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WITNESS

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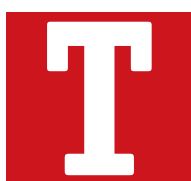
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Power of Courts to Grant Bail in Non-Bailable Offences

■ Jayashree Shukla Dasgupta & Swati Sharma



he Code of Criminal Procedure, 1973 (hereinafter called "CrPC") defines Bailable Offence to "mean an offence which is shown as bailable in the First

Schedule, or which is made bailable by any other law for the time being in force; and "non-bailable offence" means any other offence.¹ The distinction between Bailable and Non-Bailable Offences is based on the gravity of the offence, danger of accused absconding, tampering of evidence, previous conduct, health, age and sex of the accused person². Though the schedule for classification of offences as Bailable or Non Bailable is provided in CrPC; however, it is

mostly the offences which are punishable with imprisonment for not less than three years that are classified as Non-Bailable.

The question that arises for deliberation is whether there is any scope for grant of Bail in case the offence falls within the category of Non-Bailable Offence. Section 437 of CrPC is required to be studied in this regard. Section 437 of CrPC empowers the Court to release an accused person on Bail. What is interesting to analyse is the balance between right to liberty as defined under the Constitution of India³ as well as the principles of law in so far as commission of Non-Bailable offences is concerned. The Hon'ble Supreme Court in the matter of Shahzad Hasan Khan v. Ishtiaq



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Hasan Khan⁴ has observed that “Liberty is to be secured through process of law, which is administered keeping in mind the interests of the accused, the near and dear of the victim who lost his life and who feel helpless and believe that there is no justice in the world as also the collective interest of the community so that parties do not lose faith in the institution and indulge in private retribution.”

The aim of arresting a person accused of having committed a crime is to ensure that he/she does not escape the rigours of law, when proved guilty or that the accused person does not tamper with the prosecution evidence. While dealing with the issue of grant of bail in non-bailable offences, it has been held that a person is entitled to his liberty even in case he/she is accused of a Non-Bailable offence and the right of an accused person should not be dealt with by a court in a superficial manner. In fact, CrPC provides that in case the court has sufficient reason to believe that the case in hand requires further investigation to prove the guilt of the accused; such person should be enlarged on bail.⁵

It has also been the opinion of courts that since right to liberty is an imperative right of a person, an application seeking Bail should not be decided in a mechanical and perfunctory manner.⁶ It is also relevant to point out that there may be instances when a woman is detained for being an accused of committing a Non-Bailable offence. It has been held by various courts that releasing a woman accused of having committed a Non-Bailable offence on special grounds is not discriminatory. In the matter of *Mst. Chokhi v. State*⁷, a

woman accused of committing murder of her one child was released on bail as there was no one to look after her other child at home. Further, it has been the opinion of courts at large that where the prosecution is unable to persuade the court that there is any reasonable ground for believing that the accused person is guilty of commission of a Non-Bailable offence, in such case the accused person should be released on Bail⁸. Even in cases where the person is accused of having committed an offence under Section 307⁹ is enlarged on Bail owing to ill-health.¹⁰ However, it is necessary to appreciate that there is no specific rule as to when Bail should be granted. It has been the view of the courts that where a Non-Bailable offence is not punishable with life imprisonment or with death sentence, Bail should generally be granted and liberty of an accused should not be compromised with.

Having said so, it may be pointed out that courts have abstained from enlarging an accused on bail in cases punishable with death sentence.¹¹ The Delhi High Court laid down certain guidelines to be kept in mind while granting bail.¹² Though it is settled position of law that grant of Bail in Non-Bailable offences is the discretion of a court and that the court dealing with grant of bail is to only satisfy if there is a prima facie case against the accused¹³. However, it has been time and again held by various courts that the said discretion is to be exercised in a judicious manner and not as a matter of course. Further, it has also been categorically held that an order enlarging an accused person on Bail without any cogent reason cannot be sustained.¹⁴ 



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¹Section 2(a) of the Code of Criminal Procedure, 1973., ²*Kalyan Chandra Sarkar v. Rajesh Ranjan* (2004)7SCC528

³Article 21 of the Constitution of India, ⁴(1987)2SCC684, ⁵*Kashiram & Ors v. State*, AIR1960MP312,

⁶*Ratan Singh Nihal Singh & Ors v. The State*, AIR1959MP216, ⁷AIR1957 Raj10, ⁸*Gurcharan Singh v. State (Delhi Administration)*, (1978)1SCC118

⁹*Indian Penal Code*, 1860, ¹⁰*M. Janumanthe Reddy v. Govt of Mysore* 1953CrI1547, ¹¹*Supra* Note 2

¹²*Sidharth Vashisth v. State of Delhi* 2004CrI1684(Del), ¹³*Chamna Lal v. State of UP* (2004)7SCC525

¹⁴*Ram Govind Upadhaya v. Sudharshan Singh* (2002)3SCC598