



Research Monograph

On

PROVISION RELATING TO BAIL IN THE CRIMINAL JUSTICE SYSTEM IN BANGLADESH

A Research Monograph submitted for the partial fulfillment of LLB[Hons]

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Letter of Transmittal

To

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Subject: Submission of Research Monograph on “**PROVISION RELATING TO BAIL IN THE CRIMINAL JUSTICE SYSTEM IN BANGLADESH**”.

Dear Sir,

It is a matter of great joy for me to submit the Research Monograph on “**PROVISION RELATING TO BAIL IN THE CRIMINAL JUSTICE SYSTEM IN BANGLADESH**”.

While doing this Research Monograph, I have tried my level best to maintain necessary requirements. I earnestly hope that it will fulfill your expectation, and accordingly you would be kind enough to go through this dissertation for evaluation

I am always available for any clarification of any part of this Research Monograph at your convenience.

Sincerely Yours

Suborna Akter

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Declaration

I am Suborna Akter [ID:-LLB1702011032] a student of Sonargaon University Department of Law, hereby solemnly declare that, this Research Monograph on **“PROVISION RELATING TO BAIL IN THE CRIMINAL JUSTICE SYSTEM IN BANGLADESH”**. has been prepared by me and it has not been submitted or published anywhere earlier. I also solemnly declare that this Research Monograph has been prepared by me obeying all relevant copyright provision, and all information mentioned here is true to the best of my knowledge.

Signature: -

Date: -

Certification by the Research Advisor

This is hereby certified that the Research Monograph on “**PROVISION RELATING TO BAIL IN THE CRIMINAL JUSTICE SYSTEM IN BANGLADESH**” submitted by Suborna Akter [ID:-LLB1702011032] in fulfillment of the requirements for the Graduate Degree in Law from Sonargaon University, was under my active supervision and guidance. It is also asserted that no part of this Research Monograph has been submitted or published anywhere earlier.

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Acknowledgements

At First, I would like to express my gratitude to Almighty who has been kind enough to let me complete this Research Monograph in proper way, and in right time.

Secondly, I would like to acknowledge my gratitude to Sanjoy Pal Sir, Honorable Research Supervisor, for permitting me to undertake my Research Monograph. I am grateful to him for his most valuable suggestion and directive guidelines regarding this Research Monograph.

During the completion of this Research Monograph, I have help from some books, journals, articles and newspapers. Thanks to all authors of that books, journals and articles.

Signature

ABSTRACT

Bail is money or some form of assets that is deposited or guaranteed to a court, in order to secure the announcement from custody or jail of a suspect who has been arrested, with the understanding that the suspect will return for their trial and required court appearances. Bail is a mechanism to release suspects from imprisonment pre-trial, while ensuring their return for trial. If the suspect does not return to court, the bail is forfeited, and the suspect may possibly be brought up on charges of the crime of failure to appear. If the suspect returns to make all their required appearances, bail is returned after the trial is concluded. In some cases, bail money may be returned at the end of the trial, if all court appearances are made, regardless of whether the person is found guilty or not guilty of the crime accused.

Generally, bail is some form of property deposited to a court to persuade it to release a suspect Criminal from jail, on the understanding that the suspect criminal will return for trial or forfeit the bail (and possibly be brought up on charges of the crime of failure to appear). In some cases bail money may be returned at the end of the trial, if all court appearances are made, regardless of whether the person is found guilty or not guilty of the crime accused. If a bondsman is used and a surety bond has been obtained, the fee for that bond is the fee for the insurance policy purchased and is not refundable. In some countries, granting bail is a common practice in the court. Even in such countries, however, bail may not be offered by some courts under some circumstances, for instance, if the accused is considered likely not to appear for trial regardless of bail. Legislatures may also set out certain crimes to be notailable, such as capital crimes. In this sub-continent especially in Bangladesh, bail has been developed as of fundamental rights of an accused.

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This Dissertation is Dedicated

TO

My Beloved Parents

And

My Beloved Teachers

CHAPTER: ONE

1. Introduction:

Bail is a familiar word and it is also very much common word in criminal court and civil court. Bail is to deliver, to release. Bail is delivering someone in trust to somebody for a special reason and for a limited purpose. Bail is release after a security money has been paid.

Bail is right of any person. Anyone wants bail who is arrested and is living in jail means they want a bail at any time. To set free, or deliver from arrest, or out of police custody, on the undertaking of some other person or persons that he or they will be responsible for the appearance, at a certain day and place, of the person bailed. The person or persons who procure the release of a prisoner from the custody of the officer, or from imprisonment, by becoming surely for his appearance in court. The security given for the appearance of a prisoner in order to obtain his release from custody of the officer; as, the man is out on bail; to go bail for any one.

1.1 Statement of Problem

Bail provision is an important part of Criminal Procedure. Section 496,497,498 of Code of Criminal Procedure prescribed about Bail Provision. Section 496 deals with bail provision of bailable offense and section 497 deals with non bailable offence. If any accused did not get bail in bailable offence then it must be notified by the Magistrate, on the other hand if any accused get bail in non bailable offence then it must be notified by the Magistrate. But in a Practice a huge problem arise to exercise the bail provision. I try my level best to find out the problems and solve this problem.

1.2 Objective :

Bail is very important for the accused person without bail the arrested person may not be released in the custody.

- a) To know about the bail provision of Bangladesh in details.
- b) To know the provision of granting bail in non-bailable offense.
- c) To know the misuse of the power of granting bail in non-bailable offence.

So, with view to set up some effective solutions I have decided to make a thesis paper on this issue Besides this, to gather a knowledge about the present legal and practical aspects bail provision in non-bailable offence in criminal justice system of Bangladesh my objective of the study.

1.3 Literature Review:

Many works have been done before this, such as, Abdul Halim writes in his book named, “*The text book on Criminal Procedure*” but he could not give clear concept about Bail Provision in Non Bailable offence. Mr. Siddiqur Rahman Miah in his book “*The Law on Bail*” general provision of Bail, Conditional Bail, Bail on Special Laws etc. I also try to study the following writers’ books and try my level best to find out this problem and solve this problem.¹ – “*The Code of Criminal Procedure* -written by Md. Zakir Hossain.” , “*The Code of Criminal Procedure written by Sikder M. Answer Uddin* ” In the Fajlur Rahman vs, The state in this case states that the court granting bail should exercise its discretion in a judicious manner and not as a matter of the course.² Justice Mohammad Hamidul Haque writes in his book named “*Trial of Civil suits and Criminal case*” Justice Shaikh Md Mujahid_Ul_Islam writes in his book named “*Gateway of Criminal and Family Laws in Bangladesh*. Abul kalam azad writes in his book named “*The Law on Bail*”. Md. Muslem Uddin khan write in this book named “*the law on bail*”.

¹ Miah SiddiqurRahman ,*The Law on Bail*(New warsi book corporation First ed, 2002)121.

² Fajlur Rahman vs, The state 17 BLT 192.

1.4 Research Methodology:

Every research involves a method by which the desired result can be achieved. Here I have applied analytical method. In this regard I have used primary and secondary sources. To complete my research work I will follow some critical but effective process and I will follow this process through studying books, newspapers, websites discussion with Resource Person, basic documents etc.

1.5 Limitation of the Research:

It is a great problem to finish this thesis within a short time. The time for that reason I could not collect enough document data are not available. The field work was a great challenge because the parties of any criminal cases are not interested to say something about bail procedure. The court premises is very much crowded, so it is not possible to collect proper document on bail provision in non available on this topic. The court author are not friendly to help about this matter.

CHAPTER: TWO

Types and Definition

2. Introduction

Bail is very important for accused to get released on the custody. Without bail in accused person cannot get released from the custody. So with a view to discuss the definition of bail and classification of bail. When the accused person released on bail in non-bailable offence depends on the surety of money and property. Without surety and security of money the court shall not grant a bail.

2.1 Definition of Bail

The concise Oxford Dictionary defines 'Bail' as security for the appearance of prisoner on giving which the accused is released pending trial. In the same Dictionary the meaning of the word "Bail" as a verb is giving as "to admit to bail, to release on security given on appearance. Bail is an alternative preventive measure to the preventive measure applied as detention against the defendant and it is applied only in case the court has made a decision about detaining the defendant.

The word Bail is derived from the old French verb "Bailer which means to give" or to "deliver"³ (Webster's Dictionary, 1938) Security or bond pledged or given to a court or on behalf of one accused of committing a crime, to obtain release from incarceration and to ensure the person future appearance in court when required during the criminal proceeding.

Bail has been defined by Black's Law Dictionary in the Language that "security required by a Court for the release of a prisoner who must appear at future time".⁴

Thus, bail is a guarantee for the defendant to be in freedom until a judgment is made against him.

³ Neilson, William Allan, ed, *Webster's New International Dictionary* (2nd edition, 1943) 171.

⁴ Abridged ed, *Brayan A, Garner, Bank's Law Dictionary* (9th edition, 2009) 150.

2.2 Bailable and non bailable offence

Basically, there are two kinds of offences according to CRPC. Some offence are bail able offences and some offences are non bailable offence.

Bailable

Bail able offences are those offences which are stated in 2nd schedule of CRPC as bailable.

Non bailable

Non bailable offences are those offences which is stated in 2nd schedule of CRPC non bailable.

*Section 4(B) of CRPC it is said that "Bailable Offence" means an offence sown as bailable in the second schedule or which is made bailable by any other law for the time being enforced; and "non-bailable offence" means any other offence.*⁵

Actually, this is enough to understand bail able or non bailable offence, there is no specific criterion to understand whether one offence is bail able or non bailable. So to understand the bail able or non bailable you have to read the 2nd schedule of CRPC which you can find in the last part of CRPC. I have identified one criterion to understand bail able or non bailable offence though this criterion is not always accurate. Whether one offence is bail able or non bailable depends on the gravity or proximity of those offences.

For example, murder, attempt to murder, theft, extortion, dacoity, Robbery, criminal breaches of trust grievous hurt are non bailable offence.⁶

One the other hand criminal trespass (section447) house trespass (section 448), threat to life (section 506), simple hurt (section 323), mischief and causing damage to the amount of 50 taka or upwards (sec427) are bailable offences.⁷

⁵ The code of criminal procedure 1898 s 498.

⁶ The Penal code 1860 S 378,502,359,383.

⁷ Ibid, s 447,448,506.

2.3 Ad Interim Bail

No magistrate. Sessions judge or any court has jurisdiction to grant interim bail during the pendency of bail application in that court. Order granting short term bail quashed. If the magistrate, sessions judge feel that such a course should be adopted and it is always open to them either to dispose of the application on the same day and in the alternative release the accused on executing personal bond till the disposal of the application. It may be also pointed out that the applicant is entitled to claim the benefit of the proviso to section 497 (1) Cr.P.C which contains special provision for bail to women. Minors under 16 years of age and sick or infirm persons.⁸

As soon as the accused appears or brought before the court and prays for bail the Sessions judge should dispose of his Application. If the sessions judge fails to dispose of the same there is no scope for allowing the accused to continue on the bail granted by the magistrate, he is to be sent jail custody⁹

Ad interim bail can not be allowed to continue simply because an appeal against conviction is pending in the High Court Division. Interim bail allowed continuing further on specific terms¹⁰.and another important case is¹¹

2.4 Anticipatory Bail

Court to try and effect a settlement between the warring couple may be laudable act but is alien to the exercise of jurisdiction while deciding an application seeking grant of anticipatory bail. Learned senior counsel urged that the well known parameters viz. gravity of offence, possibility of accused absconding or threatening witness of the prosecution, inherent probabilities, for and against the accused are some of the factors which have to be considered by the court while deciding an application for grant a bail.¹²

⁸Halim Abdul, *The Legal System of Bangladesh* (Shams publication 4th Ed, 2012) 34.

⁹*Sohail Thakur and others v. State* 22 BLD 65.

¹⁰*Nizamuddin v. State* 17 DLR(SC)231.

¹¹*Abdul Hakim Howladar v. State*(1989)10 MLR113.

¹² Ibid

2.5 Bail Bond:

Criminal Law term paper Bail Bonds The principle of bail is basic to our system of justice and its practice as old as English law itself. When the administration of criminal justice was in its infancy, arrest for serious crime meant imprisonment without preliminary hearing and long periods of time could occur between apprehension and the arrival of the King's Justices to hold court. It was therefore a matter of utmost importance to a person under arrest to be able to obtain a provisional release from custody until his case was called.¹³

2.6 Forms of Bail

in the most of states there are several forms of bail used, these vary from jurisdiction, but the common forms of bail include¹⁴:

1. Recognizance – when an accused is released on recognize, he promises to the court that he will attend all required judicial proceedings and will not engage in illegal activity or other prohibited conduct as set by the court. surety – by a surety bond, a third party agrees to be responsible for the debt or obligation of the defendant. in many jurisdictions this service is provided commercially by a bail bondsman, where the agent will receive 10% of the bail amount up front and will keep that amount regardless of whether the defendant appears in court. the court in many jurisdictions, especially jurisdictions that prohibit bail bondsmen, may demand a certain amount of the total bail (typically 10%) be given to the court, which, unlike with bail bondsmen, is returned if the defendant does not violate the conditions of bail. this also known as surety on the bond.

2. Property – the accused or a person acting on his behalf pledges real property having a value at least equal to the amount of the bail. if the principal fails to appear for trial the state can levy on the property to recover the bail.

3. Cash – typically “cash-only,” where the only form of bail that the court will accept is cash.

¹³ Shaikh Md Mujahid Ul Islam, *Gateway of Criminal and family laws in bangladesh*, (New warsi Book Corporation)14 Bangabondhu Avenue ,1st edition October 2015.

¹⁴Miah Siddiqur Rahman ,*The Law on Bail* (New warsi book corporation First ed,2002)121.

combinations – courts often allow defendants to post cash bail or bond, and then impose further conditions, as mentioned below, to protect the community or ensure attendances

4. Combinations – courts often allow defendants to post cash bail or bond, and then impose further conditions, as mentioned below, to protect the community or ensure attendance.

5. Surety If any person seeks bail then a third person has to give a surety on behalf of the defendant and the third person has to pay 10% of total amount of money if the defendant does not violate any condition then the court will return the whole amount of money.¹⁵

2.7 Bail proceedings

bail is an amount of money that a criminal defendant may be ordered to pay before being released from custody pending trial. Its purpose is to ensure a defendant's return at subsequent trial proceedings. Release the defendant on his or her own recognizance or upon an unsecured appearance bond

- (a) Deny bail to the accused
- (b) Set terms of bail, including the amount of bail and any special conditions for release

Bail may or may not be required in misdemeanor cases, depending upon the circumstances and seriousness of the offense. More serious misdemeanor cases and felonies often require a bail determination. Bail may come into play at three stages of a criminal proceeding¹⁶:

- (a) During the pretrial period
- (b) Pending imposition or execution of sentence
- (c) Pending appeal of a conviction or sentence

If bail is not required, a defendant may be released on his or her own recognizance. Releasing someone on personal recognizance means that the person has promised to show up for trial or other court proceedings, without posting a bond. Release on personal recognizance may be appropriate when a person has ties to the community and has lawful and steady employment. Family status is also taken into account. Before release, a defendant must sign a document promising to appear. Failure to abide by the terms of release on personal recognizance may result

¹⁵ *Ibid*

¹⁶Hossain Belaiet, *Code of Criminal Procedure* (Hira publications 2nd Ed, 2013)78.

in revocation of the privilege, or further criminal charges, including immediate arrest. A defendant released on personal recognizance may be required to abide by certain rules. For example, the defendant may be forbidden from traveling outside of the court's jurisdiction, or may be forbidden from contacting the victim or the victim's family.

A court may also impose an unsecured appearance bond on a criminal defendant. A bond amount is set, but the defendant is not required to post any money. If the defendant fails to appear at subsequent proceedings, or violates any terms of the bond, he or she will be required to pay the full amount of the bond.¹⁷

2.8 Important Provisions relating to Bail

2.8.1 Section 496. In what cases bail to be taken: -

- When a person accused of a bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court or at any stage of the proceedings before such Court to give bail, such person shall be released on bail.
- Provided that such officer or court instead of taking bail may discharge the accused on executing a bond without sureties.¹⁸
- The bailable provision is fundamental rules is that if any person who is under police custody those persons handed to the surety person from the police custody? The surety must insure to the court he is able to brought the person on the trial proceeding.¹⁹

¹⁷ Dr. Thaeer Abu, Criminal Justice system (2010) *8work for better Bangladesh*

¹⁸ Halim Abdul, *The Legal System of Bangladesh* (CCB Foundation, 2013) 201.

¹⁹ [5 DLR(FC) 154]

2.8.2 Section 497. When bail may be taken in case of non-bailable offence: -

“Any person who is accused of non-bailable offence he may be released on bail but the condition is that those person has been guilty offence punishable with death or imprisonment for life he shall not release on bail.

1. Who is under the age of 16 years or
2. Any women or
3. Any sick or infirm person

Under which such person released on bail in non-bailable offence”²⁰

2.8.3 Section 498. Power to direct admission to bail or reduction of bail: -

This section stipulates that Power to direct admission to bail or reduction of bail

Every amount of bond shall be executed, Shall be fixed, and shall not be excessive.

Such section provides jurisdiction to High Court Division or Court or Session by which may direct any person to be admitted to bail and the bail which is required by police officer Magistrate be reduced. The amount of every bond shall be fixed and shall not be excessive, the high court division of Court of Session released any person on bail or reduce the bail.²¹

2.8.4 Provisions for bail in different laws:

Chapter XXXIX of the Code of Criminal Procedure including section 496 to 502. sections 86..167(5). 169. 426 (2) (2A), 3390(4), 433. schedule 2. column 5, schedule 2 under the heading offence against other laws sav section 32 of Special Powers Act, section 19 of the Nari-o-Shishu Nirjalan section 15 of the Acid Aparadh Daman Ain, order 16, Rule 18 of CPC, section 31 Narcotics Control Act, 1990, section 22(5) of the Manab Pacher Pratirodh O Daman Ain,1 2012, section 48 of the Children Act, 1974. chapter VII of the Criminal Rules and Orders.²²

²⁰ *Ibid* s497

²¹ *Ibid* s 498

²² Md, Zakir Hossain, *the principles of criminal litigation*,

CHAPTER: THREE

Bail in Bailable Offences

3.1 Right of Bail in Bailable Offence:

A bailable offence is an offence where bail can be claimed as of right. As soon as it appears that the accused person is prepared to give bail bond, the police officer or the court before whom he offers to give bail bond, is bound to set him free on bail on such terms as to bail as may appear to the officer or the court. Neither the court nor the officer can reject bail where the offence is bailable because the language of section 496 is imperative. It is only the HCD which has power to order him to be arrested and remand to custody in bailable offences. In every bailable offence bail is a right and not a favour. Accused of a bailable offence cannot be taken into custody unless the accused is unable or unwilling to offer bail bond or furnish moderate security! The Court or police may ask for securities or executing a bond without sureties for his appearance in police station or court. The object of demand of security is not to punish the accused but to ensure his presence in the court. The amount of security must be fixed with due regard to the means of the accused and the nature of the offence and should not be excessive. If the person on bail suborns witness there may be other remedies at law open to him e.g. contempt proceeding, or proceeding to bind him over to keep the peace or be of good behavior.

3.2 Principle of granting bail

Actually, there is no hard and fast rule for granting bail or rejecting is bail. The basic principle which is followed at the time of dealing with bail is that the power of granting bail or rejecting of bail is discretion of the court. However, in section 497 of CPC there are some directions on the question of bail. of bail. The principles stated in section 497 of CPC are stated in the following:

1. Court will consider the bail of any person who is under the age of sixteen years and in such case court may direct to release that person on bail.
2. The court may also consider the bail of any woman and sick or infirm person.
3. The court may release any person on bail at any stage or investigation, inquiry or trial of a case,

4. If there is no reasonable ground for believing that the accused person has committed the offence, but there are sufficient grounds for further inquiry into his guilt, the court may direct to release that person on bail.
5. When the court will grant bail of any accused person the court shall write down the reasoning for releasing that person on bail.
6. If after conclusion of trial and before judgment it appears to the court that there are sufficient grounds for believing that the accused is not guilty of any such offence, the court shall release the person on bail.²³

3.3 Which Court can grant bail?

The general principle is that the court to which the accused person is presented after arrest can grant bail if there is sufficient ground for granting bail. In most of the cases after arresting the accused person the person is bail. In before the magistrate court which has the cognizance power (power accept the case) and that magistrate court has the authority to enlarge the accused person on bail. The reasoning behind this is that if such power is not given to the court of first appearance (Magistrate court), the persons will be in custody without taking any opportunity to defend themselves. So the power of granting bail to the accused person by the court of first instance is very important and justified.

There are two relevant sections of CRPC on the question of granting bail; section 496 and section 497. Section 496 deals with the provision of granting bail in case of bailable offences and section 497 deals with the provision of granting bail in case of non-bailable offences. According to section 496 of CRPC where the accused person is arrested by the police officer on the allegation of a bailable offence, he shall be enlarged on bail if the application for bail is filed before the court. In the same way section 497 of CRPC says that where the accused person is arrested for the allegation of a non bailable offence the court may enlarge him on bail and the only restriction imposed by CRPC is that the court will not grant bail to that person if it appears

²³ Shaikh Md Mujahid Ul Islam, *Gateway of Criminal and family laws in bangladesh* ,(New warsi Book Corporation 14 Bangabandhu Avenue 1st edition, 2015) 47.

reasonable ground to for believing that he has been guilty of an offence punishable with death or transportation for life.²⁴

So from the discussion this is very clear that the court of first instance has the power to grant bail and as the Cognizance magistrate is the court of first instance, it has the power to deal with bail. In practice there is some is practice in some special laws like Prevention of Woman Repression Act 2000 which will be discussed later in another part of this book.

3.4 What are the different stages involved in granting a bail?

There are different stages involved in granting bail. The stages are discussed below.

- (1) The accused person will appoint a lawyer for defending the bail petition.
- (2) The bail petition will be put up before the honorable court for consideration.
- (3) The concerned appointed lawyer will be appeared in the court for hearing the petition on behalf of the accused person.
- (4) If the court considers the petition and grants the bail, the appointed lawyer will submit bail bond.
- (5) The bail bond should be signed by the concerned judicial magistrate. After that the police authority will release the accused person on bail.
- (6) The accused person on bail should be present before the concerned court on the fixed date, if the accused person is unable to be present on the fixed date before the court, the court may cancel the bail.
- (7) If the lower court does not consider the bail of the accused person, the accused person can appear before the high court division for bail under section 498 of the criminal procedure.²⁵

3.5 Cancellation of bail

When bail is granted in case of a non-bailable offence, the court granting the bail or the High Court Division or the Courts of Session may pass an order to arrest the person who was earlier

²⁴ Ibid

²⁵ Shaikh Md Mujahid Ul Islam, *Gateway of Criminal and family laws in bangladesh* ,(New warsi Book Corporation 14 Bangabandhu Avenue 1st edition, 2015) 12.

released on bail and may commit him to custody. But nothing is mentioned in sections 497,498 or in any other section of Chapter XXXIX as to under what circumstances bail of a person may be cancelled and he may be committed to custody again.²⁶ However, from judicial pronouncements, now it is settled that under the following circumstances bail may be cancelled:

- (a) if the person hampers the investigation,
- (b) if he tampers with the evidence by giving threat to the witnesses or to the complainant or to the informant,
- (c) if he runs away to a foreign country or conceal himself so that he could not be found by his sureties,
- (d) if he commits the very same offence or offence of the similar nature after being enlarged on bail,
- (e) if he commits acts of violence in revenge, or
- (f) in any other way misuses the privilege of bail.

If an application is filed on behalf of the complainant or prosecution for cancellation of bail on any of the grounds as mentioned above, it will not be proper to cancel the bail without being satisfied about the correctness of the allegations made against the accused enlarged on bail. So, the prayer for cancellation of bail should be considered cautiously and judiciously. See 21 BLD 503, 52 DLR 326. Before cancellation, a notice is to be given to the accused and he also must be heard. See 20 DLR (SC) 339, 5 BLC 348.²⁷

3.6 Conditions of bail

The law enjoins certain conditions for the release on bail, and the Criminal Procedure Code lays down various provisions regulating the conditions that can be imposed while granting bail to a person.

²⁶ Justice Mhammad Hamidul Haque,writs “this book *name trial of civil suits and criminal cases*” (publisher of Universal book house,Dhaka 1000).

²⁷ [15 MLR 476].

Section 499. (1) Before any person is released on bail or released on his own bond, a bond for such sum of money as the police 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 or court, as the may be.

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

The word “conditioned” in section 499, Cr.P.C. is not so comprehensive as to include all continued that the Magistrate may like to impose e.g., that accused is to live in a certain place.²⁸

3.7 When does Court Refuse Bail?

The general rule is that the court has to grant bail unless one of the following conditions applies. If it's not an impressionable offence, the court can refuse bail if you have previously not turned up after being granted bail and if the court believes that, if released on bail now, you would fail to turn up.

3.8 Misuse of the power of granting bail

In bailable offense accused have right to get bail. But, sometimes we are looking that, the accused cannot get bail in bailable offense in the court. The Magistrate is influenced by political and other illegal way he cannot grant bail.

There are other important reason for refused granting bail by the magistrate is taken huge amount of money from the party. Some magistrate are corrupted, there are always take money from the party after that the magistrate granting bail in the non- bailable offense.²⁹

In the Session judge court and the High court division has discretionary power for granting bail. The session judge and high court division has right to grant bail in non-bailable offense. Session judge and High court division exercise the supreme power of granting bail. For, this reason, sometimes misuse of the power of granting bail in the court.³⁰

²⁸ [PLD 1955 Dhaka 84].

²⁹ Islam Md.Zahurul,*The Code of Criminal Procedure* (Islamia Publication 2nd Ed, 2012)102.

³⁰Miah Siddiqur Rahman ,*The Law on Bail* (New warsibook corporation First ed, 2002)339.

The High Court Division or Court of Session and in the case of a person released by itself, any other Court may cause any person who has been released under this section to be arrested and may commit him to custody.

The basic essential governing the matter of granting bail is that bail should never be withheld as punishment. Grant of bail is a rule and same could not be withheld by way of punishment.

3.9 Abolishing bail able and non bail able offence

The Code of Criminal Procedure classifies the offences into two types.

1. Bail able offence and
2. non bail able offence.

In case of **bail able offence** the bail is considered as the right of the accused person. When one person is arrested in a bail able offence the court will consider his bail as his right. But this is also the discretion of the court to disallow his bail.³¹

One the other hand in case of **non bailable offences** this is the discretion of the court to allow or disallow the bail prayer of the accused person.

But which is the justification of the classification of bail able and non bailable offence. In most of the cases the court grants bail of the accused person where there is the accusation of the bail able offence against the accused person.

This practice indeed is really dangerous indeed. Because of such practice where the ajahar is filed, the ajaharkari has a trend to include the non bailable section in the ajahar against the main accused person though actual allegation against him is bail able. If we give an **example**, this will be more clarified.

There exists enmity between the two parties for a land dispute. At night one party tried to enter into the land and destroy some movable goods in the land. Here the actual section of allegation lies against one party is section 447,427. But both the section is bail able. So the ajahrkan in such case has a trend to include false allegation against the other party which is non bailable.

³¹ Shaikh Md Mujahid Ul Islam, *Gateway of Criminal and family laws in bangladesh*, (New warsi Book Corporation 14 Bangabandhu Avenue 1st edition, 2015) 56.

CHAPTER: FOUR

Bail in Non bailable offence

4.1 Right of Bail in Non-bailable Offence:

When a person is arrested for a non-bailable offence and is brought before the court, the court may release him on bail. Thus bail in non-bailable offence is a matter within the discretion of the courts and cannot be claimed as of right (section 497).

4.2 Bail on Humanitarian Ground

A sick or infirm may be released on bail even in a case of capital punishment. Grant of bail to a woman is not a matter of right yet intention of Legislature appears to be that bail should invariably be granted to a woman unless any special circumstances exist on record to warrant refusal of bail. A Court should grant bail to a woman even when she is an accused of murder. Where there was no evidence to show that woman accused had been party to conspiracy to commit murder they were enlarged of bail (PL) 1983 in such circumstances the existence of a suckling baby may be a additional ground in favour of grant of bail.

4.3 Principles for Granting of pre-arrest Bail:

Power of granting anticipatory bail is very sparingly used by High court to save a citizen from unnecessary harassment and humiliation in the hands of police on flimsy ground or with ulterior motive or out of political design. This power can not be exercised in each and every case as a substitute to the exercise of such power by the court below. A person can not be enlarged on anticipatory bail how high so ever he maybe unless conditions for granting such bail are satisfied.

The main conditions to be satisfied before exercise of jurisdiction to allow pre-arrest bail-³²

- (a) that there should be a genuine proved apprehension of imminent arrest with the effect of virtual restraint on the petitioner:
- (b) that the petitioner should physically surrender to the Court:
- (c) that on account of ulterior motives, particularly on that part of the police. there should be apprehension of harassment and undue irreparable humiliation by means of unjustly arrest:

³² The Code of Criminal Procedure 1908, s 498

(d) that it should be otherwise a fit case on merits for exercise of discretion in favour of the petitioner for the purpose of bail. In this behalf the provision contained in section 497, Cr. P.C. would have to be kept in mind:

(e) that unless there is reasonable explanation the petitioner should have earlier moved the Sessions Court, for the same relief under section 498. Cr. P.C.

4.4 Guiding principles of granting a bail

As a general rule bail should be withheld as punishment unless the facts warrant such course.

The matters of consideration in an application for bail may be enumerated as follows:

- a) Whether there is or is not a reasonable ground for believing that the applicant has committed the offence with which he is charged;
- b) The nature and gravity of the charge;
- c) Severity of degree of the punishment which might fall in the particular circumstances in case of a conviction;
- d) The danger of the applicant's absconding if he is released on bail
- e) The character and means and standing of the applicant;
- f) The danger of the alleged offence being continued or repeated, assuming that the accused is guilty of having committed that offence in the past;
- g) The danger of witness being tampered with;
- h) Opportunity of the applicant to prepare his defense; and
- i) The fact that the applicant has already been some months in jail and that the trial is not likely to conclude for several months at least.³³

4.5 Who can grant bail u/s 497?

Powers of officer in charge of police has power to release a person on bail u/s 57(2), 59(3), 169, 170, 496 and 497.

Powers of courts

³³ Shaikh Md Mujahid Ul Islam, *Gateway of Criminal and family laws in bangladesh*, (New warsi Book Corporation 14 Bangabandhu Avenue, 1st edition, 2015) 56.

Courts have power to released a person on bail u/s 76, 86, 91 186, 217, 427, 466, 475, 476, 496, and 497

Powers of court sessions

Court of sessions has power to released a person on bail u/s 408, 497 and 498.

Powers of high courts

High court has power to released a person on bail u/s 426, 497 and 498.

4.6 When bail may be refused.

It cannot be said that section 497(1), Cr. P.C was applicable only where an offence was punishable exclusively with death or imprisonment for life and by no other sentence in place of or in substitution of death or imprisonment for life.³⁴

4.7 When Court may grant bail in non-bailable offence:

Under the proviso to section 497, the Court is empowered to release any person on bail who is under the age of 16 years or any woman or any sick or infirm person accused of a non-bailable offence.

Other circumstances under which bail may be granted to a person who is accused of a non-bailable

offence: Sub-section (2) of section 497 provides that when further inquiry will be necessary, the accused shall be released on bail pending such inquiry. Moreover, if after conclusion of the trial and before delivery of judgment, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, he shall be released on bail. However,

there can not be any hard and fast rule on this point, the court is to decide whether there is any reasonable ground on consideration of the facts and circumstances of each case.³⁵

³⁴ [PLD 1973 Lah. 741].

³⁵ Md, Zakir Hossain, *the principles of criminal litigation*,(publisher own edit 1st,2016) 39.

4.8 Procedure of non bailable offences

In order to apply for Bail under *Section 497 or Section 498 of CrPC*, the accused is required to fill the Form No. 45 given in the First Schedule and apply for bail. After that, it will be the discretion of the Court whether it grants or rejects the application for bail.

4.9 The grant of Bail is not a matter of right

A non-bailable offence is one in which the grant of Bail is not a matter of right. Here the accused will have to apply to the court, and it will be the discretion of the court to grant Bail or not. The court may generally refuse the Bail, if:

“Bail Bond” has not been duly executed, or if the offence committed is one, which imposes punishment of death or Life imprisonment, such as "Murder " or "Rape" or the accused has attempted to abscond, and his credentials are doubtful. The application for bail shall be filed before the Magistrate, who is conducting the trial. The application after being filed is usually listed on the next day. On such day, the application will be heard, and the police shall also present the accused in court. The magistrate may pass such orders, as he thinks fit.³⁶

EXAMPLE OF NON-BAILABLE OFFENCE

- Murder (S.302) PC
- Dowry Death (S.304-B) PC
- Attempt to murder (S.307) PC
- Voluntary causing grievous hurt. (S.326) PC
- Kidnapping (S. 363) PC
- Rape (S. 376) etc.

³⁶ Md. Muslem Uddin , *the law on bail* (publisher law book house 2nd edit, 2011) 31.

4.10 Condition of nonailable

The conditions laid down by the supreme court for grant of bail are as follows.

If the person seeking bail has been placed under actual custody; or

He appears in answer to a process issued by the court; or

He is brought before the court; or

By the police; or

By some other arresting authority

Anwar Vs. state 1995 Cr. LJ 863 (Orin) [the condition for release on the bail for depositing cash security with one surety in addition to bail bond held harsh and progressive.³⁷

4.11 Difference Between bail and nonailable offences

number	Bailable	Non Bailable
1	Bribery -section 171E PC	Rape section – 376 pc
2	Adulteration of food or drinking section 272 PC	Kidnaping section 363 PC
3	The accused is entitled to be released on bail	the accused may not be released on bail
4	The accused has a right to be released on bail	the accused has no right to be released on bail. However the person accused of nonailable may be released on bail, subject to judicial discretion.

³⁷ Ibid.

5	..Less serious in nature	more serious in nature
6	Punishment for bailable offence is imprisonment less than 3 years or fine or fine or both	punishment for non bailable offence is more than three years and even death or life imprisonment and is severe than the punishment for bailable offence.
7	A person to be accused of bailable offence cannot apply for anticipatory bail.	A person to be accused of non bailable offence can apply for anticipatory bail.
8	Section 496 CrPC is applicable for granting the bail in bailable offence	section 497 CrPC is applicable for granting the bail in non bailable offence
9	In bailable offence, bail is claimed as a right and the courts also will give bail liberally	in non bailable offence, the court use the discretionary power and depending upon the circumstance of the case, they may grant or refuse the bail.
10	Generally the judicial first class magistrate or any magistrate is empowered to try the case of bailable offence	Generally the additional sessions judge or sessions judge is empowered to try the cases of non bailable offence.

4.12 Fees for bail bond

Normally where the court grants bail of any accused person the court grants the bail taking a bail bond from them. For example in a case of theft if the bail is granted, the court in its order may write that the bail is granted on 5000 taka bond. This does not mean that the accused will have to give 5000 taka for bail. The accused will have to give the fees for bail bond. The fee is fixed by the Court fees (Amendment) Act 2010 which is only 25 taka. So the fee for bail bond is only 25 taka."Sometimes some people think that the accused will have to give the amount which is fixed by the court at the time of submitting bail bond. But this is totally wrong concept. At the time of submitting bail bond the accused will have to pay only 25 taka for for legal fee. If any body claims more than that, that will not be legal.³⁸

4.13 Costing for submitting bail prayer and bail bond

The bail matter is an important issue in criminal justice system. Where any case is filed against any person and court takes cognizance of that case where a case is filed in thana or the person is arrested by police, the accused person wants to see bail and to get bail he submits bail prayer before the court. Now question is what is the cost of the bail prayer? For submitting bail prayer the govt fee is only ten taka.

Normally where the court grants bail of any accused person the court grants the bail taking a bail bond from them. For example in a case of theft if the bail is granted, the court in its order may write that the bail is granted on 5000 taka bond. This does not mean that the accused will have to give 5000 taka for bail. The accused will have to give the fees for bail bond. The fee is fixed by the Court fees (Amendment) Act 2010 which is only 25 taka. So the fee for bail bond is only 25 taka." Sometimes some people think that the accused will have to give the amount which is fixed by the court at the time of submitting bail bond. But this is totally wrong concept. At the time of submitting bail bond the accused will have to pay only 25 taka for for legal fee. If any body claims more than that, that will not be legal.

Finally it can be said that the govt. fees fixed for any petition or complaint case is not that much high. On the other hand the ajaharkari in GR case has no cost from beginning to the end of a

³⁸ Shaikh Md Mujahid Ul Islam, Gateway of Criminal and family laws in Bangladesh ,(New warsi Book Corporation 14 Bangabandhu Avenue 1st edition, 2015) 90.

case. But most of the mass people have no idea on it. Some middle man in the court wants to take the privilege of this ignorance. So building legal awareness can change the situation.³⁹

4.14 Bad practice and customs in court (bail matter)

This is true that law can only bind the court and except law there is no authority for any judge to control any junior judge on the question of legal power of judges. There is no authority to any controlling judge to give any direction to the junior judges regarding the question of legal power of judges what the law has sanctioned to them. If the senior judges give direction to the junior judge restraining his legal power this would be great barrier to ensure justice. If we allow such direction this is not possible to ensure justice. The judges will not feel psychologically independent if his controlling judge (who gives his ACR) gives direction on the question of his legal power. This question is very much relevant on the question of bail matter. On the question of bail law (CRPC) permits the magistrate court to consider the bail matter of the accused person. The constitution of Bangladesh legally binds the police authority to produce the person before the nearest magistrate court. The reasoning behind it is that if the magistrate does not consider the bail matter, the accused person will have to be in police custody till the superior court considers his bail matter. That's why law gives this power to magistrate court. But there is bad practice and customs in the courts of Bangladesh where sometimes the senior judges (The Judge who gives ACR to the junior judge) gives restriction to junior judge for not considering the bail of the accused person of heinous criminals case of murder, Dacoity, case under Special Power Act etc). Such trend creates great barrier to justice. If the magistrate court does not consider bail matter of the accused persons of such cases where is the remedy for the innocent persons who are arrested by police out of doubt or out of conspiracy? If the magistrate does not consider the bail matter on these cases where there is merit because of such malafide direction by senior judge, the accused person will have to be in jail till the revision court considers his bail. Now question is if the accused person does not have enough money to go to revision against the

³⁹ Shaikh Md Mujahid Ul Islam, *Gateway of Criminal and family laws in bangladesh*, (New warsi Book Corporation 14 Bangabandhu Avenue 1st edition, 2015)91 .

order of magistrate regarding bail, which will be his remedy if such bad trend on bail matter is followed. Now this is time to consider on these issues to ensure justice.⁴⁰

4.15 Photo of the ajahrkhari in ajahar and picture of accused in bail prayer

Sometimes this is very difficult for the court to identify the ajaharkari or the persons before the court. There is no legal requirement prescribed in law in which the ajaharkari or the accused persons can be properly identified by the court. Identification of the real person is really problematic. Sometimes this is alleged that in place of one person another person comes before the court. It is also alleged that sometimes one person goes to jail on behalf of another powerful person. Now question is why the law did not prescribe anything for proper identification of the ajaharkari or the accused person. I think the reason for such vacuum is the lack of technological advancement in one hundred years ago. At that time there was no availability of electricity or taking pictures was not that much easy?

But the present situation is totally different. Now we cannot find any place in Bangladesh where this is not possible to take a snap of any person. So for proper identification of the ajaharkari we can make provision that at the time of filing ajahar the petitioner must have to present his picture with the ajahar. Identification of the accused persons is very important. After getting bail the accused person can abscond. After one year if he appears again before the court and seek bail through a lawyer with new vakalatnama (through which the person appoints the lawyer) how is it possible for the court to identify the accused person. If another person appears before the court on behalf of the original accused person how the court will identify the accused person.

In order to prevent the abuses for proper identification of the accused person or the ajaharkari, picture of the ajaharkari or the accused person should be inserted in the ajahar and in the bail petition. If the picture of ajahrkari in the ajahar and the picture of the accused person in the bail petition is inserted, the identification problem will be redressed.⁴¹

⁴⁰ Shaikh Md Mujahid Ul Islam, *Gateway of Criminal and family laws in bangladesh*, (New warsi Book Corporation 14 Bangabandhu Avenue 1st edition, 2015) 108.

⁴¹ Ibid. p. 113.

4.16 Bad practice of giving direction of superior judge on bail matter should be stopped

This kind of practice which has no legal force and which has no legal basis must be stopped. This is very severe type of allegation the senior magistrates gave direction to the junior magistrates on the bail matters. One kind of common direction is that the at session triable case (Murder, rape, Dacoity) no bail will be granted to the accused person. If we follow the practice of the magistrates in the courts of Bangladesh on bail matter, such direction is almost strictly followed. Such kind of direction is very dangerous indeed and this ultimately endangers the legal security of the mass people.

We find many cases in Bangladesh where the police arrests one lady (wife of the main accused person) for helping rape and the magistrate because of the direction though the magistrate realizes that Hough the magistrate realizes that the case was filed because of the land dispute of the two families, the justice of the two families, the justice cannot be ensured at all. There are many cases in Bangladesh which has no apparent but the magistrate cannot grand bail because of such bad direction is there any realistic basis on the charge of son, father, mother, wife of rape. So if we allow such direction, this really endangers the legal security of mass people.

That's why we should have to think on the legality of this direction of bail matter.⁴²

⁴² Ibid, p. 120.

CHAPTER: FIVE

Bail provisions in special Laws

5. Introduction:

Bail means releasing an accused person from the custody, in this situation the accused have to execute a bond. There are many provisions regarding bail. In this chapter I will discuss about some statutes where bail related provisions are mentioned, such as code of criminal procedure, Prevention and corruption Act 1947 , Nari-O-Shishu Nirjaton Damon Ain , Madok Drabbaya Niyantran Ain. Speedy tribunal Act 2002.The Arms Act 1878, Digital security Act 2018.

5.1 Bail in Special law

Where a special law makes provision for the disposal of bail applications, the High Court has no jurisdiction to grant bail in contravention of those provisions. There is no question of disputing with a Special enactment or permitting it govern the field for which it is meant, or it caters; but it cannot be stretched too far to enable it to travel outside its scheme and to disturb the continuance of the normal law of the land; much less to allows it to occupy the field for which it does not provide.

5.2 Prevention of Corruption Act 1947

Where the petitioner was charged for offences under section 161, P.C. and section 5 of Prevention of Corruption Act, punishable with 3 years and 7 years' R.I respectively. Prohibitory clause as given in section 497, Cr. P.C. was not attracted to the petitioner's case. He was enlarged on bail on such sole consideration. Where in a case under the Act the accused petitioner was no longer required by the Police for investigation, he was released on bail.

5.3 Nari –O- Shishu Nirjaton Daman Ain, 2000

Bail under Nari-o-Shishu Nirjatan Daman Ain: In Nari-o-Shishu Nirjatan Daman Ain 2000 asamended in 2003, special provisions for bail have been made in section 19 of that Ain. However,there are conflicting decisions on the question as to whether prayer for bail can be

made before a competent Magistrate when a person is produced before him as an accused in a case filed against him for an offence of that Ain.

In the case of Fajlur Rahman vs. the State reported in 17 BLT 192, the High Court Division was of the view that there was no legal bar to entertain a bail prayer and to make disposal of the same by the Magistrate so long the case remained a GR case. In this case it has been also held that even if the allegation is brought under Nari-O-Shishu Nirjatan Daman Ain, the case remains a GR case till taking of cognizance by the Tribunal constituted under the Nari-OShishu Nirjatan Daman Ain. It is also held that a criminal proceeding under the Nari-OShishu Nirjatan Daman Ain commences when cognizance is taken by the Tribunal and as such the Tribunal cannot exercise the power of granting bail under section 19 of the Ain before taking such cognizance.⁴³

But in two other cases reported in 56 DLR 279 = 24 BLD 236 = 13 BLT 302 = 9 MLR 173 and 24BLD 205, the High Court Division held a different view.

5.4 Madak Drabbya Niyantran Ain, 1990

There are also other special laws, for example, the Special Powers Act, 1974. In this Act, there is no special provision as regards bail. So, the general provisions of the Code of Criminal Procedure will be applicable. But in Madak Drabbya Niyantran Ain 1990, there is a special provision in section 31(Ka) regarding bail. It may be mentioned that in Madak Drabbya Niyantran Ain there is no mention of any specific forum of trial where offences under this Ain may be tried. In the absence of any such specific provision, while considering any bail petition, the provision of sub-section (2) of section 5 of the Code shall apply and on consideration of the quantum of punishment as provided in schedule II to the Code under the heading "OFFENCES AGAINST OTHER LAWS", the forum will be determined. So, the courts mentioned in 7th column will be competent to try the case and also competent to grant bail to those persons alleged to have committed offences under the Madak Drabbya Niyantran Ain. The court is to take into consideration the nature of the offence and involvement of the accused.

⁴³ Md, Zakir Hossain, *the principles of criminal litigation*, (Published 23rd 1st edit, 2016) 45.

If huge quantity of drugs are found in possession of an accused, granting of his bail should not be considered at the initial stage.⁴⁴

5.5 Conclusion:

Finally I can say that, from the above mentioned discussion it is clear that Bail matter plays a significant role in a criminal case, because it is the ultimate goal of the accused. Bail is the right of the party. Anyone wants a bail who is arrested living in jail means they want a bail at any time. To set free, or deliver from arrest, or out of custody, on the undertaking of some other person or persons that he or they will be responsible for the appearance, at a certain day and place, of the person bailed. When bail has been arranged, the accused person is allowed to go free until the trial. Bail is an alternative preventive measure to the preventive measure applied as detention against the defendant and it is applied only in case the court has made a decision about detaining the defendant. By saying bail we understand a sum of money, securities, other valuables or, if the court permits, also real estate, which is paid to the court's deposit account to ensure that the accused is at the disposal of the body carrying out criminal proceedings.

An arrested person can be kept under custody no more than 72 hours. During this time a charge shall be brought against him and if necessary the question of choosing detention as a preventive measure shall be determined in court. If a preventive measure is chosen regarding not keeping the person in detention or a preventive measure is not chosen at all, the latter is released. And if detention is chosen as a preventive measure, the defendant has the right to file a motion about being released on bail.

The court makes a decision about releasing the defendant on bail. When discussing the motion made by the pre-investigation body, the investigator or the prosecutor about detention, the court discusses also the possibility of releasing the defendant on bail. If the terms of release on bail are violated, the prosecutor shall apply to court with a motion to take the bail as state income. The prosecutor can also file a motion on substituting bail with detention.

Bail is very much important in a criminal case. So it must be delivered by the judge with due care and deliberation.

⁴⁴ Justice Mohammad Hamidul Haque *Trial of Civil suits and Criminal case* (universal book house 14 2nd edi, Dhaka 1000) 107.

CHAPTER: SIX

Judicial Decisions

6.1 The State Vs. Zakaria Pintu and others

Similar view was taken in the case reported in 12 BLD (AD) 175. However, in the case of *the State Vs. Zakaria Pintu and others*⁴⁵, the Appellate Division observed that sometimes it is imperative on the part of the court to refuse bail if there is serious allegations against an accused like murder, rape, violence etc., because the court must always keep in mind that justice must ultimately be done by ensuring punishment upon the offender, otherwise, the offender will get upper hand and the sober section of the society will suffer, which will destroy the fabrics of the civilized society.

6.2 Md. Shahid Malongi and another Vs. The State

In the case reported in the same volume at page 236 (The case of Md. Shahid Malongi and another Vs. The State), the High Court Division was of the view that though the Tribunal and the High Court Division on appeal are empowered to grant bail under the general provisions of the Code, the power was limited and such power should be exercised subject to specific condition and restriction mentioned in section 19. It has also been observed that this restricted power of bail prevails notwithstanding the general provision of section 25 of the Ain. Section 25 provides that in the matter of lodging complaint, investigation, trial and disposal of a case under the Ain, the provisions of the Code of Criminal Procedure shall apply.

The Appellate Division in the case of Shaikh Shahidul Islam Vs. State reported in 44 DLR (AD) 192= 13 BLD (AD) 190, made the following observations as regards reasonable grounds:⁴⁶

“The onus is on the prosecution to disclose those reasonable grounds, and the Court has to examine the data available in the case to find out whether such reasonable grounds exist to connect the accused person with the crime alleged against him. The court's belief on the point

⁴⁵ 18 BLT (AD) 491.

⁴⁶ Md. Shahid Malongi and another Vs. The State, s 19

has to rest on the accusations made in the report to the police, the nature and the credentials of the evidence which the prosecution proposes to lead in the case, and all the other relevant circumstances surrounding the concurrence. In the present case although more than six months had expired since the filing of the FIR nothing was placed before the court except the allegations made in the FIR to show that reasonable grounds were there as required under section 497(1) Cr.P.C.”

6.3 Abdus Sukur & 6 vs the state

In this case grant of bail upon the fulfilment of conditions embodied in bail bond -not valid in law.

If the offence punishable with death or transportation - in case of bail application court is required to be satisfied before rejecting the application that a prima facie case exists as to the involvement of the accused in the offence.

It seems appropriate to take this opportunity to take this opportunity to state clearly that an application for bail , be it against an order of refusal or cancellation of bail by the sessions court. must mention specifically section 498,CrPc in the cause title of the petition and the accused seeking bail must anything new, but in fact, re commissioner of affidavits, must surrender before the application is heard. But not insisting upon entreating the actual position. The officer, particularly the davits, must be attentive in this respect.

In the result the rule is made ab satisfaction of the deputy commission the made absolute. The accused petitioners are released on ball 10 commissioner Chittagong. Send down the records expeditiously.⁴⁷

⁴⁷ [25 DLR 119,] s 498

6.4 Abdul Wahab Shah Chowdhury Vs. The State 19 BLD (AD).

Pre-arrest or anticipatory bail

There is no dispute that the prayer for pre-arrest or anticipatory bail can be made only under section 498 of the code and under no other section of code. The High Court Division and the court of Sessions have concurrent power under the section.⁴⁸

6.5 Anwar Hossain vs State 1995 , 17 DLR.

In this case the condition for release on bail for depositing cash security with one surety in addition to bail bond held strict and advanced.

Recording of reason

A police officer or a Court relating a person on bail under sub-sec. (1) Has to record his or its reasons for releasing any person on bail and under sub-sec (2) has to record his or its Special reasons for granting bail. Even in case of refusal, reasons, are required to be recorded. otherwise the High Court will interfere.

Mizanur Rahman Gazi vs the state (1977) 29 DLR 166. Anwar Hossain vs State(1995)17 DLR 232.⁴⁹

⁴⁸ [19 BLD (AD) 189] s 498

⁴⁹ [17 DLR 232] s 498

6.6 Shaikh shahidul Islam vs. State 44 DLR (AD).

The onus is on the prosecution to disclose those reasonable grounds, and the court has to examine the data available in the case to find out whether such reasonable grounds exist to connect the accused person with the crime alleged against him. The court's belief on the point has to rest on the accusation made in the report to the police , the nature and credentials of the evidence which the prosecution proposes to lead in the case, and all the other relevant circumstances surrounding the concurrence . In the present case although more than six months had expired since the filing of the FIR nothing was placed before the court except the allegation made in the FIR to show that reasonable grounds were there as required under section 497(1) CrPC.⁵⁰

⁵⁰[44 DLR (AD) 192] s 497

CHAPTER: SEVEN

Concluding Part

7.1. Recommendations

In the perspective of our statutory law, here we follow adversarial judiciary system. Where the judges remain silent and observe only the evidences provided by the lawyers and the Police Officer. So, here I made recommendations in the following way—

1) Govt. should direct the police officer to do their duty properly and not on bias because, in our country, Judges can't go beyond the evidence produced by the party and police officer. And, if the police officer does his duty perfectly then justice will be ensured. And, Judge can undoubtedly decide when bail can be granted or when not. But before expectations of this type of duty from the police, Govt. has also a duty that is Govt. must increase the salary scale of a police. This is because, money makes any person dishonest. So, if the police have no monetary problem then, he has no bar to do his job properly.

2) In our practical experience, it is found that some Magistrates/Judges give his decision or exercise his discretionary power for granting bail to an accused on the basis of Medical Certificate. But, there are some particular topics e.g. grievous hurt, rapes etc that are totally different in Medical Science & Law. So, before exercising the discretionary power Judges/Magistrates have to observe very carefully the Medical Certificate, and the statement given by the Doctor, in order to do justice. So after scrutinizing various law points the Judges should do the following things

3) Judges should order to the law enforcing agencies i.e. Police, RAB, CID, Ansar, etc. to do their duties properly;

4) In case of woman, aged person, sick or infirm person bail should be given;

5) In cases of overt act, that is where the accused does not take any leading or active part of the offence, bail should be given;

- 6) On the basis of Medical Certificate a Judge should not refused the bail of an accused;
- 7) Co-accused should be released on bail, where their offences are in the same footing;
- 8) In cases of heinous offences i.e. Rape, Acid Throwing, offences under Narcotics Control Act (Exclusive Possession), offences under Explosive Substance Act, bail should not be given;
- 9) In case of Murder bail should be given upon the nature of Murder.
- 10) In case of pre-plan murder bail should not be given. In case of hostile enemy bail should not be given.

7.2 Conclusion

Bail is a fundamental issue in administration of criminal justice system. An accused is said to be admitted to bail when he is released from the custody of police or court. In turn, the sureties accept the responsibilities to produce the accused to answer, at a specified time and place, the charge against him. Although bail ensures avoidance of unnecessary sufferings of presumably innocent person, it may conversely hamper administration of justice by enabling the accused person to abscond or to threaten the victims and witnesses. Granting or rejection of bail may also result into economic and social difficulty for the families of victim and witnesses. Therefore, it must be emphasize here that reforms in the bail related steps towards ensuring early identification and speedy trial of an exemplary punishment for instituting false and frivolous cases should accompany criminal systems. A massive awareness programme against false cases should also be undertaken for reducing and preventing institution of such cases. Otherwise use of bail process against the weaker sections of society might flourish and that would jeopardies the objectives of aforesaid reforms to practice of bail.

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