

Bill No. LXXXIV of 2022

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL, 2022

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BILL

further to amend the Code of Criminal Procedure, 1973.

BE it enacted by Parliament in the Seventy-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Code of Criminal Procedure (Amendment) Act, 2022.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification
5 in the Official Gazette, appoint.

2. In section 2 of the Code of Criminal Procedure, 1973 (hereinafter referred as Code),
sub-section (a) shall be renumbered as (aaa) and before sub-section (aaa), so renumbered,
the following shall be inserted, namely:—

Amendment of section 2.

"(a) 'anticipatory bail' means a bail that a person seeks in anticipation of an arrest
10 for an accusation under an offence that is non-bailable.

(aa) 'bail' means a surety bond that includes a personal bond from the accused for his release by the Court, the police or the Investigating Agency which is a conditional release based on the suspect's solemn undertaking to co-operate with both the investigation and the trial."

(2) sub-section (a) shall be renumbered as (aaa). 5

Amendment
of Section
265H.

3. For section 265H of the Code, the following shall be substituted, namely:—

Power of the
Court in plea
bargaining.

"(1) A Court shall have, for the purposes of discharging its functions under this chapter,—

(a) all the powers vested in respect of bail, trial of offences and other matters relating to the disposal of a case in such Court under this Code; and 10

(b) the power to *suo moto* review cases under trial and make decision as to their eligibility for plea bargaining".

Amendment
of section
309.

4. In section 309 of the Code,—

(i) after proviso to sub-section (1), the following proviso shall be inserted, namely:— 15

"Provided further that such adjournment or postponement of the proceedings shall not affect the conclusion of the trial within a period of two months from the date of filing the charge sheet, except in cases where the delay is reasonable for the reasons recorded thereof."

(ii) in sub-section (2), after the words "and may by a warrant remand the accused if in custody.", the words "and may release the accused on bail if the trial does not relate to an offence under the Indian Penal Code, 1860 where the punishment for such offence is life imprisonment or death or imprisonment exceeds seven years, or remand the accused to further custody, for the reasons to be recorded in writing." shall be inserted. 20
45 of 1860
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(iii) in sub-section (2), for the third proviso, the following proviso shall be substituted, namely:—

"Provided also that, the Court if deems it necessary in the interests of justice, may adjourn the proceedings for the purpose of enabling the accused person to show cause against the sentence proposed to be imposed on him, for such time as it considers reasonable and for the reasons to be recorded in writing". 30

Amendment
of section
358.

5. In section 358 of the Code,—

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) Whenever any person causes a police officer to arrest another person, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, to be paid by the person so causing the arrest to the person so arrested, for his loss of time and expenses in the matter, and the damages incurred, including but not limited to financial losses as the Magistrate thinks fit". 35
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(ii) in sub-section (2), the words, "not exceeding one thousand rupees", shall be omitted.

(iii) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) All compensation awarded under this section may be recovered as if it were a fine, and, if it cannot be so recovered, the person by whom it is payable 45

5	shall be sentenced to simple imprisonment for such term as the Magistrate directs, unless such sum is sooner paid after taking into consideration the factors, including but not limited to, the gravity of the offence the person so arrested is charged with, and the extent of the damages incurred in the matter, including but not limited to financial losses".	
	6. After section 358 of the Code, the following new section shall be inserted, namely:—	Insertion of new section 358A.
10	" 358A. In section 436A of this Code, where the undertrial prisoner is detained beyond the maximum period prescribed, the Magistrate may award such compensation, as the Magistrate thinks fit in the interests of justice, after taking into consideration the factors including but not limited to, the cause for delay, extent of the delay, and the damages incurred by the reason of such delay including but not limited to financial losses".	Compensation to undertrial prisoners detained beyond the maximum prescribed period.
	7. In section 436 of the Code, after sub-section (1), the following proviso shall be inserted, namely:—	Amendment of section 436.
15	"Provided that the officer-in-charge or the Court, shall decide the bail application within fourteen days from the first day of receiving such application."	
	8. After section 436A of the Code, the following new section shall be inserted, namely:—	Insertion of section 436B.
20	" 436B. A Court shall have, for the purposes of discharging its functions under this chapter, the power to <i>suo moto</i> review cases undertrial and make decision as to their eligibility for bail".	Power to take <i>suo moto</i> cognizance of undertrial prisoners.
	9. In section 437 of the Code,—	Amendment of section 437.
	(i) in sub-section (1), after sub-clause (ii), the following sub-clause shall be inserted, namely:—	
25	"(iii) such person shall not be so released if on such release he may directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence, or there appear reasonable grounds to believe that the presence of such person required for producing before the Court cannot be assured",	
30	(ii) for sub-section (4), the following sub-section shall be substituted, namely:—	
	"(4) An officer or a Court not releasing any person on bail under sub-section (1) or sub-section (2), shall record in writing his or its reasons for not doing so."	
35	(iii) for sub-section (5), the following sub-section shall be substituted, namely:—	
	"(5) Any Court which has released a person on bail under sub-section (1) or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody for the reasons to be recorded in writing."	
40	10. In section 438 of the Code, in sub-section (2), for clause (ii), the following clause shall be substituted, namely:—	Amendment of section 438.
45	"(ii) the existence of reasonable grounds to believe that the applicant may directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer or tamper with the evidence".	

STATEMENT OF OBJECTS AND REASONS

The Code of Criminal Procedure does not define the words 'Bail' and 'Anticipatory Bail', and only categorizes the offence into bailable or non-bailable. While Code of Criminal Procedure provides for the grant of bail as a right in bailable offences after furnishing of bond with surety; in case of indigence, the officer in-charge or the Magistrate may, if deems fit, provide bail without surety; and in case of cognizable offences the grant of bail is subject to Magistrate's discretion.

2. There are reports of overcrowding in jails, in which two thirds of the prisoners are undertrials and of these undertrials, the substantial number is of those who are arrested in non-cognizable offence. The practice of indiscriminate arrests defeats the purpose of 'bail, not jail', wherein bail is a rule and jail is an exception, as also reiterated in several judgments of the Supreme Court, the latest being Satender Kumar Antil v/s CBI (CRL. No. 5191 of 2021). The arrests shall be necessitated instead of being mandatory, and only where there is a reasonable ground to believe that the accused will not appear before the Court at the stipulated time and place, or there is a reasonable ground to believe that the accused may if not arrested can tamper with the potential witnesses or evidence, then the accused may be so detained. The condition of jails with majority of undertrials in non-cognizable offences frustrates the spirit of liberty as a fundamental right enshrined in the constitution.

3. It is with this objective that the proposed Bill is presented to redefine a procedural framework with regard to the bail provisions. The aim is to reduce the population of undertrials in the jails whose arrests are not necessitated, the speedy disposal of bail applications so as to bring in certainty, and narrow down the scope of discretionary power that exists with the judiciary in deciding on bail applications.

Hence, this Bill.

SUJEET KUMAR.

ANNEXURE

EXTRACTS FROM THE CODE OF CRIMINAL PROCEDURE, 1973

(ACT No. 2 OF 1974)

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In this code, unless the context otherwise requires,— Definitions.

(a) "bailable offence" means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and "non-bailable offence" means any other offence;

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265H. A Court shall have, for the purposes of discharging its functions under this Chapter, all the powers vested in respect of bail, trial of offences and other matters relating to the disposal of a case in such Court under this Code. Power of the Court in plea bargaining.

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309. (1) In every inquiry or trial the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded: Power to postpone or adjourn proceedings.

Provided that when the inquiry or trial relates to an offence under section 376, section 376A, section 376B, section 376C, section 376D, section 376DA or section 376DB of the Indian Penal Code (45 of 1860), the inquiry or trial shall be completed within a period of two months from the date of filing of the charge sheet.

(2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing:

Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him:

Provided also that—

(a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;

(b) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment; and

(c) where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to

examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be.

Explanation 1.—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Explanation 2.—The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused.

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Compensation to persons groundlessly arrested.

358. (1) Whenever any person causes a police officer to arrest another person, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding one thousand rupees, to be paid by the person so causing the arrest to the person so arrested, for his loss of time and expenses in the matter, as the Magistrate thinks fit.

(2) In such cases, if more persons than one are arrested, the Magistrate may, in like manner, award to each of them such compensation, not exceeding one thousand rupees, as such Magistrate thinks fit.

(3) All compensation awarded under this section may be recovered as if it were a fine, and, if it cannot be so recovered, the person by whom it is payable shall be sentenced to simple imprisonment for such term not exceeding thirty days as the Magistrate directs, unless such sum is sooner paid.

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In what cases bail to be taken.

436. (1) When any person other than a person accused of a non-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, and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such Court to give bail, such person shall be released on bail:

Provided that such officer or Court, if he or it thinks fit, may, and shall, if such person is indigent and is unable to furnish surety, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided.

Explanation.—Where a person is unable to give bail within a week of the date of his arrest, it shall be a sufficient ground for the officer or the Court to presume that he is an indigent person for the purposes of this proviso:

Provided further that nothing in this section shall be deemed to affect the provisions of sub-section (3) of section 116 or section 446A.

(2) Notwithstanding anything contained in sub-section (1), where a person has failed to comply with the conditions of the bail-bond as regards the time and place of attendance, the Court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the Court or is brought in custody and any such refusal shall be without prejudice to the powers of the Court to call upon any person bound by such bond to pay the penalty thereof under section 446.

Maximum period for which an undertrial prisoner can be detained.

436A. Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.

437. (1) When any person accused of, or suspected of, the commission of any non-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 other than the High Court or Court of session, he may be released on bail, but—

When bail may be taken in case of non-bailable offence.

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of 3 a cognizable offence punishable with imprisonment for three years or more but not less than seven years:

Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court:

Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more, be released on bail by the Court under this sub-section without giving an opportunity of hearing to the Public Prosecutor.

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, subject to the provisions of section 446A and pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code (45 of 1860) or abatement of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1), the Court shall impose the conditions,—

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence, and may also impose, in the interests of justice, such other conditions as it considers necessary.

(4) An officer or a Court releasing any person on bail under sub-section (1) or sub-section (2), shall record in writing his or its reasons or special reasons for so doing.

(5) Any Court which has released a person on bail under sub-section (1) or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

(6) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

(7) If, at any time, after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

Direction for grant of bail to person apprehending arrest.

438. (1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

(2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including—

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should be issued in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).

(4) Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code (45 of 1860).

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RAJYA SABHA

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further to amend the Code of Criminal Procedure, 1973.

(Shri Sujeet Kumar, M.P.)