

Bail is Rule, Jail is Exception

The principle that "Bail is the rule, jail is the exception" is a fundamental tenet of criminal jurisprudence in India, deeply ingrained in the legal system to uphold the rights and freedoms of individuals. This maxim reflects the presumption of innocence that is central to the justice system and is supported by various provisions of the Indian Constitution and statutory laws.

Constitutional and Statutory Framework

The Constitution of India, under Article 21, guarantees the right to life and personal liberty. This article is interpreted by courts to include the right to reasonable, fair, and just legal procedures. The principle that bail is preferable to jail is an extension of this right, ensuring that imprisonment is only used when absolutely necessary, and freedom is not curtailed unjustly.

category generally entitling the accused to bail as a matter of right.

Judicial Interpretations

The judiciary has played a pivotal role in reinforcing the principle that "bail is the rule, jail is the exception." Landmark Supreme Court judgments, such as in the cases of State of Rajasthan, Jaipur v. Balchand (1977), Gudikanti Narasimhulu & Others v. Public Prosecutor, High Court of Andhra Pradesh (1978), and Sanjay Chandra vs. CBI (2011), have underscored the importance of bail. In these cases, the Court emphasised that the basic rule is bail, not jail, except where there are specific circumstances warranting refusal of bail.

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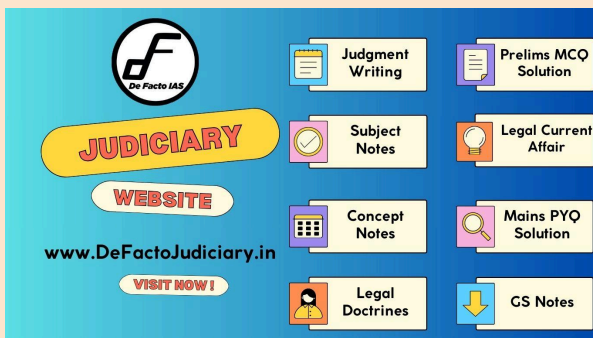
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The Code of Criminal Procedure, 1973 (CrPC), primarily governs the conditions and procedures for the grant of bail. Sections 436 to 450 of the CrPC lay down the provisions for the release of a person on bail. The CrPC distinguishes between bailable and non-bailable offences, with the former

Circumstances Affecting Bail Decisions

While bail is generally favoured, certain circumstances may necessitate the denial of bail. These include the severity of the charge, the accused's past criminal record, the likelihood of the accused fleeing from justice, or tampering with witnesses and evidence. Additionally, considerations about the safety

of the public and the victim, or maintaining public order, can also influence bail decisions.



UAPA and Its Exception to General Bail Principles

The Unlawful Activities (Prevention) Act, 1967 (UAPA), designed to combat terrorism and other threats to national security, imposes strict conditions on the grant of bail.

The Supreme Court's interpretation in *Gurwinder Singh vs. State of Punjab* highlights a significant departure from general bail jurisprudence under this act. The judgement states that the usual discretionary favour towards bail does not apply under the UAPA, marking a clear legislative intent to treat jail as the rule and bail as the exception in such cases. This is starkly different from the approach under the Code of Criminal Procedure, 1973 (CrPC), where bail is more accessible and the decision heavily relies on judicial discretion.

The rationale for this stringent approach under the UAPA is rooted in the exceptional nature of the crimes it addresses—primarily terrorism, which poses grave risks to national security and public safety. The court, in *Gurwinder Singh*, underscores the legislative intent manifested in the wording of Section 43D(5) of the UAPA, which is much more restrictive compared to similar provisions in the CrPC. The judgement implies that the severity and potential repercussions of the offences under the UAPA justify a more cautious approach to granting bail.