

# What is pre-arrest bail?

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**In news**— Karnataka Lokayukta has challenged the Karnataka High Court order granting pre-arrest bail to Karnataka BJP MLA Madal Virupakshappa in corruption case.

## What is pre-arrest bail?

- Black's Law Dictionary describes 'bail' as procuring "the release of a person from legal custody, by undertaking that he shall appear at the time and place designated and submit himself to the jurisdiction and judgment of the court."
- Although "bail" has not been expressly defined in Indian statutes, the Code of Criminal Procedure (CrPC) differentiates between "bailable" and "non-bailable" offenses.
- It also defines three kinds of bail that can be granted – regular bail under Sections 437 and 439; interim bail or short-term bail which is given when regular or anticipatory bail application is pending before the court; and anticipatory or pre-arrest bail.
- The provision for "anticipatory bail" was introduced under Section 438 of the CrPC after the 41st Law Commission Report in 1969 recommended the need for a measure that protects against arbitrary violation of one's personal liberty, such as when politicians detain their opponents in false cases.

## When can anticipatory bail be granted?

- **Anticipatory bail can be granted under Section 438, when "any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence".**
- **It can be granted by the High Court or the Court of Session, under this section, for non-bailable offenses**

for which one anticipates arrest, even if the actual arrest has not happened or the FIR has not been registered.

- Non-bailable offenses are more serious offenses, punishable with at least three years imprisonment and above.
- Section 438 was amended in 2005, following which it laid down principles for consideration for the grant of anticipatory bail under subsection such as whether the accused is likely to flee, is a habitual offender, or is likely to tamper with evidence along with his antecedents, such as previously being arrested for a cognizable offense.
- However, since state legislatures are empowered to amend certain provisions of the CrPC, Maharashtra, Odisha and West Bengal follow their own, modified versions of Section 438.
- **Uttar Pradesh and Uttarakhand did away with anticipatory bail** through the CrPC (UP Amendment) Bill, 1976, during Emergency.
- In 2019, however, this was reintroduced after then President Ram Nath Kovind approved the CrPC (Uttar Pradesh Amendment) Bill, 2018.
- Similarly, in 2019, the Uttarakhand Assembly passed an amendment Bill seeking to revive Section 438 of the CrPC.

### **What are the conditions for granting anticipatory bail?**

While granting anticipatory bail, the Sessions Court or High Court can impose the conditions laid down in sub-section (2) like:

- The person shall make himself available for interrogation by a police officer as and when required.
- The person cannot make any inducement, threat, or promise, directly or indirectly, to any person acquainted with the facts of the case to dissuade him

from disclosing them to the court or the police.

- The person shall not leave India without the previous permission of the court.
- Such other conditions may be imposed under sub-section (3) of section 437 “as if the bail were granted under that section”.