

Right of Bail in Pakistan

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What is the meaning of Bail?

Bail, in law, means procurement of release from prison of a person awaiting trial or an appeal, by the deposit of security to ensure his submission at the required time to legal authority. The monetary value of the security, known also as the bail, or, more accurately, the bail bond, is set by the court having jurisdiction over the prisoner. The security may be cash, the papers giving title to property or the bond of private persons or of a professional body or financial institution. Failure of the person released on bail to surrender himself at the appointed time results in forfeiture of the security. The law lexicon¹ defines bail as the security for the appearance of the accused person on which he is released pending trial or investigation. Courts have greater discretion to grant or deny bail in the case of persons under criminal arrest, e.g., it is usually refused when the accused is charged with homicide.

What is contemplated by bail is to "procure the release of a person from legal custody, by undertaking that he/she shall appear at the time and place designated and submit him/herself to the jurisdiction and judgment of the court."²

History of Bail

The concept of bail can be traced back to 399 BC, when Plato tried to create a bond for the release of Socrates. The modern bail system evolved from a series of laws originating in the middle ages in England.

Evolution in England

There existed a concept of circuit courts during the medieval times in Britain. Judges used to periodically go on circuit to various parts of the country to decide cases. The terms Sessions and Quarter Sessions are thus derived from the intervals at which such courts were held. In the meanwhile, the under trials were kept in prison awaiting their trials. These prisoners were kept in very unhygienic and inhumane conditions this caused the spread of a lot of diseases. This agitated the under trials, who were hence separated from the accused. This led to their release on their securing a surety, so that it was ensured that the person would appear on the appointed date for hearing. If he did not appear then his surety was held liable and was made to face trial. Slowly the concept of monetary bail came into existence and the said under trials was asked to give a monetary bond, which was liable to get forfeited on non-appearance.

In The Magna Carta, in 1215, the first step was taken in granting rights to citizens. It said that no man could be taken or imprisoned without being judged by his peers or the law of the land.

¹ Law lexicon by Ramanth Iyer, (3rd ed).

² Black's Law Dictionary 177 (4th ed.)

Then in 1275, the Statute of Westminster was enacted which divided crimes as bailable and non bailable. It also determined which judges and officials could make decisions on bail.

In 1677, the Habeas Corpus Act was added to the Right of Petition of 1628, which gave the right to the defendant the right to be told of the charges against him, the right to know if the charges against him were bailable or not. The Habeas Corpus Act, 1679 states, "A Magistrate shall discharge prisoners from their Imprisonment taking their Recognizance, with one or more Surety or Sureties, in any Sum according to the Magistrate's discretion, unless it shall appear that the Party is committed for such Matter offenses for which by law the Prisoner is not bailable."

In 1689 came The English Bill of Rights, which provided safeguards against judges setting bail too high. It stated that "excessive bail hath been required of persons committed in criminal cases, to elude the benefit of the laws made for the liberty of the subjects. Excessive bail ought not to be required."

In 1976 the Bail Act 1976 came into force. It sets out the current and the basic legal position of bail prevailing in England. It lays out that there is a general right to bail, except as provided for under the First Schedule of the Act. While there are different grounds for refusing the right to bail depending on the type of offence, for all imprisonable offences the two basic grounds are as set out by the O'Callaghan decision. But there is also the additional ground that if the court is satisfied that there are "substantial grounds for believing" that the defendant if released on bail will commit an offence while on bail, bail may be refused.

Under section 5(3) of the Bail Act 1976 the court which withholds bail is required to give reasons, so that the defendant can consider making an application.³ In practice, however, the reasons given by English courts on a variety of standard forms are frequently short and not explicitly based upon particular facts and factors. Stone's Justices' Manual suggests that magistrates announce any decision to refuse bail merely by relating the grounds and statutory reasons in short form.⁴

English administrative law also requires that, where there is an existing obligation to give reasons for a decision, the reasons given be clear and adequate, and deal with the substantial issues in the case.⁵

The English courts use tick boxes for recording the grounds and the reasons for not granting bail. There is a use of a standard pattern that which lists out the various reasons for not granting the bail. These forms vary in their precise configuration, but in substance they are all the same as all of them set out the grounds for refusing bail in one column, and a number of possible reasons for the findings those grounds established in another column. The decision is recorded by ticking the

³ Legislation has recently been enacted which, when brought into force, will require magistrates/ courts and the Crown Court to give reasons for their decisions where they grant bail after hearing representations from the prosecutor in favour of withholding bail (Criminal Justice and Police Act 2001, s 129). Such a requirement has the potential to promote thoughtful decision-making and the proper consideration of the risks that a defendant might pose if granted bail.

⁴ Stone's Justices' Manual 2000, para 1-432.

⁵ H W R Wade and C F Forsyth, Administrative Law (8th ed 2000) pp 918&919.

relevant box in each column. But the decisions recorded on standard forms might be at risk of being characterised as "abstract" or "stereotyped", and therefore inadequate. The quality of the reasons given directly reflects the quality of the decision-making process.

Criminal Justice System of Pakistan

The Code of Criminal Procedure, 1898 (Act V of 1898) defines the word Offence in clause (o) of subsection (1) of section 4 as under:

“Offence” means any act or omission made punishable by any law for the time being in force; it also includes any act in respect of which a complaint may be made under section 20 of the Cattle Trespass Act, 1871.

The Code of Criminal Procedure, 1898 in clause (b) of subsection (1) of section 4 also defines Bailable offence and Non Bailable offence as under:

“Bailable offence means an offence shown as bailable in the second schedule, or which is made bailable by any other law for the time being in force, and non bailable offence means any other offence.

The Code of Criminal Procedure, 1898 in clause (f) of subsection (1) of section 4 also defines cognizable offence and cognizable case as under:

“Cognizable offence” means an offence for, and cognizable case means a case in which a police officer, may, in accordance with the second schedule or under any law for the time being in force, arrest without warrant.

The Code of Criminal Procedure, 1898 is the general law of procedure in Pakistan and provides the machinery for the implementation of the substantive Penal laws. Where any special procedure is provided in any other law in force the same shall have the field. Where the special law is silent the procedure given in this Code shall apply unless specifically prohibited by that law.

Offence

In ordinary dictionary meaning is a deviation from the norms of a society. In the Code of Criminal Procedure, 1898 it has been given a proper definition. The object of all law is to bring consistency, uniformity and clarity and to remove all ambiguity so that all the subjects may know what they are required to act and what they are required to restrain under the law of the land applicable to them in any respect as citizens of the State.

The essential elements of an offence as given in Section 4(1) (o) of the Code of Criminal Procedure, 1898, are:

- (i) that it should be an act or omission;
- (ii) that such act or omission should be made punishable by any law;
- (iii) that such law should be for the time being in force; or that such act or omission should be such concerning which a Complaint is made under the Cattle Trespass Act, 1871.

What is an “act”? And what is an “omission”?

An “act” is any doing by a human being. An “omission” is not doing any act. When a law requires an act not to be done it becomes a legal duty of the concerned subjects not to do it. But it

will be called an offence only when law also prescribes a punishment for performance of such an act. Law must be a law in force for the time being. If it was an offence under the repealed law and the new law does not define it as an offence it shall be no offence.

Similarly when law requires doing of an act it becomes a legal duty to do it. But it will be called an offence only when law also prescribes a punishment for its omission. Here also law means the law in force for the time being.

Constitution & Concept of Bail

The constitution provisions are contained in Articles 4 and 10 of the Constitution to show what the basic concept of bail is.

Article 4 of the Constitution of the Islamic Republic of Pakistan says:

4. Right of Individuals to be dealt with in accordance with law., etc. (1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.

(2) In particular (a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;

(b) no person shall be prevented from or to be hindered in doing that which is not prohibited by law; and

(c) no person shall be compelled to do that which the law does not require him to do.

Article 10 of the Constitution of the Islamic Republic of Pakistan states:

10. Safeguard as to arrest and detention. (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before a magistrate within a period of twenty four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the Court of the nearest magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall be made except to deal with person acting in a manner prejudicial to the integrity, security or defence of Pakistan or any part thereof, or external affairs of Pakistan, or public order, or the maintenance of supplies or services, and no such law shall authorize the detention of a person for a period exceeding three months unless the appropriate Review Board has, after affording him an opportunity of being heard in person, reviewed his case and reported, before the expiration of the said period, that there is, in its opinion, sufficient cause for such detention, and, if the detention is continued after the said period of three months unless the appropriate Review board has reviewed his case and reported, before the expiration of each period of three months, that there is, in its opinion, sufficient cause for such detention.

Explanation I. In this Article, the appropriate Review Board means:

(i) in the case of a person detained under a federal law, a Board appointed by the Chief Justice of

Pakistan and consisting of a Chairman and two other persons, each of whom is or has been a judge of the Supreme Court or a High Court: and

(ii) in the case of a person detained under a Provincial law, a Board appointed by the Chief Justice of the high court concerned and consisting of a Chairman and two other persons, each of whom is or has been a judge of a High Court.

Explanation II. The opinion of a Review board shall be expressed in terms of the views of the majority of its members.

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, within fifteen days from such detention, communicate to such person the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order:

Provided that the authority making any such order may refuse to disclose facts which such authority considers it to be against the public interest to disclose.

(6) The authority making the order, shall furnish to the appropriate Review Board all documents relevant to the case unless a certificate, signed by a secretary to the government concerned, to the effect that it is not in the public interest to furnish any document, is produced.

(7) Within a period of twenty four months commencing on the day of his first detention in pursuance of an order made under a law providing for preventive detention, no person shall be detained in pursuance of any such order for more than a total period of eight months in the case of a person detained for acting in a manner prejudicial to public order and twelve months in any other case:

Provided that this clause shall not apply to any person who is employed by, or works for, or acts on instructions received from, the enemy or who is acting or attempting to act in a manner prejudicial to the integrity, security or defence of Pakistan or any part thereof or who commits or attempts to commit any act which amounts to an anti-national activity as defined in a federal law or is a member of any association which has for its objects, or which indulges in, any such anti-national activity.

(8) The appropriate Review Board shall determine the place of detention of the person detained and fix a reasonable subsistence allowance for his family.

(9) Nothing in this article shall apply to any person who for the time being is an enemy alien.

Basic concept of Bail as Explained by the Judicial Precedents:

Concept of “BAIL” emerges from conflict between police power to restrict liberty of a man who is alleged to have committed a crime and presumption of innocence in favour of alleged criminal. State in its anxiety to protect its subjects from onslaughts of criminals; have vested police with power of arrest and of approaching criminal Courts with a prayer for keeping accused in custody. In a primitive society there was no conception of bail, but in a civilized society bail has become rules.⁶

The basic concept of bail is release of a person from the custody of police and delivery into the hands of sureties, who undertake to produce him in Court whenever required to do so. Such a purpose cannot be achieved by releasing an accused from custody on furnishing of cash security,

⁶ PLD 1998 S.C. 1, PLJ 1998 S.C. 658

in lieu of solvent sureties who can take effort to produce the accused released, at a give date, time and place.⁷

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Pakistan Penal Code, 1860

Section 40 of the Pakistan Penal Code, 1860 is referred where the word offence is defined to denote a thing made punishable by Penal Code or under any special or local law with the exception of Chapter IV and V-A, P.P.C. and the sections noted hereunder:

ss.64,65,66,67,71,109,110,112,114,115,116,117,187,194,203,211,213,214,221,222,223,224,225, 327, 328, 329, 330, 331, 347, 348, 388, 389, and 445.

And in section 141, 176, 177, 201, 202,212, 216 and 441 PPC the word offence has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.

Extra-Territorial Jurisdiction:

For the purpose of section 44 PPC the term Offence includes any act committed at any place out of Pakistan which would constitute an offence if committed in Pakistan.

When an offence is constituted?

An offence is constituted as soon as the acts which constitute that offence have been committed. It remains an offence whether it is triable by a court or not and the fact that the trial of offence can only be taken up after certain specified conditions are fulfilled does not make it any the less an offence.

Can a person fall within the expression “person accused of an offence” Where an action is taken by court in advance of the commission of an apprehended crime?

This question arose in the Supreme Court in the case cited as PLD 1962 SC331 and the Honourable Judges of the Supreme Court observed:

“A person against whom action is taken by the court in advance of the commission of an apprehended crime cannot fall within the expression “person accused of an offence”.

Types / Kinds of Bail:

- Bail after arrest
- Bail before arrest

⁷ PLD 1998 S.C.

⁸ PLD 1953 FC 170

Bail In Bailable Offences

In the case of bailable offences the person accused has the indefeasible right to grant of bail subject of course to satisfactory sureties being offered, if sureties are considered necessary.

The provisions of the section are mandatory, and the court or the officer in charge of the police station, as the case may be, is bound to release the person in custody who is accused of bailable offence, on bail, provided he is prepared to give it, or on recognition.

Conditions for grant of bail

The conditions laid down by the Supreme Court for grant of bail are as follows:-

- (a) If the person seeking bail has been placed under actual custody; or
- (b) He appears in answer to a process issued by the Court; or
- (c) He is brought before the Court
 - (i) By the police; or
 - (ii) By some other arresting authority

Authority to grant bail

- (i) Court of law.
- (ii) Officer in-charge of police station

Exceptions:

The provisions of S. 107(4) and S.117 (3) which empower a Magistrate to detain the person proceeded against in custody are not subject to or controlled by the provisions of this section.⁹

Cancellation of bail:

There is admittedly no provision in the Code permitting cancellation of such a bail (section 496).

Conditional grant of bail

While granting bail in bailable offences the Court has no power to impose any condition except the demanding of security with sureties.

Bail In Non-Bailable Offences (S.497)

Factors to be considered:-

1. The nature of accusation and prosecution evidence in support of it,
2. Severity of the punishment,
3. Behaviour or plea of defence¹⁰

⁹ PLD 1969 Lah. 209

Classes of Non-Bailable Offences:

Section 497 of Cr.P.C. divides non-bailable offence into two categories i.e:-

- A). Offences falling in Prohibitory Clause
- B). Offences does not falling in Prohibitory Clause

Offences not falling within the prohibitory clause:

Offences punishable with **imprisonment less than ten years**

Rule

Grant of bail is a rule and refusal is an exception but it cannot be claimed as of right.¹¹

Bail in cases falling in this category will be declined only in extra-ordinary and exception cases e.g:-

- Where there is likelihood of abscondence of accused;
- Whether there is apprehension of the accused tampering with the prosecution evidence;
- Where there is danger of the offence being repeated if the accused is released on bail; and
- Where the accused is a previous convict.¹²

Offences falling within the prohibitory clause

Offences punishable with

- a) Death,
- b) Imprisonment for life or
- c) Imprisonment for ten years.

Rule:

As a general rule, bail shall not be granted in such cases.

Exceptions:-

- a) Person under the age of sixteen years; or
- b) Any woman; or
- c) Any sick person; or
- d) Infirm person

¹⁰ 2000 MLD 1911

¹¹ 2002 SCMR 442

¹² 2008 YLR 2712

Cases where court shall grant bail as a matter of right

Case of Further inquiry (S.497(2)).

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The essential prerequisite for grant of bail by virtue of sub section (2) of Section 497 Cr.P.C. is that the Court must be satisfied on the basis of opinion expressed by the police or the material placed before it that there were reasonable grounds to believe that the accused was not guilty of an offence punishable with death or imprisonment for life or with imprisonment of ten years.¹³

Case of further inquiry would only be made out when data collected by prosecution is not sufficient to provide reasonable grounds for believing that a prima facie case exists against accused.¹⁴

Reasons for bail to be recorded in writing (S.497(3))

Releasing any person on bail under sub section (1) or sub section (2) shall record in writing his or its reasons for so doing.

Stage when court may grant bail (S.497(4)):-

At any time after the conclusion of the trial and before judgment is delivered.

Recent Amendment in Section 497 Cr.P.C.

Bail on the ground of delay.

A new law the Code of Criminal Procedure (Amendment) Bill, 2011 has been enacted which grants statutory bail both to under trial prisoners and the convicts whose trials and appeals have not been disposed of within a prescribed time limit. Now an under trial prisoner shall be entitled to statutory bail if he has been charged with any offence not punishable with death and has been detained for one year. In case of an offence punishable with death the accused shall be liable to statutory bail if the trial had not been concluded in two years, he added.

The convicts whose appeals are pending will also be entitled to statutory bail. A convict will be entitled to statutory bail if the term of imprisonment did not exceed three years and the appeal had not been decided within 6 months of conviction. In case of imprisonment exceeding three years but less than seven years the convict will be entitled to statutory bail if the appeal remained undecided even after one year of conviction.

If a convict has been sentenced to life imprisonment or imprisonment for more than seven years will be entitled to bail if his appeal remained undecided even after two years of conviction, he said.

¹³ PLD 2001 Lah 45; 2001 SCMR 1727

¹⁴ 2002 P.Cr.L.J. 1386, 394

The law envisaged special concessions to under trial women prisoners. The time frame specified for under trial women prisoners for eligibility to statutory bail is half of the time frame for male convicts. A woman under trial prisoner will thus be entitled to statutory bail if she is accused of any offence not punishable with death and has been detained for over six months. In case of an offence punishable with death the accused woman prisoner shall be liable to statutory bail if the trial had not been concluded in one year instead of two years as in case of male under trial prisoners.

This concession however will not be allowed to a previously convicted offender for an offence punishable with death or life imprisonment or to a person, who in the opinion of the trial or appellate court is a hardened, desperate or dangerous criminal or is accused of an act of terrorism punishable with death or life imprisonment.¹⁵

Pre-Arrest / Anticipatory Bail (S.498 Cr.P.C)

Object:

The object of section 497 Cr.P.C. is to prevent innocent person from being unnecessarily harassed by being arrested in cases started by motivated persons.¹⁶

Scope

Pre-Arrest bail is rare and very limited which could be extended in very strong and exceptional circumstances, which are based on malafide / enmity. Section 498 Cr.P.C. throw light on the topic of pre-arrest bail. This section empowers High Court or session court to grant pre-arrest bail in cases of exceptional nature. But such power has to be exercised according to rule and guiding lay down by superior courts.

According to Supreme Court in order to grant pre-arrest bail following conditions must be fulfilled.

- 1) Arrest being for ulterior motives such as humiliation and unjustified harassment.
- 2) Prosecution motivated to causes irreparable injury to the reputation and liberty.
- 3) Motivation of police on political consideration.
- 4) Heinousness of offence by itself not sufficient for refusal of bail.

Hence if we sum up the main conditions before grant of pre-arrest bail those are:

- 1) Genuine proved apprehension of imminent arrest.
- 2) Petitioner should physically surrender to the court.
- 3) Apprehension of harassment and under irreparable humiliation by unjustified arrest.
- 4) It should be otherwise fit case on merits.

¹⁵ The Code of Criminal procedure (Amendment) Act, 2011 (18th April 2011)

¹⁶ 1990 P.Cr.L.J. 323

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Cannot be claimed as a matter of right.

Cannot be claimed as a matter of right but can only be availed off where it is shown that the case of prosecution is based on malice and ulterior motive.¹⁷

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If we summarize the main conditions

- Genuine proved apprehension of imminent arrest.
- Petitioner should physically surrender to the court.
- Apprehension of harassment and under irreparable humiliation by unjustified arrest.
- It should be otherwise fit case on merits.

In general course the petition is filled in the Court of Session but it can also be filed in High Court if there is reasonable explanation. In practice a person who obtain the anticipatory bail go to police to help them in investigation and after hearing argument court whether confirm the bail or reject it.

Cancellation of bail (S.497(5))

According to S. 497(5) any court which has released a person on bail under (1) or sub sec (2) of S. 497 may if considers it necessary so to do, direct that such person be arrested and committed to custody. The power to cancel bail has been given to the court and not to a police officer. Secondly, the court which granted the bail can alone cancel it. The bail granted by a police officer cannot be cancelled by the court of a magistrate. For cancellation of bail in such a situation, the powers of the High Court or Court of Session under S. 497 will have to invoked.

¹⁷ PLD 1983 S.C. 82

¹⁸ PLD 1983 S.C. 82; PLD 1997 KAR 194

¹⁹ 2005 SCMR 784

Rejection of bail when bails applied for is one thing; cancellation of bail already granted is quite another. It is easier to reject a bail application in non-bailable cases than to cancel a bail granted in such case. Cancellation of bail necessary involves the review of a decision already made and can large be permitted only if , by reason of supervening circumstances it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial. However, bail granted illegal or improperly by a wrong arbitrary exercise of judicial discretion can be cancelled even if there is absence of supervening circumstances. If there is no material to prove that the accused abused his freedom court may not cancel the bail.

The superior courts in their authoritative pronouncements have pointed out five cases where a person granted bail may have the bail cancelled and be recommitted to jail:

- (a) Where the person on bail, during the period of the bail, commits the very same offence for which is being tried or has been convicted, and thereby proves his utter unfitness to be on bail;
- (b) If he hampers the investigation as will be the case if he, when on bail; forcibly prevents the search of place under his control for the corpus delicti or other incriminating things;
- (c) If he tampers with the evidence, as by intimidating the prosecution witness, interfering with scene of the offence in order to remove traces or proofs of crime, etc.
- (d) If he runs away to a foreign country, or goes underground, or beyond the control of his sureties; and
- (e) If he commits acts of violence, in revenge, against the police and the prosecution witnessed & those who have booked him or are trying to book him.

Conclusion

The concept of bail belongs to the blurred area of criminal justice system and largely hinges on the hunch of the bench, otherwise called judicial discretion. The Code is cryptic on this topic and the Court prefers to be tacit, be the order custodial or not. And yet, the issue is one of liberty, justice, public safety and burden of public treasury all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process.

Thus release on bail is crucial to the accused as the consequences of pre-trial detention are given. If release on bail is denied to the accessed it would mean that though he is presumed to be innocent till the guilt is proved beyond the reasonable doubt he would be subjected to the psychological and physical deprivation of jail life. The jail accessed loses his job and is prevented from contributing effectively to the preparation of his defense.

Therefore where there are no risks involved in the release of the arrested person it would be cruel and unjust, to deny him bail. The law bails has to dovetail two conflicting demands namely, on one hand, the requirements of the society for being shielded from the hazards of being exposed to the misadventures of a person alleged to have committed a crime; and on the other, the

fundamental canon of criminal jurisprudence. The presumption of innocence of an accused till he is found guilty.

In order to sub serve the above said objective, the Legislature in its wisdom has given precise directions for granting bail. It is indisputable that an unnecessarily prolonged detention in prison of under trials before being brought to trial is an affront to all civilized norms of human liberty and any meaningful concept of individual liberty which forms the bedrock of a civilized legal system must view with distress patently long periods of imprisonment before persons awaiting trial can receive the attention of the administration of justice. Thus the law of bails must continue to allow for sufficient discretion, in all cases, to prevent a miscarriage of justice and to give way to the humanization of criminal justice system and to sensitise the same to the needs of those who must otherwise be condemned to languish in prisons for no more fault other than their inability to pay for legal counsel to advise them on bail matters or to furnish the bail amount itself.

While concluding, it seems desirable to draw attention to the absence of an explicit provision in the Code of Criminal Procedure enabling the release, in appropriate cases, of an under trial prisoner on his bond without sureties and without any monetary obligation. There is urgent need for a clear provision. Undeniably, the thousands of under trial prisoners lodged in prisons today include many who are unable to secure their release before trial because of their inability to produce sufficient financial guarantee for their appearance. Where that is the only reason for their continued incarceration, there may be good ground for complaining of invidious discrimination. The more so under a constitutional system which promises social equality and social justice to all of its citizens. The deprivation of liberty for the reason of financial poverty only is an incongruous element in a society aspiring to the achievement of these constitutional objectives. There are sufficient guarantees for appearance in the host of considerations to which reference has been made earlier and, it seems to me, our law-makers would take an important step-in defence of individual liberty if appropriate provision as made in the statute for non-financial releases. The concept of bail, which is an integral part of the criminal jurisprudence, suffers from drawbacks. The legislators have not taken into account the plight and the socio-economic conditions of 70% of the population of this country which lives in utter poverty. Pakistan being a poverty stricken developing country needed anything but a blind copy of the legislations prevalent in developed western countries. Bail is broadly used to refer to the release of a person charged with an offence, on his providing a security that will ensure his presence before the court or any other authority whenever required. Reading of the above definition makes it evident that money need not be a concomitant of the bail system. As the majority of the population in rural Pakistan, lives in the thrall of poverty and destitution, and don't even have the money to earn one square meal a day. Yet, they are still expected to serve a surety even though they have been charged with aailable offence where the accused is entitled to secure bail as a matter of right. As a result, a poor man languishes behind bars, subject to the atrocities of the jail authorities rubbing shoulders with hardened criminals and effectively being treated as a convict.