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From Custody To Liberty

Comparative Study of Bail Provisions

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Abstract: The concept of bail lies at the very foundation of criminal jurisprudence, embodying the delicate balance between safeguarding individual liberty and ensuring the effective administration of justice. Rooted in the old French word *baillier*, meaning “to give or deliver,” bail has evolved through judicial interpretation rather than statutory definition under the Code of Criminal Procedure, 1973, and now finds codified expression in the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. Bail represents not absolute freedom but conditional release, transferring custody from the State to sureties or personal bonds, thereby securing the accused’s presence before the court. As **Justice V. R. Krishna Iyer** emphasized, bail is not merely a procedural formality but a constitutional safeguard against arbitrary detention. Article 21 of the Indian Constitution enshrines the right to life and personal liberty, while Article 11 of the Universal Declaration of Human Rights reinforces the presumption of innocence, both serving as normative anchors for bail jurisprudence. Landmark judgments such as *State of Rajasthan v. Balchand*¹, *Hussainara Khatoon v. State of Bihar*², and *Satender Kumar Antil v. CBI*³ have consistently reaffirmed that bail is the rule and jail the exception. This paper explores the statutory framework under BNSS, judicial pronouncements, and doctrinal underpinnings of bail and bond provisions, highlighting their role in balancing public safety with the fundamental right to personal freedom.

Keywords: Bail, Bond, Conditional Liberty, Sureties and Personal Bond

Introduction: The bail provisions under the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, mark a significant departure from the Criminal Procedure Code (CrPC), 1973, by introducing statutory clarity and modern safeguards. Unlike the CrPC, which did not explicitly define **bail** and relied heavily on judicial interpretation, BNSS provides clear definitions of bail, bail bond, and bond, thereby reducing ambiguity in practice. The Supreme Court in *Gurbaksh Singh v. State of Punjab*⁴ (1980) had already clarified that bail means setting a person at liberty once security for their appearance is taken, and it includes release on one’s own bond. Similarly, in *Sunil Fulchand v. Union of India*⁵ (2000), the Court emphasized that a

¹ (1977) 4 SCC 308

² (1979) 1 SCC 98

³ (2022) 10 SCC 51

⁴ (1980) 2 SCC 565

⁵ (2000) 3 SCC 409

person released on bail remains in the constructive custody of the court, balancing liberty with judicial control. BNSS incorporates these principles into statutory language, ensuring consistency in application.

The objective of bail under both CrPC and BNSS remains the same: securing the presence of the accused during trial without unnecessarily curtailing personal liberty. However, BNSS strengthens this by revising provisions relating to maximum detention before trial, thereby reducing prolonged pre-trial incarceration. It also refines anticipatory bail provisions, laying down clearer conditions under which it may be granted or denied, reflecting contemporary concerns about misuse while safeguarding liberty. Another important innovation is the introduction of *Jamin*, which refers to a bail bond or surety bond. This concept formalizes the promise between the accused, the court, and a surety, ensuring accountability. If bail conditions are violated, the bond often a refundable amount can be forfeited, thereby reinforcing compliance.

In essence, bail under BNSS is not just a procedural safeguard but a reaffirmation of constitutional values. It ensures that detention serves the legitimate purpose of justice rather than functioning as punishment before conviction. By codifying definitions, tightening detention timelines, clarifying anticipatory bail, and introducing structured surety bonds, BNSS modernizes the bail framework, harmonizing personal liberty with judicial accountability. This shift reflects a conscious effort to align procedural justice with the fundamental right to liberty, making bail provisions more structured, equitable, and accessible.

The **Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023** has introduced statutory definitions of bail, bail bond, and bond, which were absent in the **Criminal Procedure Code (CrPC), 1973**. This marks a significant development because earlier, courts had to rely on judicial interpretation to explain these concepts.

Under **Section 2(1)(b) of BNSS**, “*bail*” means release of a person accused of or suspected of commission of an offence from the custody of law upon certain conditions imposed by an officer or Court on execution by such person of a bond or a bail bond.

According to **Section 2(1)(d)**, “*bail bond*” means an undertaking for release with surety.

Further, **Section 2(1)(e)** defines “*bond*” as a personal bond or an undertaking for release without surety.

By codifying these definitions, BNSS ensures greater clarity and uniformity in bail proceedings. The distinction between bail bond and bond highlights the difference between release with surety and release on personal undertaking, thereby strengthening accountability while safeguarding liberty.

Bail for Undertrial Prisoners – CrPC vs BNSS

Aspect	CrPC (Sec. 436A, 2005 Amendment)	BNSS (Sec. 479, 2023)	Key Change
Detention Threshold	Bail after serving ½ of max sentence (except death penalty cases)	Bail after ½ of max sentence, but ⅓ for first-time offenders	BNSS introduces leniency for first-time offenders
Multiple Cases Pending	No restriction	Bail denied if multiple cases pending	Stricter safeguard against habitual offenders
Jail Superintendent's Role	No mandatory duty	Must apply in writing for release once threshold met	Administrative accountability introduced
Fair Trial Principle	Recognized	Strengthened with procedural obligations	BNSS operationalizes fairness

Anticipatory Bail – CrPC vs BNSS

Aspect	CrPC (Sec. 438)	BNSS (Sec. 482)	Key Change
General Rule	Available before arrest	Available before arrest	Continuity
Exclusion for Gang Rape	No anticipatory bail for gang rape of women under 16 or 12 years (Secs. 376DA, 376DB IPC)	No anticipatory bail for gang rape of women under 18 years (Sec. 65 & 70(2) BNS)	Age threshold raised to 18, stricter protection

Regular Bail – Identification of Witnesses

Aspect	CrPC (Sec. 437, Proviso 3)	BNSS (Sec. 482, Proviso 3)	Key Change
Grounds for Refusal	Bail not refused merely because accused needed for witness identification	Same principle retained	Continuity
Custody Duration	No explicit mention of >15 days	Explicitly allows custody beyond 15 days for identification, but bail still not refused	Clarification added

The authority to grant bail

It is closely tied to the categorisation of offences into bailable and non-bailable. Section 2(c) defines a bailable offence as one listed in the First Schedule or made bailable by any other law, while non-bailable offences are all others. In bailable offences, bail is essentially a right of the accused, and both the officer in charge of a police station and the court have the power to grant it, though their discretion is limited. Section 47 of BNSS further imposes a duty on the police officer to inform an arrested person of their right to bail if arrested without warrant for a bailable offence, thereby strengthening procedural fairness.

In contrast, for non-bailable offences, the court exercises wider discretion. Section 480(2) provides that the court or even the police officer may release the accused on execution of a bail bond if there are no reasonable grounds to believe that the person has committed a non-bailable offence. This shows that while both authorities technically have power, the court's role is dominant in non-bailable cases, as it balances liberty with the seriousness of the offence. Thus, BNSS continues the dual authority framework of CrPC but codifies duties more explicitly, ensuring that bail decisions are not only a matter of discretion but also of procedural obligation and fairness.

Laws of Bail Bond and Surety

The Oxford Dictionary defines 'surety' as *"a person who takes responsibility for another's obligation"*. Advanced Law Lexicon by **P. Ramanatha Aiyar** defines 'surety' to mean *"the bail that is undertaken for another man in a criminal case"*.

Under the **Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023**, the provisions relating to **bond and surety** are codified in detail to ensure clarity and accountability in the bail process.

- **Section 485 BNSS** – Deals with the bond of the accused and sureties. It requires the accused and sureties to execute a bond for appearance before the court, ensuring compliance with bail conditions.
- **Section 486 BNSS** – Requires a declaration by sureties, affirming their capacity and willingness to undertake responsibility. This provision strengthens transparency and prevents fictitious or incapable sureties.

- **Section 489 BNSS** – Provides for the discharge of sureties. Once the trial concludes or bail obligations are fulfilled, sureties can apply to be formally released from liability.
- **Section 491 BNSS** – Governs forfeiture of bonds. If the accused fails to comply with bail conditions, the bond may be forfeited, and sureties can be held liable for the penalty amount.

485. Bond of accused and sureties. – (1) Before any person is released on bail or released on his own bond, a bond for such sum of money as the police officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be.

(2) Where any condition is imposed for the release of any person on bail, the bond shall also contain that condition.

(3) If the case so requires, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

(4) For the purpose of determining whether the sureties are fit or sufficient, the Court may accept affidavits in proof of the facts contained therein relating to the sufficiency or fitness of the sureties, or, if it considers necessary, may either hold an inquiry itself or cause an inquiry to be made by a Magistrate subordinate to the Court, as to such sufficiency or fitness.”

Stage at which bail bond is furnished:

Section 485 of BNSS speaks about the stage when a bail bond is furnished. Bail bond is furnished before Court or Police when the accused is arrested and before he is released on his own bond or by the police officer or by the court.

Section 490 of BNSS (earlier 445 of CrPC) speaks about deposit instead of recognizance– It provides for the concession to an accused person who is unable to produce sureties. This section permits payment of cash or Government promissory notes in substitution of passing a bond except where the bond is one for good behavior.

Form 47 of 2nd Schedule of BNSS speaks about the form to be filled up / furnished before the Officer in Charge of Police Station or Court. It also speaks about the contents of bail bond.

Amount of Bond not to be excessive:

In the case **Guddan @ Roop Narayan vs. State of⁶ Rajasthan**, the Supreme court held that:

“15. While bail has been granted to the Appellant, the excessive conditions imposed have, in-fact, in practical manifestation, acted as a refusal to the grant of bail. If the Appellant had paid the required amount, it would have been a different matter. However, the fact that the Appellant was not able to pay the amount, and in default thereof is still languishing in jail, is sufficient indication that he was not able to make up the amount.

16. As has been stated in the Sandeep Jain case (supra), the conditions of bail cannot be so onerous that their existence itself tantamounts to refusal of bail. In the present case, however, the excessive conditions herein have precisely become that, an antithesis to the grant of bail.

In **Re: Policy Strategy for Grant of Bail⁷**, the Court issued the following directions:

“With a view to ameliorate the problems a number of directions are sought. We have examined the directions which we reproduce hereinafter with certain modifications:

(1) The Court which grants bail to an undertrial prisoner/convict would be required to send a soft copy of the bail order by e-mail to the prisoner through the Jail Superintendent on the same day or the next

⁶ (Criminal Appeal No. 120 of 2023 @ SLP (Criminal) No. 9756 of 2022)

⁷ (SMWP (Criminal) No. 4/2021)

day. The Jail Superintendent would be required to enter the date of grant of bail in the e-prisons software [or any other software which is being used by the Prison Department].

(2) If the accused is not released within a period of 7 days from the date of grant of bail, it would be the duty of the Superintendent of Jail to inform the Secretary, DLSA who may depute para legal volunteer or jail visiting advocate to interact with the prisoner and assist the prisoner in all ways possible for his release.

(3) NIC would make attempts to create necessary fields in the e prison software so that the date of grant of bail and date of release are entered by the Prison Department and in case the prisoner is not released within 7 days, then an automatic email can be sent to the Secretary, DLSA.

(4) The Secretary, DLSA with a view to find out the economic condition of the accused, may take help of the Probation Officers or the Para Legal Volunteers to prepare a report on the socioeconomic conditions of the inmate which may be placed before the concerned Court with a request to relax the condition (s) of bail/surety.

(5) In cases where the undertrial or convict requests that he can furnish bail bond or sureties once released, then in an appropriate case, the Court may consider granting temporary bail for a specified period to the accused so that he can furnish bail bond or sureties.

(6) If the bail bonds are not furnished within one month from the date of grant bail, the concerned Court may Suo moto take up the case and consider whether the conditions of bail require modification/relaxation. (7) One of the reasons which delays the release of the accused/ convict is the insistence upon local surety. It is suggested that in such cases, the courts may not impose the condition of local surety.”

In **Satender Kumar Antil vs. Central Bureau of Investigation and another**⁸, it has been held that:

“Under Section 440 (484 of BNSS) the amount of every bond executed under Chapter XXXIII is to be fixed with regard to the circumstances of the case and shall not be excessive. This is a salutary provision which has to be kept in mind. The conditions imposed shall not be mechanical and uniform in all cases. It is a mandatory duty of the court to take into consideration the circumstances of the case and satisfy itself that it is not excessive. Imposing a condition which is impossible to comply with would be defeating the very object of the release. In this connection, we would only say that Sections 436(478 of BNSS) , 437(480 of BNSS) , 438(482 of BNSS) and 439(483 of BNSS) of the Code are to be read in consonance. Reasonableness of the bond and surety is something which the court has to keep in mind whenever the same is insisted upon, and therefore while exercising the power under Section 88 of the Code(sec 91 of BNSS) also the said factum has to be kept in mind.”.

Legal remedy when FIR has been lodged in multiple states and the accused fails difficulty to furnish bail bond and surety in Courts of different jurisdictions:

A writ petition(criminal) under Article 32⁹ can be filed in the Supreme Court when FIR has been lodged in the Police State of various districts across India under different provisions of BNS for seeking an appropriate Writ or Direction to the effect that the personal bonds and sureties executed by the petitioner mentioning details of FIR No., date, P.S & District shall hold good for all other bail orders passed in his favor from the Courts of different States.

⁸ (2022) 10 SCC 51

⁹ Courts have consistently held Article 32 as the “heart and soul of the Constitution” (L. Chandra Kumar v. Union of India, AIR 1997 SC 1125; Hussainara Khatoon v. State of Bihar, AIR 1979 SC 1369).

In **Girish Gandhi vs. State of Uttar Pradesh**¹⁰ the Supreme Court held –

“...22. Whether it is to get individuals, to stand as a guarantor for a loan transaction or as a Surety in a criminal proceeding, the choice for a person is very limited. It will very often be a close relative or a longtime friend. In a criminal proceeding, the circle may get even more narrowed as the normal tendency is to not disclose about the said criminal proceeding to relatives and friends, to protect one's reputation. These are hard realities of life in our country and as a court of law we cannot shut our eyes to them. A solution, however, has to be found strictly within the framework of the law.

..23. From time immemorial, the principle has been that the excessive bail is no bail. To grant bail and thereafter to impose excessive and onerous conditions, is to take away with the left hand, what is given with the right. As to what is excessive will depend on the facts and circumstances of each case. In the present case, the petitioner is experiencing a genuine difficulty in finding multiple sureties. Sureties are essential to ensure the presence of the accused, released on bail. At the same time, where the court is faced with the situation where the accused enlarged on bail is unable to find sureties, as ordered, in multiple cases, there is also a need to balance the requirement of furnishing the sureties with his or her fundamental rights under Article 21 of the Constitution of India. An order which would protect the person's fundamental right under Article 21 and at the same time guarantee the presence, would be reasonable and proportionate. As to what such an order should be, will again depend on the facts and circumstances of each case.”

Supreme Court in **Hani Nishad @ Mohammad Imran @ Vikky vs. The State of Uttar Pradesh**,¹¹ has made the following order in a situation where the petitioner was faced with 31 cases:

“Considering the submissions, the impugned order is modified to the extent that the petitioner shall execute a personal bond for Rs. 30,000/- (Rupees Thirty thousand only) and the same bond shall hold good for all 31 cases. There shall be two sureties who shall execute the bond for Rs. 30,000/- which bond shall hold good for all the 31 cases. It is clarified that the personal bond so executed by the Petitioner and the bond so executed by the two sureties shall hold good for all the 31 cases.”

Section 491 of BNSS (earlier sec 446 of CrPC) speaks about the procedure when bond has been forfeited- “Where-(a) A bond under this Sanhita is for appearance, or for production of property, before a court and it is proved to the satisfaction of that Court or of any Court to which the case has subsequently been transferred, that the bond has been forfeited, or,

(b) in respect of any other bond under this Sanhita, it is proved to the satisfaction of the court by which the bond was taken, or of any Court to which the case has subsequently been transferred, or of the Court of any Magistrate of the first class, that the bond has been forfeited, the court shall record the grounds of such proof and may call upon any person bound by such bond to pay penalty thereof or to show cause why it should not be paid.”

Extent of Liability of Surety:

In **Narata Ram vs State of Himachal Pradesh**¹², it has been held that-

“...5 There is no controversy that the responsibility of surety arises from the execution of the surety bond by him and it is not contingent upon execution of a personal bond by the accused. Thus, the forfeiture of the personal bond of the accused is not a condition precedent to the forfeiture of the bonds executed by the sureties. Perusal of Section 446 of the Code of Criminal Procedure (now sec 491 of BNS) contemplates two stages. The first stage is for the Court to satisfy itself that the bond has been forfeited. The second stage relates to the realization of the forfeited amount of the bond. For this purpose, it has to give him notice either to pay the penalty or to show cause why it should not be paid. It is imperative to

¹⁰ (2024 INSC 617)

¹¹ SLP (Criminal) Nos. 8914-8915 of 2018

¹² (1993) SCC Online HP 53

note that if there are sufficient circumstances before the Court, on the basis of which it can accept or reject the cause shown, it need not take any evidence.

6. It is also settled law that a notice to the surety cannot be issued, unless the order of forfeiture is passed. Thereafter, the Court has to consider the grounds made out by the surety in support of his case and after considering the case, on merits, if the Court is dissatisfied with the reasons shown, an order has to be made for the realization of the penalty.”

In ***R.D. Upadhyay vs . State of Andhra Pradesh***¹³, the Supreme Court held that—

“...3. So far as the cases regarding attempt to murder are concerned, we direct that the cases which are pending for more than 2 years, the undertrials shall be released on bail forthwith to the satisfaction of the respective trial courts. Persons facing trial for Kidnapping, Theft, Cheating, Arms Act, Counterfeiting, Customs, under Section 326 IPC, under Section 324 IPC, Riots and under Section 354 IPC who are in jail for a period of more than one year, shall be released on bail forthwith to the satisfaction of the trial courts concerned. There may be cases where the undertrial persons may not be in a position to furnish sureties etc. In those cases, the trial courts may consider — keeping in view the facts of each case, especially the period spent in jail — releasing them on bail by furnishing personal bonds.

Challenges and Reforms in Bail Surety Verification under Indian Criminal Justice:

Bail surety verification in India presents several pressing issues that demand reform. One of the foremost concerns is the delay in verification, which often prevents bail from translating into immediate liberty. This paradox undermines the very purpose of bail, and reforms must prioritize speedy verification through digital tools, remote scrutiny, and reduced reliance on physical checks. The proposed Surety Information Management System (SIMS) is a promising step in this direction. Another issue is the lack of uniformity in determining what qualifies as a “fit” or “sufficient” surety. Courts across the country adopt varying practices, leading to arbitrariness. National or model guidelines could help standardize criteria, including clarity on whether out-of-state sureties are acceptable or how many times one person may stand as surety.

Equally important is the need to balance liberty with security. Courts must avoid imposing onerous bail conditions such as excessively high deposits or multiple sureties, which effectively deny bail and contradict the principle that bail is the norm. Flexibility in accepting alternative mechanisms like fixed deposits, property security, or personal bonds would also make bail more accessible, especially given India’s socioeconomic diversity. Public awareness is another critical area: many sureties are unaware of their liabilities, and legal education campaigns could help them understand their rights and obligations. Finally, tackling fraud and forgery in the surety process is essential. Instances of fictitious sureties and forged documents undermine trust in the system, and stronger verification protocols, digital cross-checking, and criminal sanctions against fraudsters are needed. Together, these reforms would enhance transparency, fairness, and efficiency in the bail process, ensuring that liberty is not lost in procedural bottlenecks.

Conclusion: Bail surety verification is a critical but often overlooked part of India’s criminal justice system. It ensures that the person standing as surety has the financial capacity, credibility, and willingness to guarantee the accused’s compliance with bail conditions. When done promptly and fairly, it facilitates the exercise of liberty; when delayed or mishandled, it can lead to injustice and erode public trust. For the accused, choosing reliable sureties and assisting them with documentation is essential, while for sureties, understanding the seriousness of the obligation and their liability is equally important. Courts and enforcement agencies must continue to develop uniform guidelines, digital verification tools, and transparent procedures so that bail remains meaningful and accessible. The law empowers courts to demand sureties, but this power must always be balanced with the fundamental right to liberty — reinforcing the principle that bail is the norm and jail the exception. By focusing on surety verification, its legal basis, procedural flow, and reform potential, we strengthen both transparency and effectiveness in the bail process, ensuring that rights are protected and obligations are fulfilled.

¹³ (1996) 3 SCC 422