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# Rhetoric Versus Reality: The Case of Arnab Manoranjan Goswami vis-à-vis Munawar Faruqui

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## ABSTRACT

*The importance of the phrase 'bail and not jail' has been constantly emphasized by the Indian Courts. The legal aspects of bail under the Code of Criminal Procedure, 1973, coupled with the peculiar provisions provided under special acts like Unlawful Activities (Prevention) Act, 1967, Narcotics Drugs and Psychotropic Substances Act, 1985, etc. makes the Indian bail jurisprudence very complicated. Although the Indian Courts have attempted to remove these complexities by delivering landmark judgments and uniform guidelines, the situation has hardly ever improved. One of the reasons for this is the inconsistent approaches adopted by the Indian Courts, be it the Supreme Court or the High Courts while deciding subsequent cases of bail without justifying such inconsistencies. This is obvious from the decisions given in Arnab Manoranjan Goswami v. State of Maharashtra & Ors and Munawar Faruqui v. State of M.P. The current article is an attempt to analyse these two decisions to answer the question – why do uniform laws on bail apply differently to persons who are not so dissimilar?*

**Keywords:** Bail; Personal Liberty; Bail Jurisprudence.

## I. INTRODUCTION

The Indian Courts have, in several cases and more particularly in *Arnesh Kumar v. State of Bihar*<sup>2</sup>, attempted to lay down a uniform standard to decide on bail applications only to deviate from them without providing any sufficient reasons justifying such deviations. No doubt every case is different and the 'one size fits all' approach will never going to be efficacious in deciding bail applications. As each case is unique, there will always be a penumbra of doubt – a situation where the interpretation is required to apply an existing legal rule in a particular situation.<sup>3</sup> The conferment of discretion on the Courts is an attempt to deal with the problem

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<sup>2</sup> *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273 (India).

<sup>3</sup> Penumbra of Doubt, OXFORD REFERENCE, <https://www.oxfordreference.com/view/10.1093/oi/authority.20110803100315927>.

of the penumbra of doubt. However, discretion comes with limitations and one of the basic limitations is that it must be exercised judiciously. Further, since the exercise of discretion is a deviation from the uniform application of the law, it must be justified by clear and cogent reasons. When deviations happen frequently and without sufficient reasons, the uniformity of laws or standards ceases to have any effect.

## II. BAIL JURISPRUDENCE: AN INDIAN PERSPECTIVE

Every person, under the Indian constitution, has a fundamental right to be protected from any unreasonable restrictions on his right to life and personal liberty.<sup>4</sup> Consequently, in case there is a need to restrict his personal liberty, it has to be done in exceptional circumstances and that too as per the procedure established by law.<sup>5</sup> The term ‘procedure established by law’ is not any procedure and must be *just, fair and reasonable*.<sup>6</sup> The idea of arrest and detention runs counter to this very notion of personal liberty as guaranteed by the Indian constitution. Since the very reason for putting a person under arrest or detention is to ensure his presence at the time of trial and the sentence if found guilty. It would be unfair to arrest him when his presence can be achieved without any difficulty. Where such presence is difficult to achieve, the arrest must be made according to the Code of Criminal Procedure, 1973 (hereinafter referred to as the ‘Code’). Not only the arrest must be proper, but the protections conferred by the Code by way of bail must be complied with to preserve the ethos of Article 21 of the Indian Constitution.

The term bail, as per Black’s Law Dictionary, means “*to procure the release of a person from legal custody, by undertaking that he shall appear at the time and place designated and submit himself to the jurisdiction and judgment of the court*”<sup>7</sup>. Bail protects an innocent person from undergoing pre-trial detention and since every accused is innocent till proven guilty, he has a right to bail subject to provisions of the Code. The Code confers some discretion, with varying degrees, on police officers and judiciary in matters of bail to accommodate conflicting consequences of both jail and bail. The term ‘jail’ itself carries a negative connotation, directly affecting a person’s reputation and all the people associated with him. More importantly, being in jail seriously affects the collection of evidences; preparation of defence; and attendance of witnesses.

Alternatively, bail provides the accused an opportunity to abscond, especially if he’s guilty and he knows that there are very slight chances of his acquittal. Tampering of evidences and

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

<sup>5</sup> *Id.*

<sup>6</sup> *Maneka Gandhi v. Union of India and Anr.*, (1978) 1 SCC 248 [7] (India).

<sup>7</sup> Black’s Law Dictionary (4<sup>th</sup> edn.) 177.

threatening of witnesses are other problems. These situations undermine a fair trial for both the victim and the accused and it becomes necessary to align these competing interests, the function that discretion serves. The reason the Code confers a certain amount of discretion on the police and the judiciary is to strike a balance between the interests of the accused and of the victim. However, discretion must be exercised in a manner that conforms to the principles laid down in relevant Acts and judicial decisions, i.e., it must be judicious.

Lee S. Freidman has outlined some of the important principles to consider while deciding bail applications. Some of these are: nature of the crime committed, charge, accused, and any peculiar condition of the accused whether by reason of age/sex/health or otherwise; the possibility of absconding, interfering with the fair trial; his ability to prepare for his defence, gathering evidences, and witnesses. In deciding the possibility of absconding, the deep ties of the accused with the community are seen as a very relevant factor. It has also been confirmed by studies that when people have deep roots in society, they rarely violate their bail conditions.<sup>8</sup> However, as a general rule bail is a norm and jail is an exception. As Hon'ble Justice V.R. Krishna Iyer, in the case of *State of Rajasthan v. Balchand*, stated, "*The basic rule may perhaps be tersely put as bail not jail, except where there circumstances suggestive of fleeing from justice or thwarting the course of the justice...*"<sup>9</sup>.

In a case where the Court, after taking into account all the relevant considerations as outlined above, grants bail, the bail bond must not be excessive to practically disallow an accused from exercising his right to bail. But it must be high enough to secure the presence of the accused whenever required.<sup>10</sup> An excessive bail bond directly affects the indigents, who form a large part of under-trials in India.<sup>11</sup> Although the issue of under-trial prisoners is out of the scope of this article, it is sufficient to remark that the Indian courts should, while deciding bail applications, consider the financial state of the accused along with the seriousness of the crime alleged.<sup>12</sup> One of the significant judgments which try to bring uniformity in the law related to bails is *Arnesh Kumar v. State of Bihar*<sup>13</sup>, where the apex court issued certain guidelines to restrict the powers of arrest of police officers. However, such uniformity of law has served no purpose as will be seen in the next section.

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<sup>8</sup> Lee S. Freidman, *The Evolution of a Bail Reform*, POLICY SCIENCES 290 (1976).

<sup>9</sup> *State of Rajasthan v. Balchand*, (1977) 4 SCC 308 [2] (India).

<sup>10</sup> Emiliano R. Navarro, *Right to Bail*, 26 PHIL LJ 381 (1951).

<sup>11</sup> Aparna Chandra & Keerthana Madarametla, *Bail and Incarceration: The State of Undertrial Prisoners in India* 68 (2017).

<sup>12</sup> Rohan Joachim Alva, *Between Poverty and a Hard Place in Prison: Bail and the Suffering Indigent*, NAT'L U DELHI STUD LJ 124 (2012).

<sup>13</sup> *Arnesh Kumar supra* note 1.

### III. CASE STUDY AND COMPARISON OF ARNAB GOSWAMI AND MUNAWAR FARUQUI CASE

#### (A) Arnab Goswami Case

**Facts:** In this case, the appellant, Arnab Goswami, was charged by the Alibaugh Police under Section 306 and 34 of the Indian Penal Code for abetting the commission of suicide of the victim. The wife of the victim alleged that her husband was the substantial owner of an interior designing company that performed certain interior work in the appellant's company, the payment of which was not paid. Subsequently, the victim, along with his mother, committed suicide and left a suicide note mentioning all those who failed to pay his legitimate dues. The name of the appellant and his company were also mentioned in the suicide note. After investigation, on April 16, 2019, 'A' summary<sup>14</sup> was submitted to the Chief Judicial Magistrate. Later, the Deputy Inspector General of Police was directed by the State Home Department to reopen the case on May 26, 2020. On October 15, 2020, the appellant was arrested against which he made several bail applications to different forums but to no avail. Finally, he approached to the Supreme Court for bail.

**Findings:** The Supreme Court, while holding personal liberty as one of the most important rights provided by the constitution, asked the Trial Courts and the High Courts to check the misuse of Criminal Law as a tool to harass citizens. The Court stated "*Equally it is the duty of courts across the spectrum – the district judiciary, the High Courts and the Supreme Court – to ensure that the criminal law does not become a weapon for the selective harassment of citizens.*"<sup>15</sup>

The court further held that in cases where the liberty of an individual is threatened, the formal hierarchy of courts will not restrict the higher courts to intervene to protect the rights of bail of an individual. Courts should not tolerate the deprivation of personal liberty and need to act as the "*...first line of defense against the deprivation of the liberty of citizens.*"<sup>16</sup> The Courts are bound to interfere even in the cases where the deprivation of personal liberty is only for a day. Most importantly, while granting bail to the appellant, the Supreme Court directed the Indian Courts to use this case as a yardstick to decide future bail applications.

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<sup>14</sup> Para 219(3), Bombay Police Manual, 1959. As per the Manual, 'A' Summary means "*a case where there is no clue whatsoever about the culprits or property or where the accused is known but there is no evidence to justify his being sent up to the Magistrate (for trial)*".

<sup>15</sup> Arnab Manoranjan Goswami v. State of Maharashtra & Ors., 2020 SCC OnLine SC 964 [74] (India).

<sup>16</sup> *Id.* At para 75.

## (B) Munawar Faruqui Case

**Facts:** In this, the accused, Munawar Faruqui – a comedian, was charged, along with four other individuals, under Section 295A of the IPC. The complainant was attending the stand-up comedy-show performed by the accused and organized by the other four accused. The complainant alleged that during the show, the accused made distasteful jokes on Hindu Gods and Goddesses. He also alleged that the comedian also made certain jokes on the Home Minister of the country. As these jokes offended the feelings and sentiments of the complainant, he registered an F.I.R. against the accused.

Pursuant to this, the accused was arrested on January 01, 2021. The accused approached the Trial Court and the Hon'ble High Court of Madhya Pradesh but was not granted any relief. The Hon'ble High Court, by an order dated January 15, 2021, adjourned the bail hearing for a week only because the case diary was not available as the concerned police official forgot to bring the same for the hearing.<sup>17</sup> Interestingly, the police station where the official had kept the diary was only two minutes away<sup>18</sup> and the Hon'ble High Court; instead of asking the diary, adjourned the case for a week.

On the next hearing, the court heard the arguments by respective parties but reserved the order for further date<sup>19</sup> and finally, on January 28, 2021, the court passed the final order wherein it dismissed the bail application stating that “*Fundamental Rights although confers rights but the duties and obligations are inherent thereunder. Every right is coupled with duty.*”<sup>20</sup> The court, in Para 16, stated its unwillingness to go into the merits of the case and decided the same solely based on the “*materials seized and the statements of the witnesses*”<sup>21</sup>, but the Court failed to consider the statement of the police officials who, on record, admitted that they don't have any evidence to incriminate the said comedian.<sup>22</sup> Apart from openly expressing that they don't possess any evidence against the accused, some of the officials even went on to say that “*it didn't really matter*” whether the joke was made or not because they are prosecuting him based on the rehearsal of a joke which was overheard by the complainant.<sup>23</sup>

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<sup>17</sup> Munawar Faruqui v. State of M.P., Bail Order dated Jan 15, 2021(India).

<sup>18</sup> Gautam Bhatia, *A Plaintive Lament on Liberty that Rings Hollow*, THE HINDU, January 20, 2021, <https://www.thehindu.com/opinion/lead/a-plaintive-lament-on-liberty-that-rings-hollow/article33612396.ece>.

<sup>19</sup> Munawar Faruqui v. State of M.P., Bail Order dated Jan 25, 2021 (India).

<sup>20</sup> Munawar Faruqui v. State of M.P., Bail Order dated Jan 28, 2021 [7] (India).

<sup>21</sup> *Id.* at para 16.

<sup>22</sup> Iram Siddique & Benita Fernando, *Comedian Munawar Faruqui stays in jail, co-accused include brother, friend, organiser*, THE INDIAN EXPRESS (2021), <https://indianexpress.com/article/india/munawar-faruqui-bail-hearing-comedian-in-jail-mp-hc7148227/>.

<sup>23</sup> Kunal Purohit, *Muslim Comic Did Not Joke About Hindus, But 'It Doesn't Matter': Police Chief*, ARTICLE 14 (2021), <https://www.article-14.com/post/muslim-comic-did-not-joke-about-hindus-but-it-doesn-t-matter-police-chief>.

Irrespective of the fact that there was no material on record to show that the comedian made alleged jokes, the court denied the bail. When the case came up in the Supreme Court, it granted the bail stating that the principle laid down in the case of *Arnesh Kumar* were not followed.<sup>24</sup>

### (C) Comparison

These two recent cases provide a glimpse into the inconsistent approach adopted by the Indian Courts in bail applications. The first case involves the charge of abetment to suicide, which is no doubt a serious offence, whereas the second case involves a case under Section 295A of IPC which provides for three years of punishment but is still not grave in nature as the first case. In the first case, there was a suicide note, in the handwriting of the deceased, which mentioned the accused as an abettor along with the corroborative evidence provided by the wife of the deceased. However, in the second case, there was no video recording or any other evidence to support the case of the prosecution against and the entire case was based on a complaint in which it was alleged that the complainant overheard some jokes when the accused was rehearsing them.

These glaring differences in these decisions undermine the value of precedents and uniformity of law, especially where the Supreme Court, just a few months prior to the *Munawar Case*, gave a landmark decision, in *Arnab Case*, outlining the importance of the right to liberty and specifically the role of lower courts in protecting the same. In the *Arnab Case*, the Supreme Court directed the lower judiciary to use it as a yardstick to decide bail applications. It was unfortunate that the MP High Court, which is bound by the decisions of the Supreme Court, went ahead to decide the instant case without considering the findings of *Arnab Goswamy* and other previous decisions. Surprisingly, the instant case was decided without even appreciating the merits of it. These two conflicting findings, only within a span of a few months, points towards the inconsistent approach of Indian Courts when it comes to bail applications.

Inconsistency *per se* is not bad and the Courts need to deviate when facts and circumstances warrant such deviations. But there is a very thin line of difference between inconsistency and deviation. When courts have legitimate grounds to deviate, they must justify them by providing a reasoned order. However, when a court deviates from the established principles without there being any justification, deviations become inconsistencies. Every case cannot be the same and must be decided based on its own facts and circumstances. It is important to recognise the uniqueness of a particular case and to deviate but it is also equally important to justify those deviations by employing sound reasoning to prevent it from becoming an inconsistency.

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<sup>24</sup> *Munawar v. State of Madhya Pradesh*, , SCC OnLine SC 60 (2021) (India).

#### IV. CONCLUSION

Discretion never creates a problem, but how that discretion is exercised remains important. One way to limit the arbitrary exercise of discretion is to provide guidelines and guiding principles. The Indian Courts have attempted to bring uniformity in the jurisprudence of bail by several judicial pronouncements, more importantly in the case of *Arnesh Kumar*. However, the Trial Courts and sometimes even High Courts and Supreme Courts, have failed in continuing such uniformity. This undermines the value and the purpose of landmark precedents. The two cases, as discussed in the article, make it clear that MP High Court has failed to rely upon and appreciate a Supreme Court judgment that was pronounced only a few months earlier. It can safely be concluded that unless the justification of deviations by reasoned orders is ensured, the uniformity of law will not help.

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