

## THE EVOLUTION OF BAIL (RIGHT TO BAIL) IN THE DIGITAL AGE: CHALLENGES AND IMPLICATIONS FOR THE JUDICIARY

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### **Abstract:**

The digital age has brought about significant changes in various aspects of human life, including the legal system. One such area that has seen considerable evolution is the process of granting bail. With the advent of electronic records and digital evidence, courts now have the capability to maintain records of bail in electronic form. This advancement presents both opportunities and challenges for the judiciary. The ease of access and manipulation of electronic documents raises concerns about the legitimacy and admissibility of electronic evidence in court. Furthermore, the specialized nature of electronic evidence requires distinct methodologies for investigation and analysis, which necessitates expert training in the field of cyberspace. This paper explores the evolution of bail in the digital age, focusing on the challenges and implications for the judiciary, including the handling of electronic evidence, the role of sureties, and the conditions imposed by courts after granting bail.

**Keywords:** Bail, Digital Age, Electronic Evidence, Judiciary, Legal System, Sureties, Electronic Records, Admissibility, Cybersecurity, Legal Implications.

### **Introduction**

The advent of the digital age has transformed various facets of human existence, and the legal system is no exception. One of the areas that has experienced a significant evolution due to the impact of digitalization is the process of granting bail. Bail, a fundamental aspect of the criminal justice system, ensures that an accused person is released from custody with certain conditions, pending trial. With the integration of technology, courts have now begun maintaining records of bail in electronic form, a development that marks a departure from traditional paper-based records. This digital shift presents a myriad of opportunities for the legal system, such as enhanced efficiency, accessibility, and transparency. However, it also brings forth challenges, particularly concerning the legitimacy and admissibility of electronic evidence. The ease with which digital documents can be manipulated raises questions about their reliability in legal proceedings. Furthermore, the specialized nature of electronic evidence necessitates distinct methodologies for investigation and analysis, requiring expert training in the field of cyberspace.

This is among the most revolutionary developments in human history, and computers and digitalization have been among the major contributors. There are just as many hazards and criminal

activity on the internet as there are in other parts of human life. It is owing to the vastness and depth of the accessible content and information, as well as the relative ease of accessibility and wide range of target markets. The introduction of the internet has also raised the issue of its misuse, though. The issue of the legitimacy of electronic documents has long been discussed, given the ease with which they can be manipulated. In addition, law enforcement is increasingly burdened with questions about whether or not this form of electronic evidence would be admissible in court (Baladhikari, 2020)<sup>1</sup>.

In contrast to traditional or conventional evidence, electronic evidence, as well as specialised and expert training in the field of cyberspace, requires a method of investigation and analysis distinct from standard practises. As a result, when it comes to acquiring, searching, and analysing electronic evidence in order to present it in a court of law, there are specific methodologies that must be employed. The term "electronic evidence" is first defined by the Indian Penal Code of 1860 and revised by the Information Technology Act of 2000 (also known as the IT Act), along with the Evidence Act of 1872. ("IPC").

“In addition, the initial view of the certificate which must be submitted in conjunction with the reproduction of electronic records and not subsequently revised”. The High Court of Delhi has determined that Section 65B of the Evidence Act allows the certificate to be filed independently of the information reproduction and does not require filing. In addition, the failure to file a certificate under section 65B of the Evidence Act was ruled not to constitute a permanent mistake and corrective measures may therefore be performed at a later date (Mahaseth, 2017)<sup>2</sup>. The Honorable Orrisa Court held that, as Section 65B of the Proof Act does not require the prosecution to meet all criteria for the submission of the certificate, a preliminary evaluation before consideration of the Forensic Voice Examining and the CD transcript is needed.

The General states that, although a decision has yet to be reached by the Supreme Court on whether or not to withdraw or accept a complaint against breaking Article 65B of the Evidence Act, most federal tribunals are already prepared to withdraw. If the opponent is confirming and not challenging the replication of data, this fact functioned as an exemption from the proof and the compliance with Section 65B of the Act on Evidence in order to demonstrate the data is no longer essential. The objections to the evidence approach can be relieved if they are presented inappropriately. In this regard, the Supreme Court decided, instead of following the fact, to submit a question concerning the methodology or technology of the proof as soon as the document becomes an exhibit (Baladhikari, 2020)<sup>3</sup>. The criteria of the Supreme Court for evaluating errors is that the question is if they might have been found during the document marking procedure.

“One additional thing to bear in mind is that Section 65B of the Evidence Act governs the use of electronic evidence. While, however, a certificate issued pursuant to Section 65B of the

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<sup>1</sup> Baladhikari, S. K. (2020). Use of Technology in Access to Justice11(6), 134-145.

<sup>2</sup> Mahaseth, H. (2017). The Debate Surrounding the Admissibility of Electronic Evidence. Available at SSRN 2930923.

<sup>3</sup> Baladhikari, S. K. (2020). Use of Technology in Access to Justice11(6), 134-145.

Evidence Actt neither establishes nor demonstrates the actuality of the facts included in the electronic record, a certificate issued pursuant to the Data Act neither establishes nor demonstrates the reality of the data”. Only papers that are approved by Section 65B of the Evidence Act may be viewed or reviewed by the court (Mahaseth, 2017)<sup>4</sup>. Before the Court may establish the document's relevance, legitimacy, and trustworthiness, it must first conclude that the document exists. This determination must be made independently, in the first place, of whether the subject matter is relevant to the case and how much value, if any, the material should have.

### **Bond and Sureties**

Anyone who is naturally able to be a certainty can do so. Making a guarantee is an impossibility when dealing with a fake person or entity. The Magistrate has the ability to investigate the identity, ability, or fitness of a surety pursuant to section 441(4) of the Code of Criminal Procedure, and may reject the surety if the dependability, identity, ability, or fitness is not satisfactory. In the event that the defendant fails to appear in court on the designated day, the surety agrees to pay a certain quantity of money. In the event the accused does not appear in court, when necessary, surety contracts are mostly motivated by the need to ensure that the accused will face his or her obligation. If the court believes that a surety is inadequate or unsuitable, it may, among other things, request title papers to a property or a record of a bank deposit to test the surety's reliability. Incapable of becoming liable, individuals are said to be insolvent. A surety's function is not limited to the payment of a specified amount of money, but also to ensure that the accused individual shows up in court.

In the case of the “**State of Uttar Pradesh vs. Bhola Ram, (1966)**”<sup>5</sup>, it was ruled that guarantee is not to be utilised as a monetary fund, but instead is intended to help ensure that the accused appears in court. In two separate contracts, there are two distinct provisions: a contract with the surety, and a contract with the accused. The most common effect of that is a surety is someone who can confirm the defendant's appearance in court. While people can sometimes be without property, they can also act as an assurance for society. In “**Bhushan Lal Sharma vs. State of U.P. & Ors (2008)**”<sup>6</sup>, it was found that a surety could be someone who is well-known in society and capable of securing the accused's appearance in court, even though he or she does not own any tangible or immovable property. It is possible for a surety to be a member of Parliament or the Legislative Assembly, or to be an individual occupying one of these posts.

In “**Kamal Bai Gopalrao Jamdar vs. CJM, Gwalior (1990)**”<sup>7</sup>, it was established that an artificial entity, like as a bank or firm, cannot fulfil the surety's role of appearing in court since artificial

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<sup>4</sup> Mahaseth, H. (2017). The Debate Surrounding the Admissibility of Electronic Evidence. Available at SSRN 2930923.

<sup>5</sup> *Bhola Ram v. State of Uttar Pradesh*, 1966 Cr. L.J. 1375.

<sup>6</sup> *Bankey Lal Vs. State of U.P. & Ors (2008)* Cr. LJ

<sup>7</sup> *Kamal Bai GopalraoJamdar v CJM, Gwalior*, 1990 CriLJ 2550

persons, like corporations, are incapable of performing the role. It doesn't matter how poor you are, if you are dependable you will be taken care of the “ **Moti Ram vs. State of M.P ( 1978)**”<sup>8</sup>, case determined that if an accused or surety is destitute, the court must decrease the amount of money set aside as a surety payment. Also, the Supreme Court determined that bail is composed of both the accused's bond and the surety's bond. The court can release the defendant if he does not have the money to pay for his own bail. It is not possible for a court to contract a local surety. In some cases, local surety is required, although it is not required in all cases. The conclusion of “**Rishikumar vs. State of Rajasthan (2016)**”<sup>9</sup> is that the source of assurance might come from any state. It was ruled in the case of “**Manish vs. State of Uttar Pradesh (2014)**”<sup>10</sup> that imposing an undue demand for local security on an accused who is physically located in a distant district is inappropriate.

When an accused person is freed on bail during the duration of an investigation, he or she is obligated to present in the court whenever the charge sheet/final report is issued or a summons is delivered. You do not need to specify a certain date in the future while you are planning his escape. a non-extraditable warrant (non-extraditable warrant) was issued against an accused who was out on bail in connection with a criminal case registered under the Indian Penal Code (IPC) sections 285 and 336 (Myers, 2015)<sup>11</sup>. Even though he was absent for the hearing, his request for the recall of the NBW was denied. He offered no explanation for his absence, and he did not appear in person for the hearing. The plaintiff was enraged by the court ruling, and so they filed a criminal revision motion in the High Court, in an attempt to have the trial court's judgement overturned. In the matter before the Supreme Court, the accused petitioner's lawyer reminded the judges that his client's bail had been extended prior to the presentation of the case before Justice M Seetharama Murthi. He was charged with a crime he did not commit. If this results in an ongoing investigation into the offence, the charge sheet/final report has not been filed yet. Even though all of this was true, it retained an N.B.W. since the previously scheduled hours did not come in court on time. "The Court of Justice has rejected NBW's recall petition," the attorney continued.

Despite the disagreements between the Public Prosecutor and the majority of the facts, he contended that the order was founded on facts and law and so accepted the Court's conclusions. Murthi's court, in his opinion, determined that the matter remained open and that no indictment or final report was submitted following the petitioner's release on bail for the alleged offence. When a suspect is freed on bond following an examination, he or she is required to appear to court pursuant to Regulation 30 of the Criminal Rules of Practice and Circulation Orders, 1990. The Judge contended that he was not obligated to appear early in the morning or for an extended period of time. The petitioner's request for revision was granted, and the petitioner's charge was judged to be false. In reminding the petitioner of the NBW, the judge recommended that the procesal court

<sup>8</sup> Moti Ram v State of M.P. , 1978 AIR 1594, 1979 SCR (1) 335

<sup>9</sup> Rishikumar v State of Rajasthan , Pp on 11 November, 201 6, Cr. LJ (Raj.)

<sup>10</sup> Manish v State of Uttar Pradesh, 29 January, 2014

<sup>11</sup> Myers, N. M. (2015). Who Said Anything about Justice-Bail Court and the Culture of Adjournment. *Can. JL& Soc.*, 30, 127.

monitor the legal proceedings and, if necessary, take whatever steps are necessary to assure the petitioner's attendance at the proper stage of the case.

“The Supreme Court of Canada held in *Nandan and Kansra* (2019)<sup>12</sup> that the High Court or Court of Session has exceptional bail powers. If a judge denies bail, the High Court or Court of Session will generally uphold the decision if bail is warranted”. Similarly, amended Code Section 439(2) allows the High Court and Court of Session to arrest and detain anyone freed on bail. Article 498(2) of the Old Code allows the High Court to detain such a person. A defence lawyer cannot represent the accused. Before a lawyer can represent an accused person, a Court of Session hearing is required. Section 439 of the new Code no longer prohibits requesting the imprisonment of a person recently released on bond.

Section 439(2) of the new Code allows a person released on bail to be put into custody if the High Court deems it necessary. This only applies when a High Court has granted bail after a defendant has been released on bail. The Court of Session cannot revoke a High Court bail grant. The State has two alternatives if a person is granted bail by the Court of Session in District Court custody. The State can ask the Session judge to re-examine the subject based on new facts or even new events. The State may also ask the High Court, the superior court, to detain the individual indicted under Section 439(2). *Chaturvedi* (1969)<sup>13</sup> expanded: when a state has been offended by a judge's bail order and there are no new circumstances, the state has legal jurisdiction to submit the High Court to the Supreme Court for cancellation. The Court of Session is below the High Court in the British court hierarchy.

The Petitioners provided no claim that the Respondent engaged in any improper behaviour after he was granted bail by the Court, justifying the revocation of the bail order; as a result, the bail order should be rescinded (*Chaturvedi*, 1969)<sup>14</sup>. Bail cancellation applications generally focus on the facts and circumstances alleged in the application, and any claims asserted in the application were deemed to be outside the jurisdiction and power of this Court. Accordingly, claims of illegality and perversity could not be assessed in bail cancellation applications. Because it was assumed to be comparable to revocation or revision of a bail order, which is specifically forbidden under Section 362 of the CrPC, this was deemed to be identical to revocation or revision of a bail order.

### **Default bail u/sec. 167 Cr.PC**

In addition, the three-judge bench of the Right to Legal Procedure (RF Nariman, Navin Sinha, and KM Joseph, JJ) argued that a defendant's right to demand bail is not only codified under Section 167(2) of “the Code of Criminal Procedure's first proviso, but also an essential element of the

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<sup>12</sup> *Nandan, S., & Kansra, D. (2019). Cancellation of Bail. Bail: Law and Practice in India, Publication of the Indian Law Institute, Delhi.*

<sup>13,42</sup> *Chaturvedi, R. G. (1969). FORFEITURE OF BOND AND CANCELLATION OF BAIL—A DISTINCTION. Journal of the Indian Law Institute, 11(1), 100-107.*

criminal procedure established by law under Article 21 of the Indian Constitution, and thus a fundamental right to be released from detention once bail has been met (Wright, 2016)<sup>15</sup>”.

The Court noted that the right to make a bail payment prior to the submission of the charge sheet at the conclusion of the 90-day period was deemed complete if an application for bail was filed prior to the filing of the charge sheet, and an application was not need to be in writing. The question of whether the criminal court in question did not rule on the application prior to the filing of the charge sheet is immaterial or ruled on the application in an incorrect manner prior to the filing of the charge sheet. “The default bail given in an application for default bail before the agreed term ends before time is extended to a maximum duration of 180 days is unjustifiable, and must be provided until an application for default bail is made before the stipulated term expires before time is extended.”

### **Power of the Court to extend the period of 90 days up to a maximum period of 180 days**

The question of whether or not to use section 167 of the 1973 Code of Criminal Procedure, as amended by the 1967 Unlawful Activities (Prevention) Act, was before the court; this time limit had previously been 90 days but was now to be extended to 180 days (UAPA). This is how it led to an extremely comprehensive evaluation of the legislative framework.

- **Section 167 CrPC**

When a person is arrested and detained in custody, Section 167 CrPC provides that the time allowed for investigation of an offence punishable by death, life imprisonment, or imprisonment for a term of no less than ten years is ordinarily 15 days, but may be extended to a maximum of 30 days if the Magistrate determines that there are reasonable grounds for doing so (Deb, 1997)<sup>16</sup>. “The first proviso (a)(i) of Section 167(2) of the Code, providing that an accused person will be released on bail if he is willing to and does provide bail after the maximum period of 90 days has elapsed, specifies that any person so released on bail will be considered released for the purposes of Chapter XXXIII”.

### **Grant of special powers bail and trials to the courts by the High Court**

"Any person in detention charged with an offence is entitled to be released on bail, and if the nature of the charge as described in subsection (3) of section 437 involves offences described in subsection (3) of section 437, the court may impose any conditions it sees fit for the purpose stated in that subsection." Solicit the reversal or modification of any condition set by a Magistrate while releasing someone on bail. If the High Court shall notify a public Prosecutor of an application for bail before granting a bail that is solely triable by the Court of Justice or is penalised, while not alone triable, by life imprisonment if it considers that it is unworkable in writing for reasons to be taken. Furthermore, before granting bail to an indicted person pursuant to subparagraph 3,

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<sup>15</sup> Wright, B. (2016). Codification, Macaulay and the Indian Penal Code: the legacies and modern challenges of criminal law reform. Routledge.

<sup>16</sup> Deb, R. (1997). Police Investigation: A Review. Journal of the Indian Law Institute, 39(2/4), 260-271.

paragraph 376Ab, 376DA, 376DB or 376DB of the Indian Penal Code, the High Court or Court of Sessions shall inform the public prosecutor of the bail request within the next fifteen days following the receipt of that notice (45 of 1860). “The notifier, or any person authorised by him, must attend the bail application at the hearing of a bail request made under section 376, section 376AB, section 376Da, or section 376DB of the Indian Penal Code (45 of 1860)”.

The high court or the court of sitting shall arrest and arrest any individual who has been freed on bail. In general, this section vests the High Court with extraordinary bail powers, which are quite broad. It has the ability to order the release on bail of any person detained and charged with a crime, as well as to impose any restrictions it considers necessary. The Court now has the power, during release of a person for bail, to impose or remove any condition imposed by a Magistrate. If the offence is trialled by the Court only, the High Court shall send the prosecutor a notice of bail, unless the Court deems that it is ineffective and documents its reasons in writing (Law Times Journal, 2020)<sup>17</sup>. The High Court has the ability to order the arrest and detention of anyone who has been released on bail.

### **Problems faced in court after accused gets bail**

When deciding a bail application, the Court should focus on the existing prima facie evidence rather than digging into the case's merits through evidence review. When granting or rejecting bail for a non-bailable offence, the most critical variables to consider are the type and seriousness of the offence. When ruling on bail applications, judges should evaluate just if a prima facie case exists for granting bail. The Court is unable to address the prosecution's witnesses' credibility and dependability. A reasonable suspicion of witness tampering or a threat against the complainant; the nature of the charge and the severity of the punishment if convicted, as well as the sort of supporting evidence; the Court's prima facie approval of the charge.

It is vital that the courts allow ample time for investigating authorities to finish their investigations. It is vital, therefore, that the Courts strike the proper balance between this imperative and the equally compelling principle that a citizen's liberty cannot be reduced unless and until the facts and circumstances warrant it. According to a literal interpretation, the legislators used the term "reasonable grounds for believing" rather than "evidence" in Section 437 of the Code of Criminal Procedure. As a result, the Court's sole responsibility is to evaluate whether the case against the accused is legitimate and whether there is sufficient evidence to establish the charge.

Under Section 437 of the Code of Criminal Procedure, the Court has the jurisdiction to set restrictions on bail. While the court may require a person to surrender his passport while granting bail, as noted previously, the accused cannot be subjected to any restriction that is not practicable or reasonable. The Court is responsible for ensuring that the condition imposed on the accused is reasonable and consistent with the sections' intent and requirements. The Court has the authority

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<sup>17</sup> Law Times Journal (2020). Who is a surety in a criminal case?, online available at <https://lawtimesjournal.in/who-is-a-surety-in-a-criminal-case/>.

under Section 437(3) to impose certain conditions on a person accused or suspected of committing an offence punishable by imprisonment, such as

- a) That he or she appear in court in accordance with the terms of the bond, and
- b) That he or she does not commit an offence similar to the one for which he or she is accused or suspected.
- c) Additionally, in the interest of justice, the Court may impose any further criteria it considers necessary.

The bail provisions' fundamental purpose should not be to keep and arrest an accused person, but to secure his appearance at trial and to ensure that, if he is found guilty, he is prepared to face the legal consequences of the crime committed. It would be unreasonable and unreasonable to deprive the alleged accused of his liberty while the criminal case against him is underway. Imposing fair terms and granting bail based on relevant considerations is critical not only for the accused and any dependent family members, but also for society as a whole. As a result, the Court is obligated to assess the case's facts and circumstances and strike a balance between considerations and the application of reasonable requirements.

### **Conclusion**

The evolution of bail in the digital age has brought about significant changes in the legal landscape. The introduction of electronic records and digital evidence has revolutionized the process of granting bail, making it more efficient and accessible. However, it has also introduced new challenges, such as the need for specialized training in handling electronic evidence and concerns about the legitimacy and admissibility of such evidence in court. The judiciary must navigate these challenges carefully, balancing the benefits of digitalization with the need to maintain the integrity and fairness of the legal process. As technology continues to evolve, the legal system must adapt to ensure that the rights of the accused are protected while upholding the rule of law.