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# Necessity of Providing Specific Reasoning under Section 439

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## ABSTRACT

*Bail is a set of pre-trial restrictions that are imposed on a suspect to ensure that they will not hamper the judicial process. Bail is the conditional release of a defendant with the promise to appear in court when required. Chapter XXXIII of the Code of Criminal Procedure talks about bail and how bail is given in India. This paper aims to briefly study all relevant sections of bail while giving special effect to Section 439 of the Act, as to how these powers are used and how they are being used in recent times. This paper will look into the special power of the courts in regard to bail. This paper will also look into how with regards to this section, how courts are deciding bail pleas without giving a specific reason. This paper will take a deeper look into the recent judgement of the supreme court in regard to the Rajasthan HC order granting bail to the appellant, accused of rape of his niece - Allowed - The impugned order passed by the High Court is cryptic, and does not suggest any application of mind.*

## I. INTRODUCTION

The term bail is not defined in the Criminal Procedure Code; however, in the most common sense, it means that an accused is released from custody in exchange for a type of security, such as a personal bond or a bail bond, which the accused provides to the court to ensure that he will appear in court to face the charges levelled against him. Bail is a legal system that ensures the accused appears in court and is available for trial. The concept of bail is addressed in sections 436 to 439 of the Criminal Procedure Code<sup>2</sup>.

We will be specifically looking at section 439 of the Code of Criminal Procedure. As the section talks about “*the special powers of the high court or court of the session regarding bail*”.<sup>3</sup> Using the section the court can decide to grant bail or not to grant bail if the offence is of nonbailable nature. Further, this paper will look into how the courts are using this section in today’s time and what the legislation was meant to be. In the recent judgements, it is seen that the courts are granting bail without giving any specific reason.

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<sup>1</sup> Author is a Student at Jindal Global Law School, India.

<sup>2</sup> The Code of Criminal Procedure, 1973, §436-439, No. 02, Acts of Parliament, 1973 (India).

<sup>3</sup> The Code of Criminal Procedure, 1973, §439, No. 02, Acts of Parliament, 1973 (India).

## II. CONSTITUTIONAL APPLICATION

"No individual shall be deprived of his life or personal liberty unless in compliance with lawful procedure," says Article 21 of the Indian Constitution<sup>4</sup>. Any person who violates the law of the nation will face legal consequences, and his or her freedom may be curtailed as a result, depending on the gravity of the offence. *"Every accused who has been falsely accused of a non-bailable offence is entitled not only to a good defence, but also to be released on bail by the Court after the Court considers various factors such as the nature or seriousness of the offence, the character of the evidence, circumstances unique to the accused, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or the state, and similar other factors. The Court has a moral obligation to resolve bail applications as quickly as feasible by providing a reasoned judgement based on the applicant's good faith and the facts and circumstances."*<sup>5</sup>

## III. UNSPECIFIC REASONS FOR GRANTING BAIL

There has been an increasing trend where the courts are starting to grant bail or refuse the same on general observation and without providing any specific reasoning. The same was observed in *Ms Y v. State of Rajasthan & Ors.*<sup>6</sup> where the Rajasthan high court granted bail to the respondent who was accused of raping and sexually assaulting his minor niece. The supreme court had a different take on it as it said, *"The impugned order passed by the High Court is cryptic, and does not suggest any application of mind. There is a recent trend of passing such orders granting or refusing to grant bail, where the Courts make a general observation that "the facts and the circumstances" have been considered. No specific reasons are indicated which precipitated the passing of the order by the Court."* In the present case also the high court failed to recognise that the accused was a repeat offender, including heinous offences. Even after this, the court without giving a definite reason allowed his bail.

In exercising section 439 the *State of U.P. v. Amarmani Tripathi*<sup>7</sup> established that *"There can never be a strict jacket formula for determining what the important criteria are. However, several essential elements are always taken into account, including the accused's prima facie involvement, the nature and gravity of the charge, the harshness of the punishment, and the accused's character, position, and standing.* The judgment of *Jagjeet Singh & Ors. v. Ashish*

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<sup>4</sup> INDIA CONST. art. 21.

<sup>5</sup> Sushila Aggarwal vs State (Nct Of Delhi) (SC) Criminal Appeal No. 72811-7282 of 2017.

<sup>6</sup> Ms. Y v. State of Rajasthan (SC) Criminal Appeal No. 649 of 2022.

<sup>7</sup> State of U.P. v. Amarmani Tripathi (SC) Criminal Appeal No. 1248 of 2005.

Mishra @ Monu & Anr.<sup>8</sup> also talks about how “*The High Court or Sessions Court must give bail only after a judicial mind has applied itself, following well-established principles, and not in a cryptic or mechanical fashion.*”

The bail can be allotted under section 439 if the certain requirement which is mentioned by *State of U.P. v. Amarmani Tripathi* is fulfilled. These requirements are present to provide just reasons to grant bail. As the person for whom the bail is granted could be a danger to society it is of immense importance to analyse the situation and give the reasoning for granting such bail. In the case, where the accused has other pending trials or shows a tendency that if he is released he could go back to his old ways then the granting of bail would lead to danger for the public. These reasons make it detrimental for the court to provide reasoning as to why they believe that the accused should be released on bail.

As it can also be seen in the case *P Chidambaram v. Central Bureau Of Investigation*, there are three contentions for granting bail. Which are, “(i) flight risk; (ii) tampering with evidence; and (iii) influencing witnesses.”<sup>9</sup> The same judgment also talks about that granting or refusing bail has no hard and fast rules. Each case must be evaluated on its own merits, taking into account the facts and circumstances. The court's discretion must be used wisely, rather than arbitrarily. The argument which flows from all these judgements is that the reasoning is of the greatest essence when it comes to granting bail.

#### IV. PROVIDING THE SPECIFIC REASON

One such recent judgement where the court has given significant reasoning is in the case of *Nand Lal v. the State of Rajasthan*<sup>10</sup>. In this case, the wife appealed that bail should be granted for performing a conjugal connection with his wife, particularly for the sake of progeny, which would be detrimental to his wife's rights.

Because the prisoner's spouse is innocent and her sexual and emotional needs related to married life are disturbed, the prisoner should have been granted a cohabitation term with his husband in order to protect her. The court held, “*Thus, viewing from any angle, it can safely be concluded that the right or wish to have progeny is available to a prisoner as well subject to the peculiar facts and circumstances of each case. Simultaneously, it is also found apposite to hold that the spouse of the convict-prisoner cannot be deprived of his or her right to get progeny.*”

As seen in the above case the court mentioned specific reasoning that the rights of the wife and

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<sup>8</sup> Jagjeet Singh & Ors. v. Ashish Mishra @ Monu & Anr. (SC) Criminal Appeal No. 632 of 2022.

<sup>9</sup> P Chidambaram v. Central Bureau Of Investigation (SC) Criminal Appeal No. 1603 of 2019.

<sup>10</sup> Nand Lal v. the State of Rajasthan (HC of Rajasthan) Criminal Writ Petition No. 10/2022.

the right to get progeny cannot be denied because of which, though the convict was convicted for life imprisonment the court granted bail.

## **V. CONCLUSION**

Bail is the rule, denial is the exception. To conclude, granting bail is to preserve the liberty of the accused until they are proven guilty. Providing bail is of great essence, if there are reasonable grounds that the accused is not dangerous then they should be provided bail with specific reasoning. Providing specific reasoning removes arbitrariness. Proving the reasons which go along the lines that “taking all the circumstances or evidence into account” leaves arbitrariness in the proceeding. The court must provide justification as to why the accused deserves the bail. If the accused is known to be a danger to society, has other pending cases, is known to be a repeat offender, or is known to have the tendency of breaking the three contentions then they should not be released on bail as the accused could cause harm. The granting of bail under section 439 has no specific directions as to whom the bail should be granted, having said that the court should also apply the right reasoning as to what kind of offence the person is booked under and what are the tendencies of the accused.

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