ABSTRACT

“The person who reads can bail, but the person who doesn’t fails”

-Gary Paulsen

Bail has become a matter of extreme concern in a country like India where bail is recognised as a Right only for elite class, the poor suffers the physical torture and mental agony. A stereotype that poor offender can’t be trusted with freedom or liberty needs to be taken into serious consideration and this bias needs to be eliminated from the society. A Recent Annual Prison Report shows that majority of prison population in India are under-trial and poor belonging to economically and socially backward classes. A concept of prima facie case takes away the right of an under-trial and poor prisoner to be enlarged on bail. Where the rich has to pass the triple test to earn the right of bail, the poor has to satisfy the fourth condition i.e. no prima facie case is made against him coupled with the passing of triple test. This has created an unreasonable classification between elite class on one hand and middle class and poor on the other hand taking away the very essence of Article 14 and Article 21 of Indian Constitution. On study and careful perusal of various Judgments delivered by various Courts in India it is transparent that there are different set of guidelines for different classes of prisoners. The Right of Bail has therefore become a luxurious Right that is conferred upon the higher class of the society by Indian Judiciary. Everyone wants to support the victim but someone needs to stand up for the Rights of innocent prisoners.

KEYWORDS: Bail, Under-trials, Triple test, Prima facie, Classification

INTRODUCTION

“Bail is rule, Jail is exception” - this principle has time and again being reiterated by the Supreme Court of India1 but the same is not being followed or applied by the Lower Courts and High Courts. Though it is the duty2 of the Lower and High Courts to follow and obey the order or judgment of The Supreme Court. This principle was laid down in order to protect the Rights of the Prisoners. It was introduced in consonance with a universally accepted principle i.e. “innocent until proven guilty”3. Every person who is charged with a penal offence is presumed to be innocent until proven guilty at the stage of trial and therefore, keeping the alleged offender behind bars for an unreasonably long time serves a punishment which is

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1 State of Rajasthan, Jaipur vs Balchand @ Baliay 1977 AIR 2447, 1978 SCR (1) 535
2 Article 141 of The Constitution of India 1949: “The law declared by the Supreme Court shall be binding on all courts within the territory of India.”
3 Article 11 of The Universal Declaration of Human Rights: “Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.”
It is well known that grant or refusal of bail is a matter of Judicial Discretion. This discretion was conferred on the Courts to act in interest of Justice, but it has rather become an arbitrary power vested in the Courts. The Courts are using this discretion on the basis of economical and social background of the alleged offenders which leads and gives rise to arbitrariness and unfairness in the Judicial System.

Another reason why bail should be granted by Indian Courts is that the Prisons are overcrowded and there is not enough staff in Prison to take care and handle so many Prisoners. Over-crowding of prison eventually leads to violation of Human Rights. The recent Prison Report reveals that there are in total 1,339 Prisons in India having a total capacity of 3,96,223 inmates. According to the same report, the total number of inmates stuffed into these prisons are 4,66,084. This figure itself shows that the prison is over-crowded and therefore, leading to violation of Human Rights. In addition to this, report also reveals a very disturbing and shocking fact that out of 4,66,084 prisoners, 3, 23, 537 are under-trial.

In our system, condemnation and punishment should only ever happen after someone has been found guilty of an offence. Bail should not be used to punish a person who is yet to be prosecuted for a crime.

Supreme Court that Bail Matters are not to be looked into depth and only a test has to be satisfied.

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4 https://theconversation.com/not-for-punishment-we-need-to-understand-bail-not-review-it-28651

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5 Article 14 in The Constitution of India 1949

“Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.”

6 Article 21 reads as:

“No person shall be deprived of his life or personal liberty except according to a procedure established by law.”

7 Anil Kumar Yadav vs. State (NCT) of Delhi, (2018) 12 SCC 129

8 Shri Gurbaksh Singh Sibbia and others v. State of Punjab (1980) 2 SCC 565

9 Re-Inhuman Conditions In 1382 ... vs State of Assam WRIT PETITION (CIVIL) No.406 OF 2013

10 Prison Statistics India 2018, Published By: National Crime Records Bureau (Ministry of Home Affairs) Government of India, Chapter 1: Prisons – Types and Occupancy pg. 2

11 supra note 10, Chapter – 2 Prisoners – Types and Demography pg. 33

12 In this paper the term ‘undertrial’ denotes an unconvicted prisoner i.e. one who has been detained in prison during the period of investigation, inquiry or trial for the offence s/he is accused to have committed.
prisoners awaiting their trials to end. This figure shows that 69.42% of the total population of prison in not even found guilty yet and are still languishing in jail suffering physical and mental trauma.

This research paper will deal with the Law of Bail in India, how it is applied for different classes of people, judgments supporting the views, statistical data of under-trial prisoners and relation of bail to fundamental rights. It is a matter of extreme concern, and the same shall be dealt by the Indian Judiciary as soon as possible in order to prevent the violation of Human Rights and respect the conventions relating to the prisoners to which India is a proud signatory.

In words of Justice Krishna Iyer13: “Personal liberty is deprived when bail is refused, is too precious a value of our constitutional system, that the crucial power to negate it is a great trust exercisable not casually but judicially with lively concern for the cost to the individual and the community.

WHAT IS BAIL?

Before dwelling into the relevance of bail and provisions relating to the same, it is incumbent to understand what is Bail per se. In simple or layman language, when a person is arrested for a cognizable14 or non-cognizable offence15, the police or Court respectively can release the alleged offender from its custody after imposing certain necessary conditions to ensure the presence of accused at the stage of trial.

Following are some definitions of Bail-
“Means a security such as cash or a bond, especially security required by court for the release of a prisoner who must appear at a further time.”16

“Bail, a temporary release of a prisoner in exchange for security given for the prisoner's appearance at a later hearing."17

Offence can be bailable and non-bailable. A person who has been booked with a bailable offence has a statutory right18 of being released on bail19, Whereas a person who has been charged with a non-bailable offence has to apply before the Court of Law in order to be granted bail20. In non-bailable offence, the alleged offender does not have a statutory right of being released on bail. In simple terms, Bailable offences are considered to be less serious offences and Non-bailable offences are considered to be serious and dangerous offences. In countries like Canada, offences are three categories i. e. summary

\[\text{Section 2 (c) of CrPC- "cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;}
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\[\text{Section 2 (l) of CrPC- "non-cognizable offence" means an offence for which, and "non-cognizable case" means a case in which, a police officer has no authority to arrest without warrant;}
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\[\text{Black Law Dictionary, 7th Edn., p. 135}
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14 Section 2 (c) of CrPC- "cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;
15 Section 2 (l) of CrPC- "non-cognizable offence" means an offence for which, and "non-cognizable case" means a case in which, a police officer has no authority to arrest without warrant;
16 Webster's Dictionary of Law, Indian Edn., (2005), p. 41
18 Section 436 of CrPC- “whenever a person accused of a bailable offence is arrested without warrant and is prepared to give bail, such person shall be released on bail.”
offences, indictable offences and hybrid offences\textsuperscript{21}. 

In India, Section 436 to 439 of Code of Criminal Procedure, 1973 deals with the relevant provisions of bail\textsuperscript{22}. Section 436\textsuperscript{23} deals with bail in cases of bailable offences, Section 437\textsuperscript{24} deals with bail in non-bailable offences. Section 438\textsuperscript{25} deals with Anticipatory Bail. Section 439 deals with regular bail.

**BAIL IN RELATION TO ARTICLE 21**

In India, one of the biggest flaws in the judicial system is delay of process. It takes a long time to decide a bail application once presented before the court. This exercise often leads to violation\textsuperscript{26} of Article 21\textsuperscript{27} that guarantees every individual life and liberty and forces the people to draw adverse inferences against the Judiciary. It takes nearly 4-5 years for a trial to get over and pronounce the judgment, and during this period keeping the alleged accused behind the bars clearly infringes his fundamental rights. Also, speedy trial is an essential part\textsuperscript{28} of Article 21 though it has not been mentioned in the Article itself. A speedy trial also serves social interest and helps in drawing the people’s belief in Judiciary\textsuperscript{29}.

In Hussainara Khatoon & Ors. Vs. Home secretary, Bihar\textsuperscript{30}, Justice Bhagwati observed that—

“The unfortunate undertrials languished in prisons not because they were guilty but because they were too poor to afford a bail. Following Maneka Gandhi v. Union of India\textsuperscript{31}, he read into fair procedure envisaged by Article 21 the right of speedy trial and sublimated the bail process to the problems of the destitute.”

It was laid down in Hussain and ors. vs Union of India (UOI) and Ors\textsuperscript{32} that—“speedy trial is a part of reasonable, fair and just procedure guaranteed under Article 21. This constitutional right cannot be denied even on the plea of non-availability of financial resources. Deprivation of personal liberty without ensuring speedy availability of financial resources. Deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. This Court has held that while a person in custody for a grave offence may not be released if trial is delayed, trial has to be expedited or bail has to be granted in such cases.”

On perusal of the above the mentioned judgments it is very well understood that when accused is kept into the custody for an unreasonably long time without the trial moving forward, it leads to gross injustice

\textsuperscript{22}State of Gujarat vs Salimbhai Abdulgaffar Shaikh (2003) 8 SCC 50 para. 6
\textsuperscript{23}Supra note 15
\textsuperscript{24}Ram Pratap Yadav vs. Mitra Sen Yadav, (2003) 1 SCC 15 para. 7
\textsuperscript{25}https://indiankanoon.org/doc/1783708/
\textsuperscript{26}Intiyaz Ahmad Vs. State of Uttar Pradesh & others, reported in A.I.R. 2012 SC 642
\textsuperscript{27}Supra note 6
\textsuperscript{28}Abdul Rehman Antulay & Ors. Vs. R.S. Nayak & Anr. [(1992) 1 SCC 225]
\textsuperscript{29}Supra note 25
\textsuperscript{30}1980 SCC (1) 98
\textsuperscript{31}1978 SCC (1) 248
\textsuperscript{32}(2017) 5 SCC 702
and violation of personal liberty\textsuperscript{33} guaranteed by Constitution of India.

Life and liberty of the accused is universally accepted and the same cannot be curtailed for any reason whatsoever unless the gravity or magnitude of the crime committed by him is heinous and thereby releasing him on bail will not be step towards public safety. Most of the countries like United Kingdom, USA, West Germany, Japanese, Pakistan, and Bangladesh have recognised Right to Life and Liberty as Fundamental Right\textsuperscript{34}.

\textbf{United Kingdom-} “Right to life is the most fundamental of all human rights and any decision affecting human right or which may put an individual’s life at risk must call for the most anxious scrutiny.”\textsuperscript{35}

\textbf{USA-} “No person shall be deprived of his life, liberty or property, without due process of law.”\textsuperscript{36}

\textbf{West Germany-} “Everyone shall have the right to life and physical inviolability. The freedom of the individual shall be inviolable. These rights may be interfered with only on the basis of the legal order.”\textsuperscript{37}

\textbf{Japan-} ”No person shall be deprived of life or liberty nor shall any other criminal penalty be imposed, except according to procedure established by law.”\textsuperscript{38}

\textbf{Bangladesh-} ”No person shall be deprived of life or personal liberty save in accordance with law.”\textsuperscript{39}

\textbf{Pakistan-} ”Security of Person: No person shall be deprived of life and liberty save in accordance with law.”\textsuperscript{40}

\section*{STATISTICAL DATA OF PRISONERS}

India has a total number of 1, 339 prisons having a total intake capacity of 3, 96, 223\textsuperscript{41}. It is quite astonishing to know that in spite of having a capacity of 3, 96, 223, there were 4, 66, 084 inmates languishing in the Prison in the year 2018. This clearly shows that the prisons are over-crowded. Due to overcrowding of prison the inmates do not even have sufficient place to sleep, they have to sleep in shifts\textsuperscript{42}. Whole idea of sending a person to prison is reformatory\textsuperscript{43} in nature, rather than deterrent punishment. Over-crowding of Prison and keeping prisoners in such inhumane condition inevitably leads to violation of human rights\textsuperscript{44} and abuse of process of law.

The Report also reveals that out of 4, 66, 084 prisoners, 3, 23, 537 are under-trial prisoners

\begin{itemize}
\item \textsuperscript{33} Supra note 6
\item \textsuperscript{34} Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694
\item \textsuperscript{35} Bugdaycay v. Secretary of State for the Home Department (1987) 1 All ER 940, also see: R on the application of Pretty v. Director of Public Prosecutions (2002) 1 All ER 1 wherein it was held: “The sanctity of human life is probably the most fundamental of the human social values. It is recognized in all civilized societies and their legal system and by the internationally recognized statements of human rights.”
\item \textsuperscript{36} Fifth Amendment to the Constitution of U.S.A. (1791)
\item \textsuperscript{37} Article 2(2) of the West German Constitution (1948)
\item \textsuperscript{38} Article XXXI of the Japanese Constitution of 1946
\item \textsuperscript{39} Article 32 of the Constitution of Bangladesh, 1972 [3 SCW 385]
\item \textsuperscript{40} Article 9 Right to life and Liberty
\item \textsuperscript{41} Supra note 10
\item \textsuperscript{43} Sunil Batra (1) v. Delhi Administration, [1979] 1 S.C.R. 393
\item \textsuperscript{44} Supra note 9
\end{itemize}
awaiting their trials to end. This figure shows that 69.42% of the total population of prison in not even found guilty yet and are still languishing in jail suffering physical and mental trauma. From the 2013 to 2018 the population of under-trial prisoners has increased by 16.2%.

In the end of the year 2018, out of 3, 23, 537 under-trial prisoners:

- 1, 17, 012 inmates were lodged in various Prisons for upto 3 months.
- 69, 180 inmates were lodged in various Prisons for 3-6 months.
- 55, 349 inmates were lodged in various Prisons for 6-12 months.
- 40, 217 inmates were lodged in various Prisons for 1-2 years.
- 22, 359 inmates were lodged in various Prisons for 2-3 years.
- 14, 316 inmates were lodged in various Prisons for 3-5 years.
- 5, 104 inmates were lodged in various Prisons for above 5 years.

The data is very upsetting in terms of so many under-trials are languishing in Jail without even being proved guilty. In addition to this, a total of 59, 357 undertrial prisoners were released based on acquittal on the first instance and 24, 651 undertrial prisoners were released subsequent to the acquittal on appeal.

The Supreme Court has very well observed:

“The consequences of pre-trial detention are grave. Defendants presumed innocent are subjected to the psychological and physical deprivations of jail life, usually under more onerous conditions than are imposed on convicted defendants. The jailed defendant loses his job if he has one and is prevented from contributing to the preparation of his defence. Equally important, the burden of his detention frequently falls heavily on the innocent members of his family.”

Every person, irrespective of class, creed, caste, age, gender etc. is presumed to be innocent in the eyes of law unless convicted by the Court of Law. Incarceration of a pre-trial detainee with hardened and notorious criminal may eventually disturb his mental psychology which may eventually turn even him into a criminal. It is also to be noted that majority of under-trial prisoners are poor and underprivileged belonging to rural and agricultural background.

Acquittal rate is admittedly higher than the conviction rate and therefore, Police must be slow in arresting the accused when he is ready to co-operate with the investigation as the conviction rate is less than 10%.

Investigating agency also has a duty to arrest the accused on their confession.

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45 Supra note 10, Chapter – 2 Prisoners – Types and Demography pg. 44
46 Supra note 10, Chapter – 6 – Prisoners- Sentences and Incarceration pg. 150
47 Prison Types and Occupancy, Prison Statistics India 2018, National Crime Records Bureau, Ministry of Home Affairs, p.11
48 Moti Ram and Ors. V. State of Madhya Pradesh AIR 1978 SC 1594.
49 Pre-trial detainee has the same meaning as that of under-trial prisoner.
50 All India Committee on Jail Reforms 1980-1983
52 1746512.html
55 Supra note 32 Para. 93
56 If someone, especially an official, investigates an event, situation, or claim, they try to find out what happened or what is the truth

www.supremoamicus.org
conferring upon it by law to protect the rights of the accused. The job of investigating agency is not to arrest a person just to torture him but the arrest should be made to secure the presence of the accused. And if the accused is already co-operating with the investigating machinery, there seems no purpose being served by keeping the alleged accused behind bars.

**UNREASONABLE CLASSIFICATION BETWEEN RICH AND POOR INMATES**

The object of arrest and detention is primarily to secure the presence of the accused during the stage of trial. If the court is satisfied that the accused has roots in society and he will not abscond and his presence will be secured at the stage of trial, it may release the accused on bail imposing certain strict conditions. The Hon’ble Supreme Court in the year 1983 held that there are only two primary considerations to be taken into account while dealing with a Bail Application and i.e.:

1. Whether the accused would be readily available for the trial?
2. Whether he is going to tamper with the evidence or intimidate the witnesses abusing the benefit granted in his favour?

The first consideration can be fulfilled if the accused provides his proof of permanent address, furnishes surety or personal bond as directed by the court, and proves that he has roots in society. In order for the court to satisfy the second consideration, it has to go through the criminal record of the accused and check whether he is a history-sheeter, the Courts can also check his conduct while in police custody.

The Supreme Court in the year 2009 delivered one more judgment laying down the points to be considered while deciding a Bail Application. There are three primary considerations:

1. Nature of accusation and severity of punishment in case of conviction.
2. Whether he is going to tamper with the evidence or intimidate the witnesses abusing the benefit granted in his favour?
3. Whether there is *prima facie* case against the accused?

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54 J.M. Jain vs Ghamandiram K. Gowani (1979) 81 BOMLR 64
55 Sanjay Chandra v. CBI, (2012) 1 SCC 40
56 Section 436A of CrPC
57 Bhagirath Sinh S/O Mahipat Singh ... vs State of Gujarat 1984 AIR 372, 1984 SCR (1) 839
58 Aadhar Card, Passport, Ration Card, Rent Receipt, Electricity bill, Phone Bill.
59 Definition of surety by Ministry of Attorney General, Ontario- A *surety is a person who gives or promises security for another person.*
60 A personal bond is a bond stating a criminal defendant will appear at all future court dates. The accused doesn’t have to post bail, but will forfeit the amount in the bond if the promise to appear is broken. *It is also known as a release on recognizance bond.*
61 Gudikanti Narasimhulu vs. Public Prosecutor of Andhra Pradesh AIR 1978 SC 429
62 History-sheeter means- A person with a criminal record.
63 Bhuvaneshwar Yadav vs. State of Bihar 2009 AIR (SC) 1452
64 Black’s Law Dictionary- Sufficient to establish a fact or raise a presumption unless disproved or rebutted.
By nature of accusation and severity of punishment the Court meant that if any person is accused of committing a serious offence punishable with life imprisonment or death, he stands on different footing than those who have allegedly committed cognizable offence which are not punishable with life imprisonment or death. A person who is accused of committing a serious offence punishable with life imprisonment or death is not entitled to bail by the virtue of Section 437 of CrPC.

The concept of prima facie case often leads to contradicting judgments and unfairness. This principle is often used while deciding Bail Applications of poor and underprivileged prisoner whereas the rich and famous people are exempted from this consideration. This can be proved by perusing few judgments:

In a case, where a famous film actor was accused of raping his maid moved a bail application in the Hon’ble High Court of Bombay in the year 2009 wherein it the Court held that at the stage of bail only two factors are supposed to be taken into consideration and those are:

1. Whether he will abscond?
2. Whether he will tamper with the evidence and intimidate the witness?

The infamous 2G spectrum scam case wherein it was alleged that the politicians and private officials under the United Progressive Alliance coalition government in India were accused of committing a major scam of 2, 867, 800, 000, 000 rupees, but the gravity and magnitude of the offence were not considered rather it was freely expressed that-

“We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardize the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI.”

Yet in another case of a political leader, the Hon’ble Bombay High Court while relying on judgment of Supreme Court in the case of Sanjay Chandra observed-

“The trial may take considerable time and it looks that the appellants, who are in jail, have to remain in jail longer than the period of detention, had they been convicted. It is not in the interest of justice that accused should be in jail for an indefinite period. No doubt, the offence alleged against the appellants is a serious one in terms of alleged huge loss to the State Exchequer that, by itself, should not deter from enlarging the appellants on bail when there is no serious contention that the accused, if released on bail, would interfere

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65 A person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life
67 Supra note 53 Para. 28
68 Chhagan Chandrakant Bhujbal vs Assistant Director, Directorate of Enforcement, 2018(3) RCR (Criminal) 125 Para. 27
69 Supra note 53
with the trial or tamper with evidence. There is no good reason to detain the accused in custody, that too, after the completion of investigation and filing of the charge-sheet.”

And the easy bail of Mr. P. Chidambaram, the then Union Finance Minister in the INX Media case which is an ongoing high-profile money laundering investigation in India. It involves the allegation of irregularities in foreign exchange clearances given to INX Media group for receiving overseas investment in 2007. The Court relied on the judgements far back and reiterated the principle of bail only to ensure attendance in Court and presumed innocence of the applicant, as abstracted from Nagendra v. King-Emperor and Emperor v. Hutchinson. Then the Court concluded that the Applicant i.e. Mr. Chidambaram could not be considered as a ‘flight risk’ and there was no possibility of tampering the evidence or intimidating the witnesses and thereby giving due consideration to his time spent in custody, it was deemed to be a fit case of bail and was released.

On perusal of the above-mentioned judgments, it can be clearly seen that even after Supreme Court laying down the factors requiring to be considered while deciding Bail Application, the Courts have completely ignored the factors like; nature of allegation and prima facie case. Only the triple test of bail was taken into consideration. Logically, a poor man won’t be able to intimidate the witness as he is already helpless and not resourceful whereas a rich man can be more influential increasing the chances of witness intimidation and tampering of evidence.

This creates an unreasonable classification between the poor and rich offender leading to travesty of justice and violation of Article 14. Due to this classification the rich are resting in their paradise whereas the poor is suffering the mental and physical torture in the Prison. It is extremely important for the Supreme Court to clearly lay down a law stating that at the stage of bail primary consideration should be given to the factors laid down in the case of Bhagirath Sinh and consideration may also be given to nature and gravity of offence as it would be highly risky to keep the offender committing an offence punishable with life imprisonment or death at the same footing with other offenders. The Supreme Court should clearly lay down that the primary consideration for granting bail to the offenders alleged to have been committed offence not punishable with life imprisonment or death should be:

1. Whether the accused would be readily available for the trial?
2. Whether he is going to tamper with the evidence or intimidate the witnesses abusing the benefit granted in his favour?

The government must increase the strength of the Courts by employing more judges in order to ensure speedy trial and early disposal of bail application which are essential facet of Article 21.

The courts should bear in mind two cardinal principles of law while hearing bail pleas and

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70 P. Chidambaram v. Directorate of Enforcement, Cr. Appeal no. 1831/19 in SLP (Cri.) No. 10493 of 2019
71 AIR 1924 Cal 476, 479, 480 : 25 Cri LJ 732
72 AIR 1931 All 356, 358 : 32 Cri LJ 1271
73 Supra note 5
74 Supra note 55
75 Supra note 6
those are: “innocent until proven guilty”76 & “bail is rule, jail is exception”77. Releasing under-trial prisoners is also necessary to reduce the over-crowding in jail and prevent the violation of Human Rights78.

The Government of India can adopt a way of making the criminal offender wear ankle bracelet79 while on bail known as “electronic tagging” which was introduced first in Britain in the year 1999. By doing that, the police will have complete track of his movement and can secure his presence at the stage of trial or whenever required by the Court. By doing that even the State can be relieved of the liability of taking care of the accused in the Prison.

RECOMMENDATIONS

1. The Hon’ble Supreme Court must lay down a uniform set of considerations to be followed while dealing with a matter of bail, irrespective of who the Applicant is in order to uphold the sanctity of Article 1480 of the Constitution of India, 1949.

2. The Courts must lean in favour of granting bail to the applicants who are alleged to have committed offence not punishable with life imprisonment or death. The Courts while dealing with the Bail Applications must not go deep into the merits and stick to main point of concern and that is whether the accused will attend the trial if released on bail.

3. The Courts must make efforts to dispose off the Bail Application within a period of one month following the guidelines of Supreme Court given in the 2017 in the case of Hussain and ors vs Union of India81.

4. Improve the conditions of Jail creating a humane environment for the prisoners protecting the Fundamental Right to live in a clean and healthy environment82 enshrined in Article 2183 of the Constitution of India, 1949.

5. The Government must take initiative to increase the strength of the Courts by appointing more Judges to succeed the goal of early disposal of matters as currently each Judge is overly burdened to deal with 1400-1500 cases84.

6. The Government must take initiative to introduce the technology of Electronic Tagging85.

CONCLUSION

India is a democratic country and guarantees fundamental rights to every citizen irrespective of class, creed, race, religion and gender. The primary concern of the Courts and Police machinery should be securing the presence of the accused and to punish him by keeping him behind bars. Keeping a person

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76 Supra note 3
77 Supra note 1
78 Supra note 9
80 Supra note 5
81 Supra note 30
82 Shanti Star Builders vs. Narayan Totame 1990(1) SCC 520
83 Supra note 6
85 Supra note 77
in the Prison at the trial stage and denying him bail merely on the ground of *prima facie* case leads to travesty of justice and infringement of personal life and liberty. The Courts have the power to impose strict conditions while granting bail. The Courts also have the power to cancel the bail immediately if the accused breaches any one of the conditions imposed. Condition of Prison is also very bad and keeping the accused in such inhuman conditions also affects his Human Rights. The Supreme Court should lay down specific parameters to be considered while deciding bail pleas laying down more focus on the “Triple Test”. By giving poor their rights which they acquired as soon as they were born in India, the Courts will win back the confidence and trust of people in the Judicial System.

“It makes sense to assume that a man on bail has a better chance to prepare or present his case than one remanded in custody. And if public justice is to be promoted, mechanical detention should be demoted.”

-Justice Krishna Iyer-

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