

Criminal Law

Anticipatory Bail:

Anticipatory bail is a direction to release a person on bail, issued even before the person is arrested.

WHEN CAN A PERSON APPLY

When any person apprehends that there is a move to get him arrested on false or trump up charges, or due to enmity with someone, or he fears that a false case is likely to be built up against him,

He has the right to move the court of Session or the High Court under section 438 of the code of Criminal Procedure for grant of bail in the event of his arrest, and the court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

CONDITIONS THAT MAY BE IMPOSED BY THE COURT

The High Court or the Court of Session may include such conditions in the light of the facts of the particular case, as it may think fit, including:

- (a) a condition that the person shall make himself available for interrogation by the police officer as and when required;
- (b) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer;
- (c) a condition that the person shall not leave India without the previous permission of the court.

ARREST

If such person is thereafter arrested, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail and the magistrate taking cognizance of such offence decides that warrant should be issued against that person, he shall issue a bailable warrant in conformity with the direction of the court granting anticipatory bail.

ANTICIPATORY BAIL NOT A BLANKET ORDER

The applicant must show by disclosing special facts and events that he has reason to believe, that he may be arrested for a non-bailable offence so that the court may take care to specify the offence or offences in respect of which alone the order will be effective and it is not a blanket order covering all other offences.

CANCELLATION

An accused is free on bail as long as the same is not cancelled. The High Court or Court of Session may direct that any person who has been released on bail be arrested and commit him to custody on an application moved by the complainant or the prosecution.

ANTICIPATORY BAIL NOT AVAILABLE IN UTTAR PRADESH

Arrest:

A person may be arrested for committing an alleged offence. The right to liberty as envisaged by the constitution is safeguarded by various procedures to be followed by the Police.

ARREST WITHOUT WARRANT

Any police officer may without an order from a magistrate and without a warrant, arrest any person

- a. Who has been concerned in any cognizable offence like murder, causing hurt, kidnapping etc, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned; or
- b. Who has in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking, or
- c. Who has been proclaimed as an offender either under this Code or by order of the State Government; or
- d. Who is in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or
- e. Who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or
- f. Who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or
- g. Who has been concerned in, or against whom reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise liable to be apprehended or detained in custody in India; or
- h. Who, being a released convict, commits a breach of any rule, made under sub-section (5) of section 365; or
- i. For whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

RIGHTS OF A PERSON ARRESTED

PERSON ARRESTED TO BE INFORMED OF GROUNDS OF ARREST

Every police officer arresting without warrant shall communicate to the person being arrested, full particulars of the offence for which he is arrested or other grounds of arrest.

PERSON ARRESTED TO BE INFORMED OF RIGHT TO BAIL

Where a police officer arrests without warrant a person accused of a bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for surety on his behalf.

WHEN SEARCHED RECEIPT OF THE ARTICLES TAKEN TO BE GIVEN

Whenever a person is arrested but the person arrested cannot furnish bail, the officer making the arrest may search such person, and place in safe custody all articles, other than necessary wearing apparel found upon him and where any article is seized from the arrested person, a receipt showing the article taken in possession shall be given to such person.

PERSON ARRESTED TO BE TAKEN BEFORE MAGISTRATE OR OFFICER IN CHARGE OF POLICE STATION

A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions for bail, take or send the person arrested before Magistrate having jurisdiction of the case, or before the officer in charge of a police station

Bail-Introduction:

Bail commonly means release on one's own bond, with or without sureties. Every accused person is presumed to be innocent until proved guilty. The effect of granting bail is not to set the accused free, but to release him from custody and to entrust him to the custody of his sureties who are bound to produce him to appear at his trial at a specified time and place.

BAILABLE / NON - BAILABLE OFFENCES

The offences committed by an accused fall under two categories:

1. BAILABLE OFFENCES

When any person accused for a bailable offence is arrested or

detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, and

is prepared at any time while in the custody of such officer or at any stage of the proceeding before such Court to give bail, such person shall be released on bail.

In case of a bailable offence bail is a matter of right

If such officer or Court, thinks it fit such person maybe released on a personal bond without sureties. In case of bailable offence, one has to only file the bail bonds and no application is required.

2. NON-BAILABLE OFFENCES

In case a person is accused of a **non-bailable offence it is a matter of discretion of the court to grant or refuse bail and application has to be made in court to grant bail.**

1. When a person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but -
 - i. such person shall not be released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;
 - ii. such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a non-bailable and cognizable offence :

Provided that the Court may direct that a person referred to in clause (i) or clause (ii) as above, be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:

Provided also that the mere fact that an accused may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court.

2. If it appears to such officer or Court at any stage of the investigation; inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, subject to the provision of section 446-A and pending such inquiry, be released on bail or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.
3. When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter 6, Chapter 16 or Chapter 17 of the Indian Penal Code (45 of 1860) or

abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1), the Court may impose any condition which the Court considers necessary-

- a. in order to ensure that such person shall attend in accordance with the conditions of the bond executed under this Chapter, or
 - b. in order to ensure that such person shall not commit an offence similar to the offence of which he is accused or of the commission of which he is suspected, or
 - c. otherwise in the interests of justice.
4. An officer or a Court releasing any person on bail under sub-section (1) or sub-section (2), shall record in writing his or its reasons or special reasons for so doing.
 5. Any Court, which has released a person on bail under sub-section (1) or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.
 6. If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.
 7. If, at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered

Summon:

A summon is a court order to an individual to appear in court at a specified time and place. A summon may be issued in both criminal and in civil cases.

HOW IS A SUMMON SERVED

- a. Every summon shall be served by a police officer, or by an officer of the court issuing it or any other public servant.
- b. The summon shall if practical, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.
- c. Every person on whom a summon is served shall sign a receipt on the back of the other duplicate.

SERVICE WHEN PERSONS SUMMONED CANNOT BE FOUND

Where the persons summoned cannot be found, the summons may be served by leaving one of the duplicates for the person with some adult male member of the family residing with him, and the person with whom the summon is left, shall sign a receipt on the back of the duplicate.

A servant is not a member of the family.

SUMMONS MAY BE SERVED BY POST TO A WITNESS

A court issuing summons to a witness may simultaneously direct a copy of the summons to be served by registered post addressed to the witness. When an acknowledgment purporting to be signed by the witness or an endorsement is made by the postal employee that the witness refused to take delivery of the summons has been received, the Court issuing the summons may declare that the summons has been duly served.

In case the service of summons is evaded the court may issue bailable or non-bailable warrants.

PROCLAMATION FOR PERSON ABSCONDING

If any court has reason to believe that any person against whom a warrant has been issued has absconded or is concealing himself so that such warrant cannot be executed, such court may publish a written proclamation requiring him to appear at a specified place and time within 30 days of publishing such proclamation.

The proclamation shall be published as follows:-

- a. It shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;
- b. It shall be affixed in some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;
- c. A copy thereof shall be affixed to some conspicuous part of the court house;
- d. The court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which person resides.

ATTACHMENT OF PROPERTY OF PERSON ABSCONDING

The Court issuing a proclamation may, at any time after the issue of the proclamation, order the attachment of any property, movable or immovable or both, belonging to the proclaimed person:

Provided where at the time of issue of the proclamation the Court is satisfied that the person in relation to whom the proclamation is to be issued -

- a. is about to dispose of the whole or any part of his property, or
- b. is about to remove the whole or any part of his property from the local jurisdiction of the Court,

it may order the attachment simultaneously with the issue of the proclamation.

YOUR DUTIES

1. To accept the summons and sign the duplicate if required.
2. To treat the officer serving the summon with respect.
3. To appear on the date mentioned in the summons or engage a lawyer to appear on your behalf.

First Information Report (FIR):

F.I.R. is the abbreviated form of First Information Report. It is the information recorded by the police officer on duty, given either by the aggrieved person or any other person about the commission of an alleged offence. On the basis of the F.I.R. the police commences its investigation.

WHO CAN FILE AN F.I.R.

Any person can file an F.I.R. He need not be the aggrieved person. It may be merely hearsay and need not be by the person who has had firsthand knowledge of the facts.

WHERE TO FILE AN F.I.R.

An F.I.R. can be filed in the police station of the concerned area in whose jurisdiction the offence has occurred. It must be made to the officer-in-charge of the police station and if he is not available the Assistant Sub Inspector is competent to enter upon the investigation

HOW TO FILE AN F.I.R.

When a wrong has been committed and the aggrieved person or any other person wants to file a F.I.R. it shall be filed in the following manner.

1. Go to the police station and meet the officer-in-charge.
2. Step by step in an orderly sequence narrate to the officer every information relating to the commission of the offence.
3. The officer shall reduce the information given in writing.
4. The information given shall be signed by the person giving it.
5. The information given shall be entered in a book to be kept by the officer.

COPY OF THE INFORMATION AS RECORDED SHALL BE GIVEN FREE OF COST TO THE INFORMANT.

WHERE AN OFFICER-IN-CHARGE REFUSES TO RECORD THE INFORMATION

If the officer in charge refuses to record the information, the information may be sent in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him.

INVESTIGATION

Once the F.I.R. has been registered the investigation in the case shall begin.