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RESEARCH ARTICLE

A STUDY RELATING TO BAIL.

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Abstract

In a primitive society one can briefly conceive of right to bail but in civilized society bail has become the rule. It is indisputable that the law of bails occupies an important place in administration of justice and is now a very valuable branch of the law of procedure. All the countries of the world including India are focusing on protection of Human Rights of the people and all Human Rights instruments are specifically focused on protection, prevention and promotion of the welfare of the people including accused and right to bail is one of the fundamental rights of an accused. Right to bail has become the cumbersome, for want of bail under trial prisoners lying in prisoner for want of bail. The procedural mechanism relating to imposition of condition in bail creates confusion between the object of the law of bail and the procedure adopted in practice. In most of the cases of preventive detention, the right to bail is denied which violates the fundamental human right of personal liberty of suspects and also violates the legal norm: Presumption of Innocence until Guilt is proved. In deeply rooted corruption in investigation machinery, this causes massive and brutal violation of human rights of an accused person. The justice is expected to be delivered without any fear or favour. So, this discretion is granting or refusing the bail should be exercised without any fear and favour. If the judges are passing order for some considerations, it will not be fair justice. If the custody is granted under any sort of influence then it will be depriving the constitutional right of the person arrested. Now, in the verge of modernization and globalization, most of the countries of the world are focusing on the reformative aspects in dealing with the treatment of prisoners, in such a condition denial of bail is nothing but the denial of the fundamental right of the accused person.

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Introduction:-

BAIL, according to concise oxford dictionary, is a security for the appearance of prisoner on giving which the accused is released pending trial.

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The bail system is designed to guarantee the timely appearance for the defendant in court. Bail is also an insurance policy for the state that the defendant will appear to face charges.

In India usually bail is arranged through a relative or a friend whose benefited, credentials and illegibility are verified by the courts before a bailer is allowed to execute a bail bond. Bail is granted after due satisfaction of the court, which accepts bail. This is to ensure that the accused shall continually appear before the court till conclusion.

Right of Bail:-

Bail is the matter of judicial discretion. Taking into account that whether to grant bail or not is the conflicting statement concerning the accused individual freedom/liberty and the greater social interest must be taken into account. Under Article 21 of the Indian Constitution recognizes the fast/speedy trial as a right of every citizen of our country. The new criminal procedure effective negotiation, If there delay in the conclusion or the investigation it means that it is breach of the Constitution guarantees a fair, just and equitable procedure is actually fundamental right and the fast/speedy trial.

Article 21 of Indian Constitution say criminal prosecution shall be put to end as quickly as it can be by way of speedy/fast trial. This includes all of the phase, that is, the Investigation, Enquiry, Trial, Appeal, Review, Revision and retrial, in case of delay it must be determined all the facts, shall be taking into account, all the circumstances including in the offense, inter alia, the work load of the Court of Justice also depends upon the local situations, etc.¹

But only delay in proceeding alone by itself can-not the ground to be immediately release on bail. All other related conditions must be taken into account. Article 21, of the Indian Constitution is related with deprivation of individual liberty, its significance is of serious concern, and it is only permitted in conditions or authorizes where the Act is reasonable and the objectives is for the good of the Community. Article 19 Says Reasonableness assumes that deprivation from freedom/liberty by refusing or not granting bail shall not be for punitive purpose but for the bifocal interest of justice to the individual involved and society affected. If ever the time is to come where the prisoners after a period of time has to wait forever at the kindness/mercy of the state, while waiting for a gold key to open the doors of the prisons, the courts may be sown the revolution. More than likely wearing or complications can be avoided. Something must be done urgently.²

Right of Speedy Trial:-

What is the worth of a fundamental right if it cannot be implemented for not one or two but for tens of millions of people and not for a few days, but for years together? How does it make a difference whether it is a fundamental right or a normal statutory right or no right at all, if it is only for academic purposes and not for practical use by an individual? Yes, we are discussing the right to speedy trial. And while the failure of the criminal justice system in India to effectively implement the said fundamental right to speedy trial affects not only those persons who continue to languish in jail for years despite presumed to be innocent by the system itself until completion of the trial, but also those who were comparatively fortunate at least in getting bail even though they also have to face the anxiety of waiting for completion of trial for years together, it is definitely the ones who are not able to get bail for long durations who suffer the most. Let it be misunderstood that speedy trials help only the accused persons, whether on bail or otherwise, it should be clarified that the society, in fact, is the biggest beneficiary of speedy trials.

Just to give an illustration, in one of several such cases noticed by the author in his earlier avatar, one particular accused person after his first offence of murder, came out on bail and committed 3-4 other serious offences, again got arrested and got bail, and committed another 3- 4serious offences, and in this way, he committed something like 18 serious offences before ultimately he was convicted in his first murder case after a prolonged trial after which he was finally sent to jail thereby putting an end to the series of serious offences being committed by him! The moral of the story is, if only the trial in his first murder case could have been expeditiously completed and he had been sent to jail at an early date, the society would definitely have been saved from his subsequent 17 serious offences. Another big advantage to the society from speedy trials is the much improved conviction rate. With trials getting delayed for several years or decades, some witnesses might have died in the meanwhile, some might have become missing or shifted out to unknown places, some witnesses might have forgotten the intricate details of the case, some of them might have lost interest and motivation in the case, some of them might have been won over by accused over the

¹ M.P Jain, Indian Constitutional Law 98

²Sanjay Sharma v. State of J.K.

period of time, some documents might have become missing or might have been stolen or might have been eaten away by insects or might have been defaced being no more worthy of use for evidence purposes; and like.

Normally the end result of all these developments due to delayed trial is nothing but an acquittal even in a case where conviction should otherwise have been the only possible outcome due to strong evidence. A speedy trial also helps the courts. A delayed trial is like a vicious circle. Delay in trial gives rise to numerous miscellaneous applications revision petitions, appeals, SLPs, etc., for the purposes of Bails, cancellation of Bail, modification of conditions of bail, discharge applications return of property, etc.

Another big advantage of speedy trials, for the judiciary, is the improvement in its image. Whether we like it or not, the fact remains that the biggest factor, contributing to whatever negative image the judiciary in India has, is the delayed process of law. If a majority of the consumers of the justice system in India are dissatisfied with the delivery of justice, despite good work done by judiciary, then the biggest reason for it is the delayed proceedings in courts.³

A fast trial can definitely help to improve this situation. Right to speedy trial is the fundamental right and if the process is delayed than it would be considered as the denial to justice and accused person shall be admitted to be released again on bail. But, for the question of interpretation, who shall be held responsible for the cause of the delay whether the public prosecutor or the accused, it is to be left to the judiciary to decide as it is in the exercise of judicial discretion for granting of the security or bail. Irrefragably, the delay in the process is an important factor to be noted at the time of the examination of the application for bail and no court can such a myopic (narrow-minded) view in this respect, but at the same time it cannot be ignored/enlarged to make sure the role of the accused, in causing the delay. The old principle is that he who has the sole discretion, must not take the advantage to give a decent burial to the concession of the Bail, to the accused who has made a deliberate attempt to cause delay with ultimate intentions of taking the advantage of such a delay. In one case, in the direction have been issued by the Court for the removal of case within a specified time, but later a counter criminal case was clubbed together at the instance of the accused while almost all the witnesses were examined. It was noted that the prosecution was not responsible for the delay caused by the process of the above mentioned case and the defendant was not entitled to be release or enlarged on bail on the ground of the delay in the process/trial.⁴

An accelerated criminal proceeding is a fundamental right of the accused, especially if he is in the prison. No accused can be kept in prison for an uncertain time, as under-process caught, especially if no fault is present. In criminal proceedings where the accused is in prison, it is the duty of the officer-in-charge to end the case as soon as possible, and take the statements of the witnesses for the prosecution without any delay, instead of prolonging it day after day, and that all efforts are to be made by the police to the safety of the witnesses on the date fixed for recording their statements.⁹ Article 21 of the Indian Constitution recognizes the right of every citizen for a speedy trial regardless of the innocence or guilt of the accused. Lengthy process is the most traumatic, to an innocent person. The objective of the new Cr.P.C is the fast investigation and prosecution of criminal offenses. Indefinite detention of the accused, even serious criminal offenses is against the legislative intent and the object of the Code of Criminal Procedure.

Procedural constraints in the Code are designed to protect the rights of the accused. Section 309 of the Code of Criminal Procedure has a mandate to the trial Court that, the procedure for each case or study/trial or legal proceedings shall be conclude as soon as possible, in particular, where the examination of the witnesses has once begun, it will continue from day to day until all Witnesses have been examined in the presence, unless the Court finds the postponement of the same on the following day, the necessary for reasons to be recorded. Section 437 (6) of Code of Criminal Procedure has a mandate rule that, the judges in every case has to consider that where the accused person has not been brought before them or where there has been not recorded the evidence within 60 days from his arrest or detain in such case the accused shall be released on bail if the trial against an accused person of a non-bailable offense is not within a period of sixty days after the receipt of the first taking of evidence on the other hand, In the case of the Section 167 (2) Code of Criminal Procedure, WHICH IS PART OF THE

³ *Gokul Singh v. State of M.P.*, 1999 Cri LJ 3455 at p. 3459 (MP).

⁴ *Smt. Deeksha Purivs State Of Haryana* on 16 October, 2012 CRM M-359 of 2012

INVESTIGATION, it also has a mandate rule that, the Magistrate may release the accused on bail if the investigation is not concluded within the period of sixty days of ninety days, as the case may be.⁵

Constitutional Provision Relating To Right To Bail In India:-

The preamble of the constitutional of India secure to all its citizens justice, liberty, equality and fraternity assuring the dignity of the individual and the unity and integrity of the Nation. Article 21 of the Indian Constitution says, "No person shall be deprived of his life or personal liberty except according to procedure established by law". The words "personal liberty" under article 21 of the Indian Constitution can be interpreted widely or broadly with a view to attract the rights mentioned in the article 19 of the constitution.

Article 15(3) and Right to Bail when accused is minor woman, sick and infirm:-

Article 15 (3) of the constitutional of India recognizes and guarantees some special provisions for women and children apart from the fact that it prohibits any discrimination on the grounds of religion, race, caste, sex of place of birth.

Article 22 and Safeguards against Arbitrary arrest and Detention:-

Article 21 of the constitution says "No person can be deprived of his life or personal liberty except according to procedure established by law. Article 22 provides those procedural requirements, which must be adopted and included in any procedure requirements, which must be adopted and included in any procedure enacted by the legislature in accordance with which a person may be deprived of his life, and personal liberty. Article 22 provides two separate matters. (1) Persons arrested under the ordinary law of crimes, and (2) Persons detained under the law of preventive detention.

Accordingly, the following rights are to be taken into consideration with regard to the person arrested provided under Article 22 of the Constitution of India.

1. Right to be informed of grounds of Arrest.
2. Right to be defended by a lawyer of own choice.
3. Right to be produced before a magistrate.
4. No detention beyond 24 hours except by order of the magistrate.

Article 22 clauses (4) to (7) prescribed the procedure, which is to be followed if a person is arrested under the law of "Preventive Detention". Preventive detention laws are repugnant to democratic constitution and they are not found in any of the democratic countries of the world. No Country in the world has made these laws integral part of the constitution as has been done in India. There is no such law in U.S.A. It was used in England only during water time. The following are preventive detention acts passed in India.

1. Preventive Detention Act, 1950.
2. National Security Ordinance 1984 (NSA)
3. Maintenance of Internal Security Act 1971, (MISA).
4. Terrorist and Disruptive Activities (Prevention) Act, 1987. (TADA).
5. Conservation of Foreign Exchange, Prevention of Smuggling Activities Act, 1974 (COFEPSA).
6. Foreign Exchange Manipulators (forfeiture of property) Act 1976. (SAFEMA).

Article 32, 226 And 227 And Provisions Of Bail:-

Constitution of India and law of habeas corpus:-

The constitution of India contains provisions for the protection of individuals against arrest and detention Article 32 and 226 of the constitution confer powers on the Supreme Court and High Court respectively to issue directions or orders of writs, including writs in the nature of Habeas Corps, Mandamus, Prohibition, Qua-warranto and certiorari.

Importance of writ of Habeas Corpus:-

1. The writ of Habeas Corpus is a prerogative writ of the highest constitutional importance, being a remedy available to the meanest against the mightiest.
2. The writ of Habeas Corpus is designed to afford immediate relief from illegal confinement or restraint and is used for the vindication of the right to personal liberty by scrutinizing the legality of the restraint.

⁵*Om Parkashv. State of Rajasthan*, 1996 Cri LJ 819 at p. 820-21 (Raj).

3. The object of writ of Habeas Corpus is not to punish previous illegality but to release a man from present illegal detention and the writ must be directed to the person who is having the actual custody of the detenu.⁶
4. A writ of Habeas Corpus is purely remedial and carries no punitive or deterrent force save in so far as the authorities may be embarrassed by adverse publicity.
5. Although the writ of Habeas Corpus is a writ of right it does not issue as a matter of course, Habeas Corpus proceedings are discretionary.⁷

While dealing with a Habeas Corpus petition under Article 226 of the constitution, the High Court has jurisdiction to give interim relief by way of bail to a detenu who has been detained under Rule 30 of the Defence of India Rules.

Provisions of Sec. 167 of the Code of Criminal Procedure, 1973 and Writ Jurisdiction under Article 226 of the constitution:-

The argument that no direction of any nature on the writ side can be made by the High Court under Article 226 as that would be paramount to usurping the powers of a magistrate contemplated under section 167 cannot be accepted. There is a sea of difference between the two powers and the two jurisdictions. While the Magistrate's jurisdiction is created and circumscribed under Section 126, High Court's jurisdiction to act under Articles 226 and 227 is related to its constitutional duty to enforce fundamental rights of citizens and discretion, a writ is not issued under Article 226 when there is an efficacious and adequate remedy available under a statute and forum for that is prescribed. Whether the remedy effective, it was held, has to be determined with reference to the statutory provision and the facts and question is of enforcement of a citizen's fundamental rights, there can be little scope to the object to exercise of this court's jurisdiction expressly and exclusively vested in it as also in the Apex Court for that purpose. It would only be necessary in such a case to be relieved against prevented by an appropriate direction. Otherwise, the Writ Court shall cease to be constitutional guarantee as to enforcement of fundamental right would turn hollow and meaningless.

Remand of Police Custody and Writ Jurisdiction under Art. 226 Of the Constitution:-

The accused had a constitutional right of being protected during investigation against being tortured and made to answer self incriminating questions. He has a right to satisfy the writ court of existence of positive circumstance pointing to imminent likelihood of his being tortured during investigation and of praying for appropriate direction to keep him out of Police Custody during such period. He has a right, in such circumstances, to pray to the writ court for a direction for allowing him assistance of a lawyer of his choice to such a direction was made, he shall till be bound to answer full other question conducive to effective and speedier investigation of the crime.⁸

In the concept of bail a technique is evolved for affecting a synthesis of the two basic concepts of human value, namely, the right of an accused to enjoy his personal freedom and the public interest on which a person's release is conditioned on the surety to produce the accused person in court to stand the trial Dicey says "Personal Liberty" means a personal right not to be subjected to imprisonment, arrest or other physical coercion in any manner that does not admit of legal justification. The constitution of India respects and upholds this fair and just notion of personal liberty in its various Articles. The Constitution of India safeguards the procedural aspects of personal liberty and directs for the satisfaction of natural justice i.e., it must be just, fair and reasonable.

The significance and sweep of Article 21 of the constitution of India makes that deprivation of liberty a matter of great concern and permissible only when the law authorizing it is reasonable, even handed and geared to the goals of community good and state necessity. The accused has a right to bail under Article 21 of the constitution which provides that no person shall be deprived of his life and Personal Liberty except according to procedure established by Law. However, the question of grant of bail to the accused depends upon the circumstances of each case. Before a person is deprived of his personal liberty by executive action save in accordance with law, the provisions of law must be strictly followed and must not be deviated from to the disadvantage of the person arrested.

Right to speedy trial by taking aid of Article 21 of the constitution covers all the stages of investigation including trial, enquiry and remand etc. The refusal to grant bail affects the dignity of the individual, which has been ensured

⁶ Markendev Vs. State, 1976 Cr LJ 88

⁷ Mohd. Ikram Hussain Vs. State of U.P., 1964(2) Cr LJ 590

⁸ Munna Singh Vs. State of M.P. 1989 CrLJ 580 (DB)

by the Indian Constitution. The courts will have to be very careful in granting bails to the accused keeping in view the dignity of the individual proclaimed in the preamble to the Indian Constitution.

Right to equality, right to freedom and right against exploitation are the expressions of right to dignity which is inherent in human nature and which is considered as the basic or fundamental human rights. Besides Article 14, 15, 21, Article 15 (3) is having special place in human rights jurisprudence because it recognize and guarantees some special provisions for women and children, which are the base for sec. 437 of the code of criminal procedure 1973 which provides for the special concessions to the right to bail or women and children which are not hit by Article 15 of the Constitution.

When Art. 21 of the constitution guard the personal liberty of the individual Art. 22 of the constitution provide procedural requirements, which must be adopted and included in any procedure enacted by the legislature. The Rights protected under Art. 22 an available to both citizens and non-citizens and to persons arrested and detained under any law providing for preventive detention.

Articles 134, 136, 142 and 145 of the constitution of India deal with the provisions which directly or indirectly refer to the subject of grant of bail by the Supreme Court of India. Art. 145 of the constitution confers upon the Supreme Court the power of rule making by which the Supreme Court has made relevant rules in Order XXI Rules 6, 21, and 27 which are concerned the subject of "Bail". The constitution of India contains provisions for the protection of individual against arrest and detention, Articles 32 and 226 of the constitution confer powers on the Supreme Court and the High Court respectively to issue directions or orders or writs, including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-warranto and Certiorari. The Writ of Habeas Corpus is acclaimed as a palladium of liberty of the common man. This writ is designed to afford immediate relief from illegal confinement or restraint and is used for the vindication of the right to personal liberty by scrutinizing the legality of the restraint. This writ is available not only to a person detained in public custody but also to any illegal restraint of freedom in private life. In case of an application for writ of Habeas Corpus the practice evolved by the court is not to follow strict rules of pleading nor place undue emphasis on the question as to on that the burden of proof lies. Even a post card written by a detenu from a jail has been sufficient to activist the court in to examining the legality of detention. The Supreme Court rules regarding Habeas Corpus are contained in Order 35, Rules 1 to 6. The High Court under its inherent powers under Article 227 of the constitution can very well interfere with the order granting or refusing the Anticipatory Bail but also can adjudge it, when such order is stricken with perversities and illegalities.

The constitution of India is mother of Laws:-

Arbitrary exercise of power creates perversity. It offends against the rule of law which is the main and important object of our constitution. To sum up, we can say that the absence of arbitrary power is the first essential of the rule of law upon which whole constitutional system is based. The refusal to grant bail affects the dignity of the individual which has been ensured by the Indian Constitution. The Courts will have to be very careful in granting bails to the accused keeping in view the dignity of the individual proclaimed in the preamble to the Constitution of India.

Statutory Provision Relating To Right To Bail In India And International Law:-

It is precisely this much needed jurisprudence of bail which is discussed in the course of this paper in the light of the personal liberty of a person and the value of that personal liberty under our constitutional system. This study attempts to explore the varied dimension of the concept of bail- as a right that must be respected by the courts and as a matter of concession left to the judicial discretion of the courts.

Thus, another fundamental issue to be focused on, in the course of this paper, is the recognized trend in the criminal justice system from the presumption of innocence to presumption of guilt.

Finally the consequences of the incorporation of section 167 of Code of Criminal Procedure with respect to bail and its nexus with necessary concern over the temporary loss of liberty of an individual as dictated by Article 21 of the Constitution shall be attempted to be analyzed.

The Criminal Procedure Code, 1973 (Cr. P. C. hereinafter), does not define bail, although the terms bailable offence and non-bailable offence have been defined in Section 2(a) Cr. P. C. as follows: " Bailable offence means an offence which is shown as bailable in the First Schedule or which is made bailable by any other law for the time being enforce, and Non-Bailable offence means any other offense". That schedule refers to all the offences under the

Indian Penal Code and puts them into bailable and non bailable categories. The analysis of the relevant provisions of the schedule would show that the basis of this categorization rests on diverse consideration. However, it can be generally stated that all serious offences, i.e. offences punishable with imprisonment for three years or more have been considered as non bailable offences. Further, Sections 436 to 450 set out the provisions for the grant of bail and bonds in criminal cases. The amount of security that is to be paid by the accused to secure his release has not been mentioned in the Cr. P. C. Thus, it is the discretion of the court to put a monetary cap on the bond.

Indian Courts however, have greater discretion to grant or deny bail in the case of persons under criminal arrest, e.g., it is usually refused when the accused is charged with homicide.

It must be further noted that a person accused of a bailable offences is arrested or detained without warrant he has a right to be released on bail. But if the offence is non-bailable that does not mean that the person accused of such offence shall not be released on bail: but here in such case bail is not a matter of right, but only a privilege to be granted at the discretion of the court.

Bail in Cases of Bailable Offence:-

The Code of Criminal Procedure, 1973, makes provisions for release of accused persons on bail. Section 436 of the Code provides for release on bail in cases of bailable offences. Section 436 provides that when person not accused of a non-bailable offence is arrested or detained he can be detained as right to claim to be released on bail. The section covers all cases of person's accused of bailable that offences cases of persons though not accused of any offence but against security proceedings have been initiated under Chapter VIII of the Code and other cases of arrest and detention which are not in respect of any bailable offense.

This section entitles a person other than the accused of a non-bailable offence to be released on bail, it may be recalled that S. 50(2) makes it obligatory for a police officer arresting such a person without a warrant to inform him his right to be released on bail.

Section 436 (1) of the Code signifies that release on bail is a matter of right, or in other words, the officer-in-charge of a police station or any court does not have any discretion whatsoever to deny bail in such cases.

Section 440(1) provides the amount of every bond executed under this chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive. Further S. 440(2) empowers the High Court or the Court of Sessions may direct that the bail required by a police officer or Magistrate be reduced.

Thus, Sub-section (2) of S. 436 makes a provision to effect that a person who absconds or has broken the condition of his bail bond when released on bail is a bailable case on a previous occasion, shall not as of right to be entitled to bail when brought before the court on any subsequent date even though the offense may be bailable.

In *Maneka Gandhi v. Union of India*⁹: - The amount of the bond should be determined having regard to these relevant factors and should not be fixed mechanically according to a schedule keyed to the nature of the charge. Otherwise, it would be difficult for the accused to secure his release even by executing a personal bond, it would be very harsh and oppressive if he is required to satisfy the court and what is said in regard to the court must apply equally in relation to the police while granting bail-that he is solvent enough to pay the amount of the bond if he fails to appear at the trial and in consequence the bond is forfeited. The inquiry into the solvency of the accused can become a source of great harassment to him and often resulting denial of bail and deprivation of liberty and should not therefore, be insisted upon as a condition of acceptance of the personal bond.

It also stated that there is a need to provide by an amendment of the penal law that if an accused willfully fails to appear in compliance with the promise contained in his personal bond, he shall be liable to penal action.

The Court laid down following guidelines that determine whether the accused has his roots in the community which would deter him from fleeing; the Court should take into account the following factors concerning the accused:

1. The length of his residence in the community,
2. His employment status, history and his financial condition,

⁹ 1978(2) SCR 621

3. His family ties and relationships,
4. His reputation, character and monetary condition,
5. His prior criminal record including any record or prior release on recognizance or on Bail,
6. The Identity of responsible Members of the community who would vouch for his reliability. The nature of the offense charged and the apparent probability of conviction and the likely sentence in so far as these factors are relevant to the risk of non appearance, and If the court is satisfied on a consideration of the relevant factors that the accused has his ties in the community and there is no substantial risk of non-appearance, the accused may, as far as possible, be released on his personal bond.

The new provision Section 436A was introduced in order to solve the problems of under trials who were languishing in jails as they will now be given an opportunity to be set free instead of endlessly waiting for their trial to take place.

According to S. 436-A, a person who has undergone detention for a period extending up to half of the maximum period of imprisonment imposed for a particular offence, shall be released on her/his personal bond with or without sureties.

Moving onto the demerits of the provisions itself, S. 436-A gives discretion to the Court to set the prisoner free or to make him/her continue imprisonment.

Bail in cases of Non-Bailable Offence:-

Section 437 of the Code provides for release on bail in cases of non-bailable offences. In such cases, bail is not a matter of right. Court has sufficient discretion to deny or to grant bail. First Schedule to the Code provides the list of bailable and non-bailable offenses. Further cases often arise under S. 437, where though the court regards the case as fit for the grant of bail. It regards imposition of certain conditions as necessary in the circumstances. To meet this need sub-section (3) of S. 437 provides:

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 VI, Chapter XVI or Chapter XVII of the Indian Penal Code (45 of 1860) or abatement 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:-

1. In order to ensure that such person shall attend in accordance with the conditions of the bond executed under this Chapter, or
2. 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
3. Otherwise in the interests of Justice.

Cancellation of Bail:-

According to S. 437(5) any court which has released a person on bail under (1) or sub sec (2) of S. 437 may if considers it necessary so to do, direct that such person be arrested and committed him to custody.

The power to cancel bail has been given to the court and not to a police officer. Secondly, the court which granted the bail can alone cancel it. The bail granted by a police officer cannot be cancelled by the court of a magistrate.

In Public Prosecutor Vs. George Williams¹⁰ – The Madras High Court pointed out five cases where a person granted bail may have the bail cancelled and be recommitted to jail:

1. Where the person on bail, during the period of bail, commits the very same offence for which is being tried or has been convicted, and thereby proves his utter unfitness to be on bail;
2. If he hampers the investigation as will be the case if he, when on bail; forcibly prevents the search of place under his control for the corpus delicate or other incriminating things;
3. If he tampers with the evidence, as by intimidating the prosecution witness, interfering with scene of the offence in order to remote traces or proofs of crime, etc.

¹⁰ 1951 Mad 1042

4. If he runs away to a foreign country, or goes underground, or beyond the control of his sureties; and
5. If he commits acts of violence, in revenge, against the police and the prosecution witnessed & those who have booked him or are trying to book him.

Right to Bail (Section 167(2) Cr.P.C.) and Delay in Investigation:-

With the incorporation of section 167(2) of Cr.P.C, the investigation agency is required to complete the job of investigation and file the charge-sheet within the time of either 60 or 90 days as the case may be. In case the above is not completed within the definite period a most valuable right accrues to the accused. The accused is, in that eventually, entitled to be released on bail.

Statutory Provisions Relating To Bail Under International Law:-

When someone is arrested by the Police as a suspect, he is normally formally charged and taken to court where he either pleads guilty or innocent to the charge. This leads to further litigation as stipulated under the Criminal Procedure Rules and other Laws.

Throughout this process, Government's powers are completely limited and directed by the Constitution and of line laws and statutes necessary for proper dispensation of criminal justice, including safeguarding the independence of the judiciary. An independent judiciary is one of the greatest safeguards to the true principles of constitutionalism and leads to meaningful observation of the rule of law. Judicial officers are empowered by law to execute their duties professionally and legally without fear or favour so that actions of the executive, which are inconsistent with the constitution, are avoided.'

International Covenant on Economic Social and Cultural Rights (1966) the states parties to the present covenant, considering that, in accordance with the principles proclaimed in the chapter of United Nation, Recognition of the inherent dignity and of the equal and inalienable rights of all members of that Human Family in the foundation of the freedom, Justice and Peace in the world.

Recognizing that, in accordance with the Universal Declaration of Human Rights (UDHR), the ideal of free Human Beings enjoying freedom from fear and want can only be achieved if conditions are created where by everyone may enjoy his economic, social and Cultural Rights, as well as his Civil and Political Rights.

The right to bail is well stipulated in Article 9 (3) of the International Covenant on Civil and Political Rights, which provides inter alia that anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officers authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.

It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subjected to guarantees to appear for trial, at any other stage of the judicial proceedings, and should occasion arise for execution of the judgment. This provision of International law provides a very strong safeguard to the right to bail, whereby any variance in relation to the above provision directly contravenes international law on which Uganda is signatory.

In Uganda, bail is a constitutional right provided for under Article 23 (6) (a) of the 1995 Constitution. It provides that a person arrested in respect of a criminal offence is entitled to apply to the court to be released on bail and court may grant the same as the court considers reasonable. Therefore, judicial officers always act very much guided and are aware of the above constitutional provision. Where there is need to divert from that position, it must be explained legally without any personal or political influence.

Specifically under Article 23 (6) (b), it is provided that a person shall be released on bail on such conditions as court considers reasonable. It is not; therefore, true that court arbitrarily releases suspects without any consideration. There are a number of legal requirements and conditions which must be fulfilled before one is granted bail. Bail is, therefore, an agreement between the accused, his sureties or surety, if any, and the court that the accused will attend his trial on a date and place fixed by court. The accused will be liable to pay a certain sum of money fixed by court should he fail to attend the trial as indicated.

The rationale for granting bail is based on the provisions of Article 28 (3) (a) of the 1995 Constitution and article 7 (1) (b) of the **African Charter on Human and People's Rights** that presume every person accused of a criminal offence is innocent until proved guilty or until he pleads so. Keeping him in custody may amount to one form of punishment or the other without proving his guilt; hence bail allows him to attend his trial while he is at liberty, but not under custody.

The judicial system needs to be reformed to make it a more efficient and useful tool for the administration of justice, but not to tamper with the right to bail which is a violation of the Constitution and international law.

Other Conventions providing Right to Bail:-

Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949. Part III: Status and treatment of protected persons Section II: Aliens in the territory of a party to the conflict

Right to leave the territory:-

This provision is clear enough in itself and does not call for any special comment. As soon as foreign civilians are released, they automatically resume their status as protected persons. As such, they may request permission to leave the territory in conformity with the provisions of Article 35 and 36.

Under Human Rights:-

Before actually determining the place of bail within human rights framework as conferred by the Constitution, it is important to examine the object and meaning of bail, such that an analysis of these fundamental objects and change therein may reveal a change. The object detention of an accused person is primarily to secure his/her appearance at the time of trial and is available to receive sentence, in case found guilty. If his/her presence at the trial could be reasonably ensured other than by his arrest or detention, it would be unjust and unfair to deprive the accused of his liberty during pendency of criminal proceedings.

Thus it is important to note the relevant provisions enshrined in the **Universal Declaration of Human Rights:**

Article 9- No one shall be subjected to arbitrary arrest, detention or exile.

Article 10 – Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11(1) – 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 defense. There are thus several reasons which have been enumerated as to why bail ought to be allowed to prevent pre-trial detention.¹¹

Bail, A Matter Of Right: Not To Be Denied On The Ground Of Nationality:-

The Constitution of India is the supreme law of the land. The fundamental rights are available to all the 'citizens' of the country but a few of them are also available to 'persons'. While Article 14, which guarantees equality before law or the equal protection of laws within the territory of India, is applicable to 'person' which would also include the 'citizen' of the country and 'non-citizen'. This reflects that the Indian Legal System does not bring the nationality of an individual into consideration while granting him/her the benefit of the provisions of bail. There is no discrimination or differentiation in granting bail to a foreign national in India.

Suggestions:-

Need for clear provision as to be made in the statute for non-financial releases:-

While concluding, it seems desirable to draw attention to the absence of an explicit provision in the Code of Criminal Procedure enabling the release, in appropriate cases, of an under trial prisoner on his bond without sureties and without any monetary obligation. There is urgent need for a clear provision. Undeniably, the thousands of under trial prisoners lodged in Indian prisons today include many who are unable to secure their release before trial because of their inability to produce sufficient financial guarantee for their appearance. Where that is the only reason for their continued incarceration, there may be good ground for complaining of invidious discrimination. The more so under a Constitutional system which promises Social Equity and Social Justice to all of its citizens. The deprivation of liberty for the reason of financial poverty only is an incongruous element in a society aspiring to the achievement of these constitutional objectives. There are sufficient guarantees for appearance in the host of considerations to which reference has been made earlier and, it seems to me, our law-makers would take an

¹¹ P.V. Ramakrishna, "Law of Bails", Seventh Edn., Lexis Nexis, New Delhi.

important step in defence of individual liberty, if appropriate provision as made in the statute for non-financial releases.

Need for re examination of judicial system to prevent abuse of Legal Procedures:-

We realize, however, that in certain situations, such legal procedures are abused, which has led to public outcry. Such happens because of high levels of ignorance of the law by the biggest section of the population. Even when bail is automatic and even after fulfilling the legal requirements, some people find themselves buying their birth right.

There is, therefore, a need for serious re-examination of the judicial system and the general principles necessary for efficient and timely access to end administration of justice. In the administration of justice, judicial officers are required to abide by the judicial code of conduct and other professional regulations.

The judicial system needs to be reformed to make it a more efficient and useful tool for the administration of justice, but not to tamper with the right to bail which is a violation of the Constitution and International Law.

Need for Procedural lucidity and comprehensiveness in the existing statutory bail scheme:-

Procedural lucidity and comprehensiveness are wanting in the existing statutory bail scheme. The reformation of bail law must, therefore, replace this vagueness and uncertainty by clarity and coherence. Matters relating to jurisdiction, the successive stages necessary for availing of the freedom on bail, the extent and power of various courts in their hierarchical order to grant, refuse or cancel bail, the discretion to grant bail and prescribing the prohibition in cases where bail ought not to be granted, must be well comprehended under the scheme.

Role of police under the legislative guidelines in the new bail law.:-

Two important aspects of the bail process must be taken into consideration while formulating a new bail law. They are: (i) the police power to grant bail and (ii) the police power to arrest and seek remand. In case of the former, the law may specifically provide for the grant of police bail in cases of arrest under a warrant, unless the release is imprudent on grounds that may be recorded. This principle can be made applicable to summary offences as well. The right to be bailed in the above cases may be accompanied by a police right to ask for a surety. In the latter case, where initial police arrest is either illegal or without a warrant, police request for the grant of remand should be given consideration only on the basis of the guidelines which must be legislatively provided in the code.

Factor of delay in grant of bail must be taken into consideration and adequately managed:-

The frequent adjournment of cases in criminal courts is also a factor to be reckoned with to assess the efficacy of the system of release on bail. The delayed disposal of criminal cases together with the fact that the accused person had been enlarged on bail affords opportunity to an accused to approach and influence witness and also to exploit the gains of dismal memory of the events narrated by a witness after a long lapse of time. This adversely affects the administration of criminal law and justice. A prolonged release on bail of an accused person caused by successive adjournments of trial has the potential of reducing even the chances of the accused appearing in the court to receive his conviction, if found guilty. The factor of delay may thus have a direct bearing on the increased rate of absconding of offenders.

Conclusion:-

The above discussion clearly throws light on the fact that the normal rule is "**BAIL NOT JAIL**". The Indian Legal system does not create any discrimination or differentiation between Indian Nationals and foreign nationals when it comes to granting bail.

The study of bail and its mechanisms in turn Help or provide an approach for the guiltless/innocent against the technicalities of the courts and their procedures. In the present scenario the faith of the people in judiciary has been deteriorating, and thus this study lays down the mechanism of speedy trial that can be adopted in order to facilitate the one suffering from lengthy trials. It is important to help those who are under trial persons who release on bail.

Law and life must derive strength from each other and then alone the rule of law will give relevance and meaning to those who suffer from abuse of power and escalating crime, which affects considerable number of the weaker sector of humanity i.e., the suspects, accused or prisoners, who are at the mercy of law and order. The state has sovereign obligation to develop a dynamic system of law. For that the rule of law must run close to the rule of life.