

**BAIL BOND, SURETIES, FORFEITURE, AND CANCELLATION
OF BAIL UNDER THE BHARATIYA NAGARIK SURAKSHA
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by

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ABSTRACT

Bail is an important safeguard of personal liberty and a practical means of ensuring that an accused person remains available for investigation, inquiry and trial. The law of bail does not end with the decision to release an accused; it also regulates the bond executed for appearance, the role and responsibility of sureties, the consequences of breach, and the circumstances in which bail or a bond may be cancelled. Chapter XXXV of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), particularly sections 478 and 480–496, provides the statutory framework for bail and bonds in India. This paper examines bail bonds, the legal position of sureties, the procedure for forfeiture, and the distinction between cancellation of bail and cancellation of a bond. It analyses safeguards under the BNSS, including the rule that bond amounts must not be excessive, the need to record grounds before recovering a penalty, and the opportunity to show cause. It also considers leading Supreme Court decisions on personal liberty and cancellation of bail. The paper argues that bail conditions should secure attendance and protect proceedings without becoming instruments of unnecessary detention. Fair administration requires reasoned orders, proportionate financial conditions, meaningful scrutiny of sureties, and a careful distinction between breach of bond and conduct that justifies taking an accused back into custody.

Keywords: Bail; Bail Bond; Surety; Forfeiture; Cancellation of Bail; BNSS, 2023; Personal Liberty; Criminal Procedure.

I. INTRODUCTION

Bail is one of the most significant mechanisms through which criminal procedure reconciles individual liberty with the legitimate needs of the justice system. Arrest and detention before conviction place a serious restriction on personal freedom, even though the accused remains presumed innocent unless guilt is established according to law. Bail permits release subject to conditions designed to secure attendance, prevent interference with evidence, and protect the course of justice. The Supreme Court has recognised that unnecessary pre-trial detention should be avoided and that bail is not intended to punish a person before conviction.¹¹

The legal arrangement described as bail consists of more than an order of release. A bond records the undertaking to appear and comply with conditions imposed by the court or authorised police officer. A surety undertakes responsibility for the accused's attendance, subject to the terms of the bond. If the undertaking is breached, the law provides procedures for forfeiture and recovery of a penalty. In appropriate cases, a court may cancel bail and direct that the accused be taken into custody. These are related but distinct legal consequences.

The BNSS came into force on 1 July 2024 and replaced the Code of Criminal Procedure, 1973, subject to applicable savings and transitional provisions. Chapter XXXV, 'Provisions as to Bail and Bonds', contains sections 478 to 496. It addresses release in bailable and non-bailable cases, anticipatory bail, the powers of the High Court and Court of Session, execution of bonds, sureties, forfeiture, cancellation and appeals.²²

II. MEANING AND OBJECT OF BAIL BOND

A bail bond is a formal undertaking executed to secure the appearance of an accused before the authority or court specified in the bond. It may involve the accused's own undertaking and, where required, the undertaking of one or more sureties. The bond states the sum for which the person is bound and may incorporate conditions governing attendance or other restrictions imposed as part of release. It is not a fine for the alleged offence; it is a procedural guarantee intended to encourage compliance with the legal process.

Section 485 of the BNSS governs the bond of the accused and sureties. Before release, the accused must execute a bond for an amount considered sufficient by the police officer or court,

¹¹ Constitution of India, art. 21; *Hussainara Khatoon v State of Bihar*, (1980) 1 SCC 81.

²² *Bharatiya Nagarik Suraksha Sanhita*, 2023, Act No. 46 of 2023, ch. XXXV, in force from 1 July 2024.

and one or more sufficient sureties may also be required. The undertaking ordinarily requires the accused to attend at the time and place stated and to continue attending until otherwise directed. Where release is subject to conditions, those conditions must be included in the bond. The court may examine the fitness and sufficiency of sureties, including through affidavits or an inquiry where necessary.³³

The object of a bond is procedural. It encourages attendance without requiring continuous detention and provides a legal consequence if the undertaking is broken. The amount should be connected to the circumstances of the case and the purpose of securing appearance. A bond fixed at an unrealistic amount may defeat the right to release and operate as detention by financial means. Section 484 provides that the amount of every bond must be fixed with due regard to the circumstances and must not be excessive. The High Court or Court of Session may direct reduction of bail required by a police officer or Magistrate.⁴⁴

III. BAIL AND THE PRINCIPLE OF PERSONAL LIBERTY

The presumption of innocence and the guarantee of personal liberty are central to bail. Article 21 of the Constitution protects life and personal liberty except according to procedure established by law. In *Hussainara Khatoon v State of Bihar*, the Supreme Court highlighted the injustice of prolonged detention of undertrial prisoners and recognised the importance of speedy trial.⁵⁵

In *Gudikanti Narasimhulu v Public Prosecutor*, the Court emphasised that bail decisions must be guided by the circumstances of the case and the balance between liberty and the administration of justice.⁶⁶

Bail does not mean that the accused is free from all legal obligations. The accused must attend court, comply with lawful conditions, and avoid interference with witnesses or evidence where such conditions are imposed. The system must not treat bail as a privilege available only to persons with substantial financial means. The statutory requirement against excessive bond amounts is important because the purpose of bail is to secure attendance, not impose economic punishment.

³ BNSS, s. 485.

⁴ BNSS, s. 484.

⁵ *Hussainara Khatoon v State of Bihar*, (1980) 1 SCC 81.

⁶ *Gudikanti Narasimhulu v Public Prosecutor*, (1978) 1 SCC 240.

The BNSS also recognises release on a personal bond without sureties in specified circumstances. Section 478 provides that where a person accused of a bailable offence is indigent and unable to furnish surety, the authority may release that person on a bond without sureties; inability to furnish a bail bond within a week of arrest may support a presumption of indigence for this purpose.⁷⁷

IV. SURETIES: ROLE, QUALIFICATION AND RESPONSIBILITY

A surety is a person who undertakes to secure the accused's attendance and accepts the consequences provided by law if the bond is breached. The surety does not become guilty of the offence merely by standing surety, nor does the surety guarantee the accused's innocence. The undertaking is procedural and arises from the terms of the bond. The court must be satisfied that the proposed surety is fit and sufficient. This assessment should be genuine but not oppressive, and should not impose arbitrary requirements unrelated to attendance.

Section 486 of the BNSS requires a person standing surety to make a declaration concerning the number of persons for whom that person has stood surety and relevant particulars. This helps the court assess whether the proposed surety can reasonably undertake the obligation and prevents undisclosed or excessive commitments.⁸⁸

Under section 489, all or any sureties may apply to a Magistrate for discharge from the bond. The Magistrate issues a warrant to bring the accused before the court; upon appearance or voluntary surrender, the bond may be discharged as to the applicant surety, and the accused may be required to furnish other sufficient sureties. If adequate replacement sureties are not furnished, the law permits the action specified in the section.⁹⁹

Section 488 allows the court to require sufficient bail where the bail first taken proves insufficient, while section 490 permits a deposit of money or Government promissory notes instead of executing a bond, except in the case of a bond for good behaviour. Section 493 deals with insolvency or death of a surety and related circumstances. Together, these provisions show that suretyship is a continuing procedural safeguard that may need adjustment when circumstances change.

⁷⁷ BNSS, s. 478.

⁸⁸ BNSS, s. 486.

⁹⁹ BNSS, s. 489.

V. FORFEITURE OF BAIL BOND

Forfeiture arises when conditions of a bond have been breached and the law's requirements for establishing that breach are satisfied. A common example is failure to appear on the date fixed by the court without sufficient cause. A bond may contain other lawful conditions, and breach must be assessed by reference to the terms actually imposed. Forfeiture is not automatic merely because an allegation is made; the competent court must be satisfied that the bond has been forfeited and must follow the statutory procedure.

Section 491 of the BNSS prescribes the procedure when a bond has been forfeited. Where a bond for appearance or production of property is shown to have been forfeited, the court must record the grounds of proof. It may call upon a person bound by the bond to pay the penalty or to show cause why it should not be paid. The explanation clarifies that a condition to appear before a court includes appearance before a court to which the case is later transferred.¹⁰¹⁰

The power to recover a penalty should be exercised judicially. The court should consider whether the breach is established, whether there was sufficient cause, the terms of the bond, and the circumstances explaining the failure to comply. An unavoidable emergency, serious illness, mistake about the date, or another credible explanation may be relevant depending on the evidence. The inquiry should not be reduced to a mechanical demand for payment. At the same time, the undertaking must carry real meaning, and deliberate or repeated breach without adequate explanation may justify recovery.

Section 495 provides an appeal from specified orders under section 491. The availability of an appeal reinforces the importance of reasoned decision-making in forfeiture proceedings. The court should identify the condition breached, evidence supporting forfeiture, the person liable under the bond, and the basis for the amount ordered.¹¹¹¹

VI. CANCELLATION OF BOND AND BAIL

The expression 'cancellation of bail' is often used broadly, but the BNSS distinguishes cancellation of a bond from the judicial decision to revoke release and return the accused to custody. Section 492 deals with cancellation of a bond or bail bond following forfeiture for breach of a condition. Where a bond for appearance is forfeited for breach, the bond executed by

¹⁰ BNSS, s. 491.

¹¹ BNSS, s. 495.

the accused and the bond of any surety in that case stand cancelled. If the authority is satisfied that there was no sufficient cause for failure to comply, the accused cannot thereafter be released in that case merely on the same personal bond; subject to the other provisions of the Sanhita, a fresh personal bond and surety bond may be required.¹²¹²

Cancellation of bail itself is a separate judicial remedy. Section 483(3) authorises the High Court or Court of Session to direct that a person released on bail under the chapter be arrested and committed to custody. The power is serious because it withdraws liberty previously granted. It should be exercised on relevant grounds and through a reasoned order, not simply because a different view of the original bail application is possible. Relevant considerations may include misuse of liberty, attempts to intimidate witnesses, interference with evidence, evasion of justice, commission of further offences, or material breach of conditions.

In *State (Delhi Administration) v Sanjay Gandhi*, the Supreme Court explained that cancellation of bail may be justified where the accused interferes with the course of justice or misuses liberty.¹³¹³

In *Dolat Ram v State of Haryana*, the Court distinguished rejection of bail at the initial stage from cancellation of bail already granted and observed that cogent and overwhelming circumstances are generally necessary for cancellation.¹⁴¹⁴

In *Mahipal v Rajesh Kumar*, the Supreme Court reiterated that bail orders must reflect proper consideration of relevant factors and that appellate interference may be warranted where the order granting bail is perverse, ignores material circumstances, or is otherwise legally unsustainable.¹⁵¹⁵

VII. DISTINGUISHING FORFEITURE FROM CANCELLATION

Forfeiture, cancellation of a bond, and cancellation of bail are conceptually related but legally distinct. Forfeiture under section 491 concerns the financial consequence of breach and requires the court to record grounds and permit the person bound by the bond to pay the penalty or show cause. Section 492 provides for cancellation of the bond after forfeiture for breach of an appearance condition and regulates the consequences for further release on bond. Cancellation of

¹² BNSS, s. 492.

¹³ *State (Delhi Administration) v Sanjay Gandhi*, (1978) 2 SCC 411.

¹⁴ *Dolat Ram v State of Haryana*, (1995) 1 SCC 349.

¹⁵ *Mahipal v Rajesh Kumar*, (2020) 2 SCC 118.

bail, by contrast, concerns revocation of the accused's release and recommitment to custody under the relevant statutory power.

The distinctions matter because each measure serves a different purpose. Forfeiture enforces the undertaking and addresses the penalty attached to breach. Bond cancellation determines the continuing validity of that undertaking. Bail cancellation protects the administration of justice where the accused's conduct or other legally relevant circumstances justify withdrawing release. A court should not assume that every forfeiture automatically requires cancellation of bail, or that a bail cancellation order by itself resolves the statutory procedure for recovery of a bond penalty.

The statutory framework also protects against excessive financial consequences. Section 484's rule that the bond amount must not be excessive should inform the setting of the bond and the response to breach. A surety's liability arises from the undertaking and the statutory procedure; it should not be treated as unlimited or detached from the bond's terms. Courts should identify the obligation, the breach, and the legal basis of the order so that consequences remain predictable and proportionate.

VIII. JUDICIAL PRINCIPLES AND CASE LAW

The Supreme Court's bail jurisprudence establishes several principles relevant to bonds and sureties. First, pre-trial detention should not be used as punishment. Hussainara Khatoon demonstrates the constitutional concern with prolonged undertrial detention, while Gudikanti Narasimhulu calls for a principled balance between liberty and the public interest in the proper administration of justice. These decisions support conditions that are effective but not excessive.

Second, bail is conditional liberty, not immunity from the criminal process. Sanjay Gandhi recognises the importance of preventing interference with justice, and Dolat Ram cautions against cancellation without sufficient grounds. The court must examine the conduct alleged, the reliability of the material, the seriousness of the breach and the impact on proceedings. A reasoned judicial assessment is essential.

Third, financial conditions must not be disproportionate. Section 484 expresses this directly, while section 478 recognises personal bonds for indigent persons in appropriate bailable cases. The statutory scheme requires attention to both attendance and the accused's ability to comply. A condition that cannot realistically be met may defeat the purpose of a release order and create unjustified detention.

Fourth, due process matters when a bond is forfeited. Section 491 requires the grounds of proof to be recorded and allows the person bound by the bond to show cause. This protects against arbitrary recovery and supports an individualised assessment of the explanation for breach. The order should make clear why the explanation is accepted or rejected and how the penalty follows from the terms of the bond.

IX. PRACTICAL CHALLENGES IN IMPLEMENTATION

One continuing difficulty is the inconsistent assessment of sureties. If courts require property ownership, local residence, or financial documentation without considering the circumstances of the accused, the process may disadvantage people with limited means or those who live away from their permanent address. Courts must verify identity and the genuineness of the undertaking, but verification should not become an inflexible barrier. Clear procedures and reasoned findings can promote consistency.

A second challenge is delay in processing bail bonds after a release order. If administrative requirements are not completed promptly, an accused person may remain in custody despite having obtained bail. Courts and prison authorities should coordinate to ensure that bonds are verified and release orders implemented without avoidable delay. Digital records may assist in tracking bonds, dates of appearance and notices, provided safeguards are maintained for accuracy and privacy.

A third issue is the use of forfeiture as a routine response without adequate inquiry into the reason for non-appearance. Courts should distinguish deliberate evasion from a genuine inability to attend. Clear notices, reliable communication of hearing dates, and careful recording of reasons can reduce avoidable forfeiture proceedings. Sureties should be informed of the precise obligations they undertake so that the consequences are understood from the beginning.

XI. CONCLUSION

The BNSS creates a structured framework governing bail bonds, sureties, forfeiture and cancellation. Sections 484 to 490 regulate the amount and execution of bonds, the role of sureties, their discharge and alternative deposits. Section 491 provides the procedure for forfeiture, section 492 addresses cancellation of a bond following breach, and section 495 provides an appeal in specified cases. These provisions must be read alongside the wider powers concerning bail,

including the High Court and Court of Session's authority to direct recommitment to custody where the law permits.

The central objective is to maintain a fair balance between liberty and the administration of justice. Bail bonds should secure attendance, not impose punishment before conviction; sureties should be assessed fairly; forfeiture should follow a recorded and reasoned process; and cancellation of bail should be reserved for circumstances that justify withdrawing conditional liberty. A consistent, proportionate and transparent application of the BNSS can strengthen confidence in criminal procedure while protecting the constitutional value of personal liberty.

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