

EXPLORING THE *MOTI RAM'S* VERDICT: THE NEXUS BETWEEN BAIL AND MONEY

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Abstract

*Our country's criminal justice system is critical for protecting individuals and preventing crime. The state has been bestowed with abundant power to carry out this solemn role under the constitution and criminal law. This power includes the power to arrest, detain, search, and seize. The judiciary and law enforcement officers have critical roles in avoiding unlawful detention, which infringes on their basic fundamental rights. Bail procedures ensure due process of law, a fair trial and the release of the arrestee. When a bail application is presented to the court, among other considerations, monitoring aspects in the bail determines the person's release. This study addresses the extent of monetary considerations in bail via the lens of the *Mothi Rams verdict*. The second portion of this study focuses on how the Motiram ratio has been invoked in contemporary times.*

Introduction

In every criminal judicial system, bail serves as an instrument to check the balance of power and evaluate the validity of the state's authority over its citizens using arrest and detention. If the state exercises an excessive degree of authority, the court may intervene and release the individual on "bail." And, if his imprisonment is needed by law, the court will impose judicial custody in exceptional circumstances. The concept is inherent in the *justice VR Krishna Iyers* rule: "Bail is the rule, jail is an exception"¹. In simple term it can be defined as "a security, such as cash or bond, required by a court for the release of an under-trial prisoner who must appear at a future date". When granted, bail results in the release of the under-trial prisoner from jail, and the security attached to bail ensures the accused is present before authorities when required². The monetary value of the security, specifically the bail bond, is determined by the Court with the appropriate jurisdiction. Bail guarantees the accused's right to freedom before guilt is proven in a court of law, preventing the arrest of innocent persons and allowing the accused to defend themselves from allegations. The apex court observed that bail is a technique that combines the right of an accused to enjoy their personal freedom and the public's interest, with the release conditioned on the certainty of producing the accused person in court to stand trial. Bail is based on the notion that punishment begins only after conviction, and rejecting bail violates a person's right to personal liberty guaranteed by the Indian constitution.

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¹ State of Rajasthan V. Balchand AIR 1977 2447

² The presence of the accused is inevitable during the investigation and trial under the BNSS. Hence, his presence cannot be dispensed off.

Bail ensures the accused's freedom until trial. The main goal is to protect innocent individuals and enable accused individuals to defend themselves against claims. It was observed by the court that bail as a technique that balances the right of an accused to personal freedom and the public's interest by requiring the accused to appear in court for trial³. A basic principle of criminal law is that 'a person is presumed innocent unless proven guilty beyond a reasonable doubt'. The right to bail comes upon arrest or apprehension. This idea states that punishment should only start after conviction. Rejecting bail violates a person's right to personal liberty, as outlined in the Indian constitution. Personal liberty can only be limited by legal procedures if the situation warrants so. However, the instances of bail abuses are also very common. Bail is a straightforward notion with a clear statutory objective. The legislation aims to strike a balance between the interests of the accused and provide a fair trial based on natural justice principles. The abuse of bail is not just restricted to the accused; its harmful rays have also lured the criminal justice systems, including the police officials and courts. Collaboration among the government's three departments is crucial for improving the judicial system and ensuring its legitimacy. Having a check and balance mechanism in place for officials and subordinate courts may assist in preventing abuse.

The rationale behind the concept of "Bail".

The objectives of bail in criminal cases are to prevent undue hardship to accused individuals, some of whom may eventually be exonerated, to facilitate unobstructed defence preparation, and to guarantee their appearance at scheduled hearings⁴. This idea aligns with Article 21 of the Constitution⁵, which is vital to the rights of individuals, protecting the rights to life and personal liberty for all people of India. In *Nikesh Tarachand Shah v. Union of India*⁶, it was determined that the purpose of bail is to guarantee the accused's attendance at trial and should not serve as a punitive measure, since it is designed to enable the accused's presence rather than to impose punishment. In '*Gurcharan Singh v. State (UT of Delhi)*'⁷, the Supreme Court recognized that no inflexible formula dictates bail decisions, which the particular facts and circumstances of each case should determine. It was well explained in *Sanjay Chandra v. CBI*⁸ that "the purpose of bail is neither punitive nor preventive"

Factors determining the bail

The court takes into account a number of considerations while determining bail. For instance, the availability of bail, the amount of time between the charge and the first appearance, the duration of the investigation and trial, the committal and the trial or punishment, and the length of trial adjournments are all factors that might impact bail. Certain countries have legislative presumptions

³ *Kamlapati v. State of West Bengal*,

⁴ '*Babba Alias Shankar Raghuman Rohida v State of Maharashtra*, 2005 Indlaw SC 1349'

'*Kalyan Chandra Sarkar v Rajesh Ranjan @ Pappu Yadav and Another*, 2005 Indlaw SC 24', Court On Its Own Motion v Central Bureau of Investigation, 2004 Indlaw DEL 741 '*Prahlad Singh Bhati v Nct, Delhi and Another*, 2001 Indlaw SC 19889', *Mahesh Kumar Bhawsinghka v State of Delhi*, *Vivek Kumar v State of Uttar Pradesh* 2000 Indlaw SC 3122

⁵ 'Article 21- Right to life and personal liberty'

⁶ (2018) 11 SCC 1.

⁷ (1978) 1 SCC 118

⁸ (2012) 1 SCC 40

against bail for certain crimes⁹, whereas other jurisdictions have differing requirements for granting bail. When setting bail, the court considers many considerations, including the possibility that the accused would not appear in court and the possibility that crimes will be committed while the accused is out on bond. Generally speaking, the following factors play a crucial role in determining the bail:

a. The severity of the crime: the severity of the crime can be assessed through its societal impact and the punishment prescribed for it by the law¹⁰. In *P. Chidambaram v. Directorate of Enforcement*¹¹, the Supreme Court observed that the courts must be mindful of the character of the allegations when evaluating bail applications. The severity of the sentence imposed for the alleged crime can also be used to assess the severity of the offence. It was emphasized that bail applications should not be routinely denied in cases of grievous economic offences, as no legislation or established bail jurisprudence mandates such a universal rule. The ultimate objective is to ensure the presence of the accused during trial and investigation, and each case must be assessed individually based on its unique facts. Detention of individuals has been predominantly permitted to prevent the "triple test" of risks, which includes the risk of reoffending, flight risk, and the risk of tampering with evidence and influencing witnesses, in light of these protections. However, the Supreme Court has consistently emphasized these three factors, in addition to a variety of other factors that must be considered when making a determination of this nature. The court has placed a particular emphasis on the severity of the alleged offense and the evidence accessible against the accused¹². In *Manish Sisodia v. Directorate of Enforcement*¹³, the court recognized the complex nature of the case, which encompassed over a lakh pages of digitized documents, numerous documents, and over 493 witnesses. However, it emphasized that the overwhelming amount of evidence should not be used to determine the severity of the offence and to justify the indefinite incarceration, particularly when the trial is not progressing.

b. Prolonged investigation or trial: Recently, in *Manish Sisodia v. Central Bureau of Investigation*¹⁴, the Supreme Court stated that detention or imprisonment prior to being found guilty of an offence should not be considered punishment without a trial. The Court has emphasized in its judgment that 'the right to a speedy trial is a fundamental right that is protected by Article 21 of the Constitution'. The Court observed that the court must exercise its authority to grant bail if the trial is unduly delayed for no fault of the accused. The Court noted that the constitutional mandate is the superior law, and it is the fundamental right of an individual who has been charged with an offence but has not been convicted to be guaranteed a prompt trial¹⁵.

⁹ In India, bail is classified into 'bailable and non-bailable offences. Bail is mandatory in the case of bailable offence'.

¹⁰ Vincenzo AS and Alissa RA, "Sentenced to Pretrial Detention: A Study of Bail Decisions and Outcomes" (2015) Available on '<https://link.springer.com/article/10.1007/s12103-014-9268-0>'.

¹¹ (2020) 13 SCC 791

¹² *ibid*

¹³ 2024 LiveLaw (SC) 563

¹⁴ 2023 LiveLaw (SC) 934

¹⁵ Available on <https://www.livelaw.in/top-stories/if-trial-is-delayed-for-no-fault-of-accused-courts-must-exercise-power-of-grant-of-bail-supreme-court-in-manish-sisodias-bail-plea-241219>

c. Antecedents of the accused: The decision to grant bail is significantly influenced by the accused's criminal history and the gravity of the offence. Nevertheless, there is a lack of individualized justification for custody, and a presumption is in favour of detention until the investigation is finalized. Bail proceedings do not consistently take into account personal circumstances and socio-economic profiling. Surety from an additional individual is required to ensure compliance with bond conditions. The accused are required to demonstrate their innocence in order to be released on bond, as special legislations such as UAPA and NDPS impose a greater burden. Bail decisions are occasionally predicated on problematic grounds, such as the accusation of the complainant or the failure to register complaints in a timely manner¹⁶. The Supreme Court in '*Prasanta Kumar Sarkar v Ashis Chatterjee*'¹⁷ held that "whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; nature and gravity of the accusation; severity of the punishment in the event of conviction; danger of the accused absconding or fleeing if released on bail; character, behaviour, means, position and standing of the accused; likelihood of the offence being repeated; reasonable apprehension of the witnesses being influenced; and danger of justice being thwarted by grant of bail".

In *State v. Captain Jagjit Singh*¹⁸, the court held that "It should have taken into account the various considerations, such as, nature and seriousness of the offence, the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of witnesses being tampered with the larger interests of the public or the State, and similar other considerations, which arise when a court is asked for bail in a non-bailable offence". In *Vaman Narain Ghiya v State of Rajasthan*¹⁹, held "while considering an application for bail, a detailed discussion of the evidence and elaborate documentation of the merits is to be avoided so that no party should have the impression that his case has been pre-judged. Elaborate analysis or exhaustive exploration of the merits is not required. Hence what is required is the court must look into the gravity of the offence, the necessity of custody, the likelihood of absconding, the likelihood of tampering with the evidence, criminal antecedents, the length of investigation and trial, any evidence of innocence, etc"²⁰.

¹⁶ Anoop Surendra Nath, "Confused Purposes and Inconsistent Adjudication: An Assessment of Bail Decisions in Delhi's Courts" [2024] Asian Journal of Comparative Law <<https://www.cambridge.org/core/journals/asian-journal-of-comparative-law/article/confused-purposes-and-inconsistent-adjudication-an-assessment-of-bail-decisions-in-delhis-courts/D3DF8ED4B9F910A8BDAE44D15D6FB70E>>

¹⁷ (2010) 14 SCC 496, Also see Babu Singh and Others v State of Uttar Pradesh 1978 Indlaw SC 128, Gudikanti Narasimhulu And Ors v Public Prosecutor, High Court Of Andhra Pradesh 1977 Indlaw SC 86, Gurcharan Singh and Others v State (Delhi Administration), 1977 Indlaw SC 410, State of Rajasthan, Jaipur v Balchand @ Baliay, 1977 Indlaw SC 105

¹⁸ (1962) 3 SCR 622

¹⁹ 2008 Indlaw SC 1940

²⁰ Sadanala Ramakrishna and others v National Investigation Agency, 2016 Indlaw CAL 935, Sajal Kumar Mitra and another v State of Maharashtra and others 2011 Indlaw MUM 31, 'Makhan Kant Sharma v Union of India, Through The Director of Revenue Intelligence, 2011 Indlaw ALL 306', Ramu Harishchandra Bawane v Deputy Inspector General of Prisons and another, 2010 Indlaw MUM 1395, Subodh Prasad Urf Anil Chotu Jagdish Mahato and another v State of Maharashtra, 2010 Indlaw MUM 1041, Vinayak Hari Kulkarni v State of Maharashtra and others, 2010 Indlaw MUM 1680, Kashi Ram v State of Rajasthan and others, 2010 Indlaw RAJ 386, Ernest Uchenna and Another v State of West Bengal, 2010 Indlaw CAL 118,

An empirical study was recently conducted by *Dr. Anup Surendranath* and *Gale Andrew*, which examined a variety of factors that influence bail considerations. It concentrated on bail orders issued by the Sessions Courts of Delhi between 2017 and 2019 for the offences of theft and rape, as accessible through the e-Courts system. The study shows that between 2017 and 2018, the sessions in Delhi received 1893 bail applications in theft cases, out of which 1318 were allowed, 69.62%, and 578 applications were rejected, 30.38%. In rape cases, 1243 bail applications were received, 677 were allowed, 54.38, and 576 were rejected 45.62%. Further, the research also discloses on what grounds the bail was rejected or other variables for allowing the bail. The table below illustrates the numerous factors for granting or denying bail²¹.

Table-1: Factors for dismissal of bail in theft and rape cases²²

Judicial reasoning for dismissal ²³	Theft cases		Rape cases	
	Number of cases	Proportion of Dismissed Cases with Reasoning	Number of cases	Proportion of Dismissed Cases with Reasoning
Criminal antecedents	322	57.19%	14	2.50%
Seriousness of offence	293	52.04%	449	80.04%
Evidence of guilt	262	46.54	324	57.75
Necessity of custody	166	29.48	289	51.52
Likelihood of reoffending	94	16.70	-	-
Likelihood of tampering of evidence	57	10.12	148	26.38
No change in circumstances since previous application	57	10.12	42	7.49%
Likelihood of absconding	40	7.10	42	7.49%
Conduct and role of the accused	10	1.78		
Case law cited inapplicable	-	-	34	6.06%
Plea raised relates to proposed defence	-	-	22	3.92%
Offence is non-compoundable, and compromise not ground for bail	-	-	17	3.03%

²¹ Supra at 15

²² Supra at 8, Table 3 and 4.

²³ Factors for considering bail

Table-2: Factors for granting of bail in theft and rape cases

Judicial reasoning for allowing ²⁴	Theft cases		Rape cases	
	Number of cases	Proportion of Dismissed Cases with Reasoning	Number of cases	Proportion of Dismissed Cases with Reasoning
Custody not required	838	71.56%	258	43.88%
Period undergone in custody	813	69.43%	281	47.79%
Absence of criminal antecedents	268	22.89%	62	10.54%
Personal circumstances	163	13.92%	52	8.84%
Evidence of innocence	115	9.82%	385	65.48%
Bail granted to co-accused	114	9.74%	18	3.06%
Less serious offence	95	8.11%	13	2.21%
Length of trial	78	6.66%	26	4.42%
Will comply with conditions	45	3.84%	-	-
Family/others undertake to monitor	29	2.48%	-	-
Granted bail in other cases	20	1.71%	-	-
Limitations of prosecution/investigation	18	1.54%	13	2.21%
Settlement of matter	12	1.02%		
Will not abscond/misuse liberty/tamper with evidence	11	0.94%	23	3.91%
Marriage between complaint and accused	-	-	44	7.48%
Complainant not objecting to bail	-	-	27	4.59%

Jail, Bail and the Poor- *Motiram Ratio*²⁵

Different Supreme Court rulings have changed the Code of Criminal Procedure clauses to let the underprivileged be freed on personal bail. However, numerous under-trial inmates who are destitute nevertheless find themselves in jail simply because of their poverty. These under-trial inmates have to stay in filthy, packed jails. Most of the accused remain in jail for a period lengthier than the sentence their crime would have entailed should they be found guilty. Many under-trial inmates in India result from the fact that impoverished accused individuals cannot offer the security for their release, thereby failing the financial commitment. The long case investigations and trial delays cause their rights to be overlooked. Measures taken aim at countering these

²⁴ ibid²⁵ 'Moti Ram v. State of M.P. (1978) 4 SCC 47'

elements²⁶. Section 167 of the Code of Criminal Procedure, 1973 gives the maximum period for investigating offences carrying the death sentence, 90 days, and for other offences, 60 days. If the investigation not be completed within the designated term, the magistrates have to provide the accused bail. Section 424-A,²⁷ which allows an “under-trial application for bail after he has spent half of the maximum period of the sentence he would have received should he have been found guilty, was included in the Code of Criminal Procedure through the Criminal Law Amendment Act, 2005”.

In *‘Hussainara Khatoon and Others v. Home Secretary, State of Bihar’*²⁸, it was stated that “Fairness under Article 21 is impaired where procedural law does not provide speedy trial of the accused; does not provide for his pre-trial release on bail on his personal bond, when he is indigent, and there is no substantial risk of his absconding”.

Justice Krishna Iyer, in the Motiram case, noted the statement of the then President, Lyndon B. Johnson statement, that “*The defendant with means can afford to pay bail. He can afford to buy his freedom. But the poorer defendant cannot pay the price. He languishes in jail for weeks, months and perhaps even years before trial.*

He does not stay in jail because he is guilty. He does not stay in jail because any sentence has been passed. He does not stay in jail because he is any more likely to flee before trial. *He stays in jail for one reason only—because he is poor. . . .*”²⁹

In the *Motiram case*, the Supreme Court criticised the Chief Judicial Magistrate’s order for seeking a surety of Rs. 10,000, despite the petitioner being a mason. The Court directed the magistrate to release the petitioner on his personal bail of Rs. 1000. He observed that “mason and millionaire were treated alike; egregious illegality is an inevitability. Likewise, geographic allergy at the judicial level mocks the equal protection of laws *within India's territory*. India is one and not a conglomeration of districts, untouchably apart”.

In India, we have four kinds of bail that the court grants to the accused: **Cash Bail, Surety bail, property bond and personal bond**. The entire Chapter³⁰ pertains to bail provisions and does not specify that the Court may require an individual to provide financial security upon their release on bail. After all, the purpose of granting bail is to ensure that an individual's liberty is extended. Naturally, the Court is responsible for ensuring that the interests of the State and the public are protected in the event of a person's release following an accusation. To this end, the Court is authorized to require the accused to appear in court whenever necessary for the purpose of investigation or prosecution, whether by the Police or the Court³¹. During this time, the Court may also issue a warning to the accused regarding any activities or movements that could potentially

²⁶ ‘Sharad Kumar Etc v Central Bureau of Investigation’, 2011 Indlaw SCO 443; ‘State Of Kerala v Raneef’, 2011 Indlaw SC 1, (2011) 1 SCC 784, 2011

²⁷ CrPC

²⁸ ‘1979 AIR 1819 1979 SCR (3)1276 1980 SCC (1) 115 ACT’.

²⁹ Ibid, at para 19

³⁰ Chapter XXXV of Bharatiya Nagarik Suraksha Sanhita, 2023, from sections 478 to 496, deals with “provisions as to bail and bail bonds”. Chapter XXXIII of CrPC from sections 436 to 450 deals with “provisions as to bail and bail bonds”

³¹ ‘Siddharam Satlingappa Mhetre v State Of Maharashtra And Others’; 2010 Indlaw SC 1026, (2011) 1 SCC 694.

cause anxiety or compromise the prosecution's evidence. Regardless of whether it is under S. 437, 438, or 439³², the Court is required to exercise its discretion in a manner that is both appropriate and not arbitrary. The discretion that is exercised must be perceived as fair and reasonable. It is accurate that there are no established standards for exercising discretion. The Court's discretion is not forfeited to its own impulses solely because norms are not established for the purpose of exercising it under Section. 437, 438, or 439³³. The guiding principle will be as previously stated, supported by reasonable reasoning, and will not be in conflict with any other law. While maintaining complete confidence in the justice system, the Legislature has granted the Court this discretion. The Court is obligated to ensure that any order or condition that is to be imposed is always in the best interest of both the accused and the State while administering justice³⁴. The conditions must not be capricious; however, they must be in accordance with the primary objective of the discretion³⁵.

Section 436 of the Code refers to bail; however, the proviso distinguishes between "bail" and "own bond without sureties. Even here, there is ambiguity, as the proviso is only applicable if the accused in a bailable offence is "prepared to give bail", as indicated in the substantive part. In this context, the term "bail" denotes "with or without sureties". Additionally, the term "bail bond" in Section 436(2) encompasses one's own surety. The term "bail" is not explicitly defined in Section 437(2); rather, it refers to the discharge of individuals under the age of 16, those who are ill or infirm, and women on bail. It is impossible for a small boy, sinking invalid, or *Pardanashin* to be denied release and subjected to stress and distress in prison unless sureties are transported to a distant court with a requirement for regular appearances. The term "bail" in this context implies release, with the emphasis on the obligation to appear when instructed rather than the production of sureties. However, Section 437(2) differentiates between surety and pledge without sureties.

In another case *Prahlad Singh Bhati v. NCT*³⁶ held that "The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of the accusations, the nature of the evidence in support thereof, the severity of the punishment that conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words reasonable grounds for believing instead of the evidence which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be

³² Criminal Procedure Code

³³ Ibid

³⁴ Talluri Srinivas S/o T. L. N. Rao v State Represented by C. B. I., Hyderabad, 'represented by its, Public Prosecutor, High Court of Andhra Pradesh', 2009 Indlaw AP 718, Amarveer Singh v, State of Rajasthan and others, 2009 Indlaw RAJ 694, Manish v State of Uttar Pradesh and another, 2008 Indlaw ALL 1134

³⁵ *Supra 16, Motiram case*

³⁶ (2001) 4 SCC 280, Also see State Through Central Bureau of Investigation v Amarmani Tripathi and another, 2005 Indlaw SC 1225

able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt”.

In ‘*State of U.P. v. Amarmani Tripathi*’³⁷ the Court observed that “the law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind”³⁸.

Recently in the apex court was addressing a report submitted by amicus curiae Gaurav Agarwal, which disclosed that as of January this year, 5,380 convicts had been granted bail but remained incarcerated. The State Legal Services Authority (SLSA) addressed their cases, connecting their ongoing imprisonment to their failure to provide the bail bonds mandated by the courts. The Supreme Court instructed trial courts to consider the financial state of convicts when determining bail terms after observations of cases when persons were unable to get bail due to their financial situations, resulting in prolonged imprisonment. The court further suggested, “We assert that courts should ensure that bail is effective, as imposing conditions that exceed the financial capacity of the defendant is futile. A scenario arises in which a prisoner cannot get bail. This situation need to be changed” stated a panel of justices ‘*Sanjay Kishan Kaul and Sudhanshu Dhulia*’ in a case where the Supreme Court is evaluating measures to reform bail policy³⁹.

Suggestions

Presumption of indigency: The presumption of indigency should be extended in both bailable and non-bailable offences. Currently, this presumption is applicable only in bailable offences⁴⁰. Along with this, the court must seek an affidavit of indigency from the accused and can also inquire about his financial status through the probationary officers or Legal Services Authority.

Orientation to judicial officers: One recommendation was to instruct judicial personnel in trial courts to refrain from imposing excessive bail bonds that are unattainable for the defendants. In this context, it also advised the development of a ‘module for orientation programs in collaboration with state judicial academies to educate judges’.

Efficient use of E-prison Software: E-prison software has already been developed by the National Informatics Centre (NIC), and the central government has implemented the same. This software automatically dispatches an email alert to the secretary of the district legal service

³⁷ (2005) 8 SCC 21

³⁸ Vaman Narain Ghiya v State of Rajasthan, 2008 Indlaw SC 1940, (2009) 2 SCC 281

³⁹ Thomas, “In Bail Orders, Courts Should Consider Prisoners’ Ability to Pay: Supreme Court” *Hindustan Times* (2023) Available on <<https://www.hindustantimes.com/india-news/supreme-court-urges-consideration-of-financial-status-in-bail-conditions-to-prevent-extended-incarceration-101690302442285.html>>

⁴⁰ Explanation to section 478, BNSS or section 436 of CrPC.

authority (DLSA) if the accused remains incarcerated for over a week following bail release. This system needs to be strengthened.

Conclusion

One of the most common criticisms levelled against the bail system is that it discriminates against those who are economically disadvantaged. This argument is based on the fact that the bail system depends on money as a guarantee, even after several revisions in criminal law. Individuals who are financially stable are able to easily afford to buy their freedom, but those who are victims of the financial bail system, who are the poor, are incarcerated because they are unable to acquire the necessary funds. The capacity to pay is sometimes the only criterion that determines who is released from prison and who is sentenced to a lengthy period of incarceration. Considering the inherent unfairness of this technique, it is reasonable to question whether or not such a practice is really pragmatic. The decision that the Supreme Court made in the case of *Rudal Shah v. State of Bihar*⁴¹ is a wake-up call because it exemplifies the worst possible example of uncaring behaviour on the part of state officials toward the situation of those who are impoverished. In spite of the fact that he was exonerated of all accusations by the appropriate criminal court on March 6, 1968, he was not freed from prison until August 16, 1998, which was fourteen years after his release. Our system needs to be pro-active, especially the judges who impose greater amounts than the financial capacity of the accused. For that he needs more orientation and training.

Bibliography

1. Vincenzo AS and Alissa RA, "Sentenced to Pretrial Detention: A Study of Bail Decisions and Outcomes" (2015)
2. Anoop Surendra Nath, "Confused Purposes and Inconsistent Adjudication: An Assessment of Bail Decisions in Delhi's Courts" [2024] Asian Journal of Comparative Law
3. Thomas, "In Bail Orders, Courts Should Consider Prisoners' Ability to Pay: Supreme Court" *Hindustan Times* (2023)
4. Zeisel Hans, "Bail Revisited" [2018] Cambridge University Press
5. Candace M and Meghan Sacks "Does law matter? A old bail law confronts the new penology, [2013] Sage Journals.
6. Singh PK, "Bail in Socio-Economic Crimes and Criminal Justice in India" [2020] 6 Athens J.L. 209
7. Albright A, "No Money Bail, No Problems?" (2021) [readme.org<https://read-me.org/s/no-money-bail.pdf](https://read-me.org/s/no-money-bail.pdf)
8. Lenny R and Don W, "Bail Presumptions and Risk of Bail Refusal: An Analysis of the NSW Bail Act" (2010) NSW Bureau of Crime Statistics and Research.

⁴¹ (1983) 4 scc 141