

# Types of bails in India

November 20, 2020

The recent case of bail for Arnab Goswami has thrown light on influential people getting special treatment while ordinary citizens are made to suffer, including imprisonment, which are many times illegal. It is utmost important that while granting bail the court must also look at the socio-economic plight of the accused and make sure that the real purpose of bail provisions is served.

**In news:** Supreme Court grants interim bail to Arnab Goswami

**Placing it in syllabus:** Law and policy

## Static dimensions

1. What is bail and its types
2. Conditions of Bail
3. Advantages and drawbacks

## Current dimensions

1. In news

## Content:

### In news:

- **Arnab Goswami, Republic TV owner and editor and two others – Feroze Shaikh and Nitish Sarda** were arrested by Maharashtra police on November 4, 2020.
- The arrest was in connection with the suicide of architect-interior designer Anvay Naik and his mother in 2018 over alleged non-payment of dues by companies of the accused.
- The magistrate's court remanded Goswami and the two others in judicial custody till November 18.
- As Bombay High court denied them interim bail, the Supreme Court heard an appeal against the High court's

decision.

- A 2-judge Supreme Court bench ordered the release of Arnab Goswami and his other co-accused on interim bail.
- The bench expressed displeasure at the Bombay high court order denying Goswami relief, saying that constitutional courts have the duty to intervene when personal liberty is at stake.
- The judges wondered if abetment to suicide charges could be used only based on non-payment of dues, if there was no personal relationship between the two individuals.
- Arnab's advocate alleged that the Maharashtra government had wrongly used powers to re-investigate the case.

However, Supreme Court Bar Association (SCBA) president Dushyant Dave wrote a letter to the top court expressing concern over the **"selective listing of matters"**.

## **What is bail?**

- Bail refers to the *provisional release of the accused in a criminal case in which the court is yet to announce the judgment.*
- The term bail originated from an old French verb **'bailer'** which means **'to give'** or **'to deliver'**.

Depending upon the stage of the criminal matter, there are commonly three types of bail in India:

**Regular bail** – A regular bail is generally granted to a person who has been arrested or is in police custody. A bail application can be filed for the regular bail **under section 437 and 439 of Code of Criminal Procedure (CrPC).**

**Interim bail** – This type of bail is granted for a short period of time and it is granted before the hearing for the grant of regular bail or anticipatory bail.

**Anticipatory bail** – Anticipatory bail is granted under **section**

**438 of CrPC** either by session court or High Court. An application for the grant of anticipatory bail can be filed by the person who discerns that he may be arrested by the police for a non-bailable offence.

## **Conditions of bail:**

### **In Bailable Offences:**

- **Section 436 of CrPC, 1973**, lays down that a person accused of bailable offence under IPC can be granted bail.

### **Conditions:**

- There are sufficient reasons to believe that the accused has not committed the offence.
- There is sufficient reason to conduct further enquiry in the matter.
- The person is not accused of any offence punishable with death, life imprisonment or imprisonment up to 10 years.

### **In Non-Bailable Offences:**

- **Section 437** of CrPC, 1973 lays down that the accused does not have the right to apply for bail in non-bailable offences.
- It is **discretion of the court to grant bail in case of non-bailable offences.**

### **Conditions:**

- If the accused is a woman or a child, bail can be granted in a non-bailable offence.
- If there is lack of evidence then bail in non-bailable offences can be granted.
- If there is delay in lodging FIR by the complainant, bail may be granted.
- If the accused is gravely sick.

### **Cancellation of Bail:**

- Court has the power to cancel the bail even at a later stage under **section 437(5) and 439(2) of the CrPC.**
- The court can cancel the bail granted by it and give directions to the police officer to arrest the person and keep in police custody.

### **Advantages and Drawbacks:**

- The release on bail upon appropriate considerations is significant not only to the accused, and his family members who might be dependent upon him but also the society at large.
- It would be unjust and unfair to deprive the alleged accused of his liberty during the pendency of the criminal proceeding against him.

### **Drawbacks:**

- The bail system in India is accused of being unjust for the poor.
- Thousands are languishing in jails without proper legal justice and are denied bail provisions just because of their poor economic backgrounds.
- Bail provisions are also denied in case of political rivalry, especially during elections.
- In the **State of Rajasthan v Balchand case (1977)**, for the first time, Justice Krishna Iyer raised his voice against the unfair system of bail administration, and had noted that a time for rethinking had come.

There is also a strong need felt for a complete review of the bail system keeping in mind the socio-economic condition of the majority of our population. To uphold the ethics of the judiciary, it is necessary that judges should be more inclined towards bail and not jail.

### **Mould your thought:**

1. What are the different types of bail and conditions

related to them? How is a bail misused?

**Approach to the answer:**

- Define bail
- Write the types and conditions for bail
- Write the drawbacks of bail system
- Conclusion