeguards in place under BNSS, 2023, for the cancellation of bail and how these safeguards can prevent arbitrary or unjust decisions. The role of judicial oversight and the balance between protecting the public and preserving individual freedoms will be critically examined.

Key Case Laws Relevant to Bail (Pre-BNSS, 2023)

1. Gurbaksh Singh Sibbia v. State of Punjab (1980) 2 SCC 565:

This landmark Supreme Court case established key principles regarding the grant of anticipatory bail. The Court emphasized that the discretionary power of granting bail must be exercised with care and circumspection, considering factors such as the seriousness of the offense and the likelihood of the accused absconding.

2. State of Rajasthan v. Balchand alias Baliay (1977) 4 SCC 308:

The Supreme Court upheld the principle of bail being the rule and jail the exception, highlighting the importance of personal liberty in a democratic society.

3. Sanjay Chandra v. CBI (2012) 1 SCC 40:

In this case, the Supreme Court reiterated that the purpose of bail is to ensure the accused's attendance at trial, not to punish the accused pre-trial. The Court granted bail to the accused despite the serious nature of the charges, emphasizing that the accused were not likely to flee.

4. Nikesh Tarachand Shah v. Union of India (2018) 11 SCC 1:

This case dealt with the constitutionality of Section 45 of the Prevention of Money Laundering Act, 2002, which imposed stringent conditions for the grant of bail. The Supreme Court struck down the provision as unconstitutional, affirming that unreasonable conditions for bail violate the fundamental right to liberty.

5. P. Chidambaram v. Directorate of Enforcement (2019) 9 SCC 24:

The Supreme Court's judgment in this case involved the denial of anticipatory bail in a high-profile economic offense. The Court emphasized the need for a careful balance between the rights of the accused and the demands of the investigation.

6. Siddharam Satlingappa Mhetre v. State of Maharashtra (2011) 1 SCC 694:

The Supreme Court in this case provided an extensive discussion on anticipatory bail, stating that anticipatory bail should not be refused merely because it is a non-bailable offense.