



# The Indian Journal for Research in Law and Management

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Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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## The Role of Anticipatory Bail in the Criminal Justice System

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Anticipatory bail serves as a crucial legal safeguard in the criminal justice system, providing a pre-arrest relief mechanism that protects individuals from arbitrary or malicious arrest. Under Section 438 of the Indian Code of Criminal Procedure (CrPC), it allows a person who fears arrest on accusation of a non-bailable offence to seek bail in advance, ensuring their liberty is not unduly compromised before formal charges lead to detention. This preventive remedy balances individual freedom with the state's interest in effective law enforcement, mitigating potential misuse of police power and false accusations. The provision is intricately linked to the fundamental right to personal liberty under Article 21 of the Constitution of India.<sup>1</sup>

### Historical Background and Legal Framework

The concept of anticipatory bail was absent from the earlier Code of Criminal Procedure, 1898, and was first recommended by the Law Commission of India in the 41st Report (1969), against a backdrop of increasing political and social rivalry that sometimes led to exploitative arrests. The Commission highlighted the need to protect individuals from vindictive or dubious prosecutions and protect personal liberty. Consequently, anticipatory bail was incorporated into the CrPC through Section 438, granting courts discretionary power to extend bail in anticipation of arrest for non-bailable offences.<sup>2</sup> The essential elements under Section 438 include the right of a person to approach the High Court or Sessions Court, judicial consideration of factors such as nature

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<sup>1</sup> Anticipatory bail and judicial interpretation of Section 438 CrPC, Manish Bhojwani, Ipleaders Blog, May 2024.

<sup>2</sup> Ibid.

and gravity of the accusation, antecedents of the applicant, likelihood of flight, and intent behind the arrest.<sup>3</sup> Courts may impose conditions like cooperation during investigation and refraining from influencing witnesses to ensure proper administration of justice.<sup>4</sup>

### **Interpretations and Judicial Principles**

The Supreme Court of India in the landmark judgment *Gurbaksh Singh Sibbia v. State of Punjab* (1980) laid down fundamental principles governing anticipatory bail. The Court clarified that anticipatory bail is not automatic relief but a discretionary remedy dependent on reasonable grounds for apprehension of arrest. The Court also underlined that anticipatory bail is not grantable post arrest<sup>5</sup> and may be revoked if the accused violates conditions or new incriminating evidence arises. The Court emphasized the need for a balanced approach protecting personal liberty while not hampering legitimate investigations.<sup>6</sup> The apex court in subsequent cases such as *Siddharam Satlingappa Mhetre v. State of Maharashtra* and *Sushila Aggarwal v. State (NCT of Delhi)* further refined anticipatory bail by affirming its indefinite life until cancelled and permitting courts to impose reasonable territorial or procedural conditions.<sup>7</sup>

### **Distinguishing Anticipatory Bail**

Anticipatory bail differs from regular bail primarily in timing and purpose. Regular bail follows arrest and applies when the accused is in custody, while anticipatory bail is sought pre-arrest as a preventive measure. Furthermore, anticipatory bail is applicable mainly for non-bailable offences and is granted exclusively by the High Court or Sessions Court, whereas regular bail can be granted by courts across different levels depending on jurisdiction and nature of the offence.<sup>8</sup> This distinction underscores anticipatory bail's role as a protective right ensuring that no person

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<sup>3</sup> Section 438 of Criminal Procedure Code, 1973 (CrPC).

<sup>4</sup> *Ibid.*

<sup>5</sup> *Gurbaksh Singh Sibbia v. State of Punjab* (1980) 2 SCC 565.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Siddharam Satlingappa Mhetre v. State of Maharashtra* (2011); *Sushila Aggarwal v. State (NCT of Delhi)* (2020).

<sup>8</sup> Difference Between Anticipatory Bail and Regular Bail, Divorce By Law Blog, March 2025.

is unnecessarily deprived of liberty before any formal process begins, thereby upholding Article 21 of the Constitution.<sup>9</sup>

### **Practical Significance in Criminal Justice**

Anticipatory bail reduces undue harassment and arbitrary arrests, preserving the dignity and freedom of accused persons during investigative stages. It also helps in decongesting jails by preventing unnecessary detention and allows accused persons to prepare their defenses without the pressure of custody. The discretion vested in courts ensures that while liberty is preserved, public interest and the needs of justice are served by imposing appropriate conditions safeguarding the investigation process.<sup>10</sup> However, anticipatory bail is denied in certain serious offences such as rape involving minors under amended provisions to protect societal interests.<sup>11</sup>

### **Notable Cases and Case Law**

Several Supreme Court cases explicate the doctrine and application of anticipatory bail. Gurbaksh Singh Sibbia (1980) remains the foundational ruling providing the legal framework and conditions for grant.<sup>12</sup> M.C. Abraham v. State of Maharashtra (2002) clarified that rejection of anticipatory bail does not automatically imply arrest.<sup>13</sup> The Court in Savitri Agarwal v. State of Maharashtra (2009) reinstated anticipatory bail after improper cancellation, underscoring strict adherence to judicial principles and factual examination.<sup>14</sup> The judgment in State of MP v. Rama Krishna Balothia (1995) clarified that anticipatory bail is not a fundamental right but a discretionary provision to be exercised judiciously.<sup>15</sup> In Siddharam Satlingappa Mhetre v. State

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<sup>9</sup> Ibid.

<sup>10</sup> Ipleaders Blog, Anticipatory Bail Role, 2024.

<sup>11</sup> Amendment under Section 438(4) CrPC prohibiting anticipatory bail in certain cases of rape.

<sup>12</sup> Gurbaksh Singh Sibbia v. State of Punjab (1980).

<sup>13</sup> M.C. Abraham v. State of Maharashtra (2002).

<sup>14</sup> Savitri Agarwal v. State of Maharashtra (2009).

<sup>15</sup> State of MP v. Rama Krishna Balothia (1995).

of Maharashtra (2011), the Court set precedent that anticipatory bail's validity extends indefinitely unless revoked.<sup>16</sup>

### **Conclusion**

Anticipatory bail is a vital instrument in the Indian criminal justice system, harmonizing the constitutional guarantee of liberty with effective law enforcement. It shields individuals from wrongful or precipitated arrests, fosters equitable trial conditions, and mitigates abuses of penal process while also allowing courts to safeguard public interest through discretionary conditions. Judicial interpretations continue to evolve, strengthening anticipatory bail as a balanced remedy that upholds justice and fundamental rights.

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<sup>16</sup> Siddharam Satlingappa Mhetre v. State of Maharashtra (2011).