

The Code of Criminal Procedure, 1973 (Cr.P.C.) in the Context of IP Offences

Module 3 – Grant of Anticipatory Bail in IP Offences

The Code of Criminal Procedure, 1973

- ❖ Procedural Law for Criminal Trials.
- ❖ Procedures to be followed by the Police, Magistrates for collection of evidence, arrests, bail, etc.
- ❖ As per the Cr.P.C. Offences may broadly be classified as:
 - Cognizable v. Non-Cognizable
 - Bailable v. Non-Bailable
- ❖ The 1st table of the Schedule I of the Cr.P.C. lists out offences and their classification.
- ❖ The 2nd Table of Schedule I of Cr.P.C., divides the spectrum of possible punishments for offences against other laws into three categories, giving a general guideline for classifying the offence.

2

3

OFFENCE	COGNIZABLE OR NON-COGNIZABLE	BAILABLE OR NON-BAILABLE	TRIAL BY WHICH COURT
If punishment with death, imprisonment for life, or imprisonment for more than 7 years	Cognizable	Non-Bailable	Court of Session
If punishable with imprisonment for 3 years and upwards, but not more than 7 years	Cognizable	Non-Bailable	Magistrate of the First Class
If punishment with imprisonment for not more than 3 years	Non-Cognizable	Bailable	Any Magistrate

❖ The process and prosecution as a criminal offence in India can commence in any of the following manners:

- **Cognizable Offence:** By complaint of a cognizable offence [F.I.R.] to a police officer. The officer can investigate the cognizable offence without obtaining a prior order from the court [Section 156 (1) of the Cr.P.C.]
- In the event that the police fails to or refuses to investigate a cognizable offence, a criminal complaint can be filed before a Magistrate [Section 190 of Cr.P.C.], for taking cognizance of the offence. Upon receipt of a complaint, the Magistrate can itself take cognizance and conduct an enquiry or order Police to register an F.I.R and investigate the offence [Section 156(3) of the Cr.P.C.]
- **Non-Cognizable Offence:** The process may be started by filing of a criminal complaint before the competent court, as the police would not directly investigate in this case [Section 190 of the Cr.P.C.]

The Concept of Bail

- ❖ What is Bail?
- ❖ What are the common types of Bail?
- ❖ Bail for Bailable Offences [Section 436]
- ❖ Bail for Non-bailable Offence [Section 437]

Anticipatory Bail

❖ Section 438. Direction for grant of bail to person apprehending arrest

“(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;”

6

Anticipatory Bail (Contd.)

“(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.

7 *(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, be shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue aailable warrant in conformity with the direction of the Court under sub-section (1).”*

Anticipatory Bail (*Contd.*)

❖ In ***Badresh Bipinbai Seth v. State of Gujarat (2016) 1 SCC 152***, the Supreme Court held:

"The provision of anticipatory bail enshrined in Section 438 of the Code is conceptualised under Article 21 of the Constitution which relates to personal liberty. Therefore, such a provision calls for liberal interpretation of Section 438 of the Code in light of Article 21 of the Constitution. The Code explains that an anticipatory bail is a pre-arrest legal process which directs that if the person in whose favour it is issued is thereafter arrested on the accusation in respect of which the direction is issued, he shall be released on bail."

8

Anticipatory Bail in IP Cases

- ❖ *Balbir Singh Sawhney v. State*, [108(2003) DLT713: 2003VIIIAD(Delhi)226]
- ❖ *Rajesh Gohil v. The State of Jharkhand*, [A.B.A. No. 2305 of 2011, High Court of Jharkhand]
- ❖ *Hira Sao and Ors. v. The State of Jharkhand*, [2019(2)J.L.J.R.457]
- ❖ *State of NCT of Delhi v. Naresh Kumar Garg*, [2011 (46) PTC 114 (Del)]
- ❖ *Jitendra Prasad Singh v. State of Assam*, [2003 (26) PTC 486 (Gau).]
- ❖ *Amarnath Vyas v. State of Andhra Pradesh*, [2007 Cri LJ 2025]
- ❖ *Piyush Subhashbhai Ranipa v. The State of Maharashtra*, [Anticipatory Bail Application No. 336 of 2021, High Court of Bombay]
- ❖ *Ajay Singh @ Mannu v. State of Haryana*, [CRM No. M- 44553 of 2014 (O&M); P&H High Court]
- ❖ *Joginder Singh v. State of Punjab*, [Crl. Misc. No. M-28292 of 2012 (O&M) ; P&H High Court]
- ❖ *Shivanagouda Sannagouda Patil v. The State of Maharashtra*, [Anticipatory Bail Application No. 316 of 2017, High Court of Bombay]

Classification of IP Offences

COGNIZABLE OFFENCE & NON-BAILABLE	NON-COGNIZABLE OFFENCE & BAILABLE
<ul style="list-style-type: none"> ❖ The Trade Marks Act, 1999 [Section 115(3)] ❖ The Geographical Indications of Goods (Registration & Protection) Act, 1999 [Section 50(3)] ❖ The Biological Diversity Act, 2002 	<ul style="list-style-type: none"> ❖ The Protection of Plant Varieties and Farmers Rights Act, 2001

❖ The Copyright Act, 1957

Conclusion

- ❖ Rationale for introduction of the concept of anticipatory bail in the statute is for prevention of innocent people being implicated in false cases by competitors or other powerful persons.
- ❖ Anticipatory bail is not granted by way of a right but only in specific or exceptional instances where it appears to the court that the person seeking anticipatory bail is being framed in the charge.

THANK YOU!

Questions?

Dishti Titus, Principal

12

© ALG India Law Offices LLP, 2021.

Disclaimer: Views, opinions, and interpretations are solely those of the presenters, not of the firm (ALG India Law Offices LLP) nor reflective thereof.

This presentation hosted at: https://www.algindia.com/wp-content/uploads/2021/04/DT_CrPc_IP-Offences_Module-3_v2.pdf