Powers of arrest defined under the criminal procedure code (CrPC) can seem wide-ranging. To the accused, who is innocent until proven guilty, bail and bonds offer some respite. This chapter deals with sections of the CrPC governing bails and bonds.

**Q. What is bail?**

Bail is the term given to the release of a person from legal custody.

**Q. Why should an accused be granted bail?**

The accused is, in the eyes of the law, innocent until proven guilty. As such, the accused may use bail to consult with his/her friends, family or lawyers on the best and next possible source of action.

**Q. Under what conditions can bail be granted?**

That is a very broad question. Apart from cognizable and non-cognizable cases, the CrPC also defines two other categories of cases - bailable and non-bailable.

**Q. Under what conditions can a person get bail in a bailable case?**

If a person has been arrested without warrant in a bailable offence. Such a person ***MUST*** be released, either on bail or by executing a bond without sureties. Granting of bail in bailable offences is a matter of legal right. It should be granted by the officer in charge of the police station.

**Q. Who is a surety?**

A surety is a person who guarantees to pay a sum of money in case the accused does not show up for proceedings in Court or in the police station. A person acting as surety must be above 18 years and should be able to demonstrate that he/she has the necessary funds.

**Q. Under what conditions can a person be granted bail in a non-bailable case?**

- If a person is arrested without warrant for a non-bailable offence, the person may be granted bail by Court.

- If the police officer or Court has no reasonable grounds to believe that the accused has committed a non-bailable offence but further investigation is needed, the accused may be released on bail on execution of a bond without sureties that guarantee his appearance as required.

- Bail can also be granted by the Court in a non-bailable offence if the accused is less than 16 years of age, is a woman or is sick or infirm. The Court may also grant bail if it is satisfied that it is just and proper to do so.

**Q. The maximum period for which a Magistrate can remand a person to custody is 60 days. Is the accused entitled to bail after that?**

Yes. Such a person has the right to be released on bail, if he is in custody during the whole of the trial period. If the Magistrate still denies bail, the reasons for so doing must be recorded.

**Q. Can a person be refused bail?**

Yes. A person can be refused bail in bailable as well as non-bailable offences. There are some conditions that must be met:

- When conditions for bail or bond are not met by the accused.

In non-bailable offences:

- If there are reasonable grounds to suspect that the accused is guilty of an offence punishable by death or life imprisonment.

- If the offence is a cognizable offence and the accused has been previously convicted of an offence punishable with death, life imprisonment or imprisonment for 7 years or more, or if he has been convicted on more than 2 occasions of a non-bailable and cognizable offence.

**Q. Does the Court have any right to impose conditions on the bail granted?**

Yes. The Court can impose conditions on the bail granted to ensure:  
 - The accused’s attendance in Court.

- That the accused does commit a similar offence outside

- If it is otherwise in the interests of justice

Bail **cannot** be refused it the accused is entitled to bail on the grounds that the accused is required for identification by witnesses.

**Q. What is anticipatory bail?**

A person can apply for anticipatory bail if he/she anticipates arrest under a non-bailable offence.

**Q. Who grants anticipatory bail?**

A person may apply to the High Court or Sessions Court which then directs law enforcement authorities to grant bail to the accused in the event of arrest for that offence. If anticipatory bail is granted, the accused will not be denied bail when arrested without warrant.

**Q. Does it mean that the person goes scot-free after getting anticipatory bail?**

No. The court may include some conditions to the bail such as:

-the person will make himself/herself available to a police officer for inquiry when required

-the person shall not make any threat or inducement to a person who knows the facts of the case nor shall this person be prevented from making statements to the court or police

-the person granted bail shall not leave the country without prior permission of the court

-any other condition that the court thinks fit

**Q. How does an accused apply for bail?**

The accused’s advocate should represent him and make out an application for bail. In case the accused cannot pay the fees for an advocate, he/she should write to the free legal aid committee of the Court.

**Q. What if the application for bail is rejected?**

If the application is rejected, the accused has the right to appeal to a Sessions Court followed by the High Court.

**Q. What is a bond?**

Before a person is released on bail, he/she must execute a bond the sum of which is decided by the court or the police officer concerned. The bond may or may not have sureties connected with it which require the accused to be present in the court at all times.

The amount of the bond is decided according to the circumstances of each case and the high court or sessions court can reduce the bond.

**Q. What procedure is to be followed in case a person is to be released on bail?**

**T**he accused is to be released immediately upon execution of bond. If the bond is executed while the accused is in jail, the court will order the release on bail of the accused by directing a letter to the officer in charge of the jail. The accused can still be detained for an offence that is not covered by the bond.

This release is not final. If the court finds that insufficient sureties have been posted for whatever reason, or conditions of the bail have been violated, the court may order the person to furnish sufficient surety or throw the accused back in jail in case of failure to furnish the new sureties.

**Q. What should one do to get released from police custody?**

1. In case there is a warrant, find out the charge and apply for bail by executing a bond with sureties.

2. If arrested for a bailable offence without a warrant, it is your right to be released on bail after executing a bond.

3. If not granted bail immediately, you have the right to call your friends, family advocates and others and apprise them of the situation and ask them to stand surety.