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**Navigating Judicial Precedents: A Comprehensive Analysis of the Legal Landscape Governing Bail in Pakistan**

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### Abstract

*The working of the criminal justice system in Pakistan is faced with many challenges in dispensing justice; one such thorny issue is the question of bail. This paper has tried to delve deep into the relevant laws and court judgments governing the grant of bail in Pakistan and their practice. It explores the guiding principles and standards for granting or refusing bail, taking into account elements including the seriousness of the crime, the possibility of the accused escaping. The study further investigates the implications of the bail procedure on the social justice administration process, considering its effects on victims' and accused persons' rights and general efficiency in the criminal justice system. This paper attempts to understand the dynamics of bail in the Pakistani criminal justice system and to argue for its impact on human rights, access to justice, and the efficient functioning of the legal process.*

**Keywords:** Bail, Law, Judicial, Precedents, Pakistan

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## Title

# Navigating Judicial Precedents: A Comprehensive Analysis of the Legal Landscape Governing Bail in Pakistan

## Abstract

The working of the criminal justice system in Pakistan is faced with many challenges in dispensing justice; one such thorny issue is the question of bail. This paper has tried to delve deep into the relevant laws and court judgments governing the grant of bail in Pakistan and their practice. It explores the guiding principles and standards for granting or refusing bail, taking into account elements including the seriousness of the crime, the possibility of the accused escaping. The study further investigates the implications of the bail procedure on the social justice administration process, considering its effects on victims' and accused persons' rights and general efficiency in the criminal justice system. This paper attempts to understand the dynamics of bail in the Pakistani criminal justice system and to argue for its impact on human rights, access to justice, and the efficient functioning of the legal process.

## Keywords:

[Bail](#), [Law](#), [Judicial](#), [Precedents](#), [Pakistan](#)

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## Introduction

The US and Pakistani constitutions do not contain any provisions related to bail, except for Amendment 8, which prohibits the imposition of excessive bail (Mahmood, 2021).

The bail debate closely links the most prized right to liberty. The right to personal liberty is one of the most valuable fundamental rights protected by the 1973 Pakistani Constitution. Unlike the Fundamental Rights, Article 4 of the Constitution guarantees rights that are even more fundamental because it prohibits their suspension. It guarantees, among other things, that unless authorized by law, no action can endanger a person's life, liberty, body,

reputation, or property (Siddique & Hayat, 2008). Article 9 of the Constitution's Fundamental Rights, Chapter 1, asserts that a law cannot deprive anyone of their life or liberty. Legal precedent has established that one cannot assume guilt unless proven innocent. Additionally, unless there are extraordinary circumstances that dictate otherwise, the law should grant bail rather than refuse it. Bail has a direct influence on freedom. Refusing to grant bail implies that the accused will likely be subjected to physical and psychological abuse during the trial; this abuse will not be repaid, even if the accused is ultimately found not guilty and declared innocent (Lamb, 1996).



Thus, a law that prohibits bail in offenses dealt with by it, may, in certain circumstances, be inconsistent with the intention and spirit of the Constitution, in that it may deprive the suspect of his most valuable right to liberty and at the same time deprive the courts of their essential role of affording to all persons the protection of the law (Monaghan, 1976).

The issue of bail arises as soon as a person is arrested and detained for an alleged offense and remains alive till the determination of guilt or innocence by a competent court; it remains alive even after conviction. When a person is arrested and detained, (this detention is described, in the American legal literature, as preventive detention), he is deprived of his liberty and the question immediately arises whether his detention is, in the language of Article 4, (2)(a), and Article 9, of the Constitution, in accordance with law. Thus, the authority to arrest and detain is conferred by law, and if there is no such law, any arrest and detention and the resultant deprivation of liberty will not be in accordance with the law (Chevigny, 1968).

The law which authorizes the arrest and detention of a person also invariably addresses

the question regarding the cases in which, or persons whose continued detention during trial will or will not be necessary. This question relates to the temporary release on bail or on his own bond or the arrestee. The law determines as a matter of policy not only the category of persons to whom and the circumstances in which bail will be granted but also the question of what is called "setting of bail", that is, the determination of those conditions that the accused will have to meet to gain his release from detention pending trial or after conviction.

On the other hand, until his guilt is proved, the legal philosophy regards him as innocent.

The Code of Criminal Procedure (V of 1898) clearly indicates that granting bail is the primary objective, with denial being exceptional and restricted to prevent legal violations. Familiarity with the terms bail, surety, and bail bond is essential before delving into the provisions outlined in Chapter XXIX and Section 426 of the Code of Criminal Procedure (Devi & Gope, 2022).

## Definition of Bail

The term "bail" is not explicitly defined in the Code of Criminal Procedure (V of 1898). Rather, it involves the formal or legal release of an individual who is under arrest and in custody. Essentially, bail refers to freeing a person who is being held in detention or under some form of restraint. According to Webster's Judicial Dictionary, bail is a form of security provided to ensure the prisoner's appearance in court and obtain their release from custody. Wharton's Law Lexicon defines bail as, the act of setting at liberty a person who has been apprehended and their liberty is restricted until surety is offered to the authorities responsible for granting bail (Devi & Gope, 2022).

The bail, as outlined in Black's Law Dictionary, refers to the security that a court mandates for the release of individuals under arrest. It entails the transfer of the accused from judicial custody to designated sureties.

Therefore, Bail refers to the provision of security to ensure that a person will appear in court when necessary. It involves securing the release of oneself or another individual by offering security for their future court appearance. This security typically takes the form of money or property that is pledged to the court or physically deposited with the court to secure the release of the individual from legal custody. In essence, "bail" is the money or assets required as security for the temporary release of a prisoner pending trial, with the individual providing this security being known as a surety.

Bail, as elucidated in the legal case of Muhammad Ali Kasuri v. State (PLD 1966 SC 589, 597), denotes the release of an accused from police or court custody upon being entrusted to their surety or sureties. These individuals are obliged to produce the accused at a designated time and place to respond to the charges, with the risk of forfeiting a stipulated sum if they fail to do so. The legal weight of bail, as highlighted in the Hakim Ali Zardari case (PLD 1998 SC 1,27), finds validation in sections 499 and 500 of the Code of Criminal Procedure.

The distinction, under the Code, is between releasing the accused on his own bond and releasing him on bail; and releasing him on bail means releasing him on the security of sureties. Sections 169, 496, and 497 bear this out.

## Definition of Surety

A surety is an individual who voluntarily assumes responsibility by entering into a bond ensuring that the accused individual will comply with the specified terms, as outlined in section 499 of the Criminal Procedure Code. The essence of bail, as described by Chief Justice Abdul Rashid in *Crown v. Khushi Muhammad* (PLD 1953 FC 170), involves releasing a person from police or court custody under the supervision of sureties. Hence the expression such as “remand in custody”, “remand on bail”, and “jumping bail”. The last expression means failure to appear for trial after being released on bail (Stearns, [1903](#)).

### **Definition of Bail Bond**

Bail entails the submission of a bond to ensure that the accused will attend trial and subsequent court proceedings. It is a formal agreement ensuring the defendant’s presence in court, involving a commitment of money or assets that will be forfeited to the court if the defendant fails to appear. This procedure is mandated by section 499 of the Code, which stipulates that before an individual is granted bail, a bond must be signed by one or more reliable sureties. This bond guarantees the defendant’s presence at the specified time and location (Schlesinger, [1986](#)).

### **Object of Bail**

The objects served by bail are:

1. To avoid incarceration of innocent persons;
2. To preclude the imposition of penalties prior to the determination of guilt, and
3. To protect the court’s duty in determining the guilt or innocence of the accused.

The release of a person on bail, it is obvious, serves the same purpose as his detention in jail, namely, that he will be available to face the charges at his trial and receive the judgment of the court.

The primary aim of arresting and detaining an individual is to ensure their presence in court during trial and, if convicted, to facilitate their serving of the sentence. Nevertheless, if it is reasonably clear that the accused can fulfill these obligations without incarceration, it would be unjust to detain them until their guilt is established. Doing so would constitute a violation of the individual’s basic right to liberty, without sufficient justification.

Bail serves as a crucial tool to ensure an accused individual’s appearance as and when summoned by the court. While the Criminal Procedure Code does not explicitly define bail, it essentially entails a formal agreement where an individual pledges in writing to the court. When an individual is in custody due to being charged with an offense or being part of ongoing criminal proceedings, they have the right to seek release on bail. By signing a bail agreement, the individual commits to attending all court proceedings until the case concludes, abiding by specified conduct conditions while on bail, and agreeing to forfeit a set amount if they fail to comply without a valid reason. Both the police and the courts hold the authority to grant bail, with the possibility of requiring security, although this is not mandatory (Thaler, [1978](#)).

In Pakistan, the bail law is continuously evolving, as highlighted by Justice Mukhtar Ahmad Junejo in the case of *Hakim Ali Zardari v. State* (PLD 1998 SC 1, 118, 20), Justice Junejo emphasized that the notion of bail arises from the tension between law enforcement’s authority to detain individuals accused of crimes and the principle of innocence presumed in favor of the accused.

The bail law is a dynamic entity that continuously adapts to the demands of different circumstances. During periods of conflict or crisis, it tends to prioritize the interests of society and the government, whereas, in times of peace, it leans towards safeguarding the rights of individuals and subjects. The primary aim of detaining an accused individual awaiting trial is to prevent the recurrence of the alleged offense or the commission of other crimes, as well as to ensure their presence at the trial. These objectives must be fulfilled while respecting an individual’s fundamental right to liberty within the legal framework.

### **Offences with Respect to Bail in Pakistan**

Offenses regarding bail can be discussed under two heads:

1. Bailable Offences;
2. Non-bailable offenses can further be divided into the following two categories:
3. Non-bailable offenses in which bail can be granted in certain circumstances; and
4. Non-bailable offenses in which there can be, under the relevant statute, no
5. bail at all.

In enacting a new offense, the legislature establishes the procedures for its investigation, arrest, bail, and trial. This includes determining whether the offense is bailable or non-bailable and specifying the conditions under which the courts can grant bail.

A suitable starting point for addressing bailable and non-bailable offenses is the Code of Criminal Procedure 1898, known as the primary criminal procedural law in Pakistan. It must however be remembered that the mere fact that it is the principal criminal procedural law of Pakistan does not endow it with the status of a Constitution; it is, as we shall see, an ordinary law and can be changed or modified by another ordinary law duly enacted by a competent legislature. The Code cannot therefore be used to invalidate another law on the grounds of its inconsistency with the Code (Mughal, 2011).

### Definition of Bailable and non-Bailable Offences

Section 4, subsection (1), paragraph (b), defines the expressions "bailable offense" and "non-bailable offense".

The term "bailable offense" refers to an offense listed as bailable in the Second Schedule of the Code or designated as bailable by any current law.

On the other hand, a "non-bailable offense" encompasses all other offenses not falling under the bailable category.

A reference to the Second Schedule to the Code will make these provisions clearer. Column 1 mentions the offense of the Pakistan Penal Code (PPC) and column 5 shows whether it is bailable or not bailable.

### Research Methodology

The present research has explored the intricacies of judicial precedents that wove the legal web of bail in Pakistan. In doing so, it tries to assess totality by carefully analyzing the court judgments and compulsions of established legal principles. This is to explain the complex interplay amongst these precedents and their combined effect on the course of granting or denying bail.

### Bail in Bailable Offences

Section 496 of the Criminal Procedure Code pertains to bail in cases of bailable offenses. It is applicable to

all individuals detained or arrested without a warrant, not solely to those accused of bailable offenses. Should a person, not accused of a non-bailable offense, be detained without a warrant or brought before a court and be willing, while in custody or during court proceedings, to post bail, they are entitled to be released on bail. However, under Section 496, the police officer or court has the authority to discharge the individual by having them sign a bond without the need for sureties for their future appearance, instead of requiring bail (Vashist, 2021).

Thus, this section applies-

1. Not only to a person accused of a bailable offense;
2. But also applies to individuals who are arrested without a warrant, such as those apprehended under section 107 of the Code for the likelihood of causing a breach of the peace or disturbing public tranquility, or those classified as vagrants and arrested under section 109 of the Code.

To "give bail" here means to give security and to "take bail" means to take security. The words "shall be released on bail" indicate the intention that bail to persons governed by section 496 is a right; "shall" is mandatory, with the result that if the arrestee or the detainee is prepared to give bail, he must be released on bail.

In the case of Mahmud Ali Qasuri v. State (PLD 1963 SC 478), it was established that in instances of bailable offenses, the accused individual possesses an indisputable entitlement to be granted bail, provided that satisfactory sureties are presented if required. The Code does not include any provisions allowing for the cancellation of such bail. Bail in such cases is not merely a privilege but a fundamental right of the individual, as their freedom is deemed a valuable possession to be safeguarded without diminishing. If the individual abuses the bail by influencing witnesses, legal actions such as contempt proceedings or potentially binding over for peacekeeping or good behavior in specific circumstances may be pursued. However, asserting that bail granted under Section 496 of the Code can be revoked based on such grounds implies that the High Court holds inherent authority to supersede the explicit regulations of the Code.

And the words "discharge him" in the Proviso appears to mean the same thing as release him.

## **Principles for Bail in Bailable Offences**

The question arises as to whether individuals have the legal right to be granted bail for bailable offenses. It has been observed that the detainee has the option to be granted bail if they are willing to provide bail, under the condition that the sureties offered are deemed satisfactory by the police officer or the court.

Here the element of discretion creeps in. This discretion vests both in the police and in the court. It is plain that police discretion and court discretion are not the same. What needs to be emphasized is that the right can be frustrated by putting the bail too high or by rejecting the bond on the ground that the surety is not a man of sufficient means or is otherwise not trustworthy. This wide power in the police is obviously liable to be abused (Vashist, 2021).

Is this discretion unguided or unfettered? Without going into the question of whether the discretion is judicial or administrative (this is relevant because a police officer too has the discretion), the answer is "No". Suffice it to say here, that the discretion is inter alia subject to the provisions of section 498 Cr.P.C. which provides that "the value of each bond issued under this Chapter will be determined based on the specific circumstances of the case, ensuring that it is not unreasonably high".

Secondly, as per section 496, a police officer or the court has the discretion to release an individual without requiring bail, upon the individual executing a bond without sureties for their appearance, if they consider it appropriate.

The police officer and the court hold the authority to release the individual under arrest on bail or personal bond at their discretion. This discretion is considered judicial or quasi-judicial and in its exercise, the authority granting bail must take into account the fundamental right to liberty. Liberty is a right guaranteed by the Constitution, and the granting of bail in bailable offenses should not be undermined by setting an unreasonably high bail amount that the individual cannot afford. Thus, it is imperative to prioritize the liberty of the individual in question, and in cases where a choice must be made between keeping someone in prison due to an inability to provide sureties or releasing them on a personal bond, the latter should be favored. This issue was addressed in the Tariq Bashir

case (PLD 1995 SC 34, 40), where it was noted that many individuals awaiting trial for bailable offenses or detained for security reasons end up in prison simply because they cannot provide surety bonds, even though they could be released on a personal bond without the need for a surety at the discretion of the court. Instead of being severe to an under-trial accused carrying presumption of innocence with them, it is better that the court should be lenient in the matter of bail".

In cases falling under section 496, it is recommended that making bail be considered a genuine entitlement without the requirement of an actual arrest, and the provision of bail should be made promptly upon informing the individual of their involvement in a bailable offense.

## **Bail in non-bailable Offences**

In relation to bail, Section 497(1) categorizes offenses into two groups:

A. Offenses that are non-bailable and carry a punishment of less than ten years imprisonment;

B. Offenses that are non-bailable and carry a punishment of death, life imprisonment, or imprisonment for ten years.

Hence, offenses that carry the penalty of death, life imprisonment, or imprisonment for ten years are considered a separate category when it comes to bail. These offenses will now be referred to as category B offenses. They are distinguished from category A offenses, which carry a lesser penalty of less than ten years imprisonment, in that individuals accused of category B offenses shall not be granted bail if there are reasonable grounds to believe that they have committed a crime punishable by death, life imprisonment, or imprisonment for ten years.

For the purpose of bail, it can be observed that under subsection (I) of section 497, the offenses that are: i. punishable by death, ii. Punishable by life imprisonment, and iii. Punishable by ten years' imprisonment, are categorized equally in terms of severity when it comes to bail considerations. As a result, the court is unable to grant bail to an individual accused of such offenses if there are reasonable grounds to believe that the person has committed the offense.

There are specific circumstances outlined in the law where bail must be granted. For instance, if there is a trial delay and the case fits the criteria



specified in the third proviso of section 497, the accused must be granted bail. Additionally, under subsection (2) of section 497, if further investigation is warranted, the accused must be released on bail until the investigation is completed, either with or without sureties as determined by the police officer or court. This provision is applicable at any stage of the investigation or trial.

It will be noticed that in the case *Shah Zaman v. State* (PLD 1994 SC 65) "the same expression "shall be released on bail" has been used in section 496 as well as in the above provisions. The inference obviously is that bail is as much a right in bailable offenses as it is in cases falling within the above provisions. Examples of cases of further inquiry within the meaning of section 497 (2) are cases in which a person's name does not appear in the challan as an accused person or his name finds mention in column 2 of the challan or the facts show that the accused may not be convicted of any offense mentioned in section 497 (I) Cr. P.C or will be guilty of a lesser offense".

It should be noted that when the court relies upon a police report in granting bail, it is not treating the police opinion as binding. As was held in *Muhammad Rafiq v. Abdur Rehman* (1986 SCMR 1978), it is "now settled law that although the reports of the investigating officers are not binding on the courts, they can be taken into consideration at bail stage in deciding whether or not the accused are entitled to the grant of bail".

Similarly, in the case *Abdul Aziz v. Bashir Ahmed* (PLD 1966 SC 658), it was described that a mere Lalkara, without more, is not a reasonable ground to hold that the accused is guilty of a non-bailable offense.

### **Non-Bailable Offences in which Bail is Forbidden**

This is the category of offence, which is non-bailable in the real sense of the term. Unlike the non-bailable offenses governed by section 497 of the Code, in which, despite the description "non-bailable", bail can, at the discretion of the court, be granted, bail in offenses falling, in this category cannot be granted at all. The legislation outlining the offense explicitly states that the offense is non-bailable, prohibiting any court from granting bail to individuals accused of such an offense. Section 9 of the National Accountability Ordinance 1999, a permanent law,

serves as a prime illustration of this provision (Adhikari, 2022).

It clearly stipulates that all offenses under this Ordinance are non-bailable, and despite any existing laws or provisions, no court is empowered to provide bail to individuals accused of offenses under this Ordinance.

This provision has engendered a lot of controversy and debate. It has been considered in a number of cases; some of the representative cases are *Muhammad Nadeem Anwar v. NAB* (PLD 2008 SC 645), *Anwarul Haq Qureshi v. NAB* (2008 SCMR 1135), *Muhammad Jahangir Badr v. State* (PLD 2003 SC 525). The latest case on the point is *Talat Ishaq v. NAB* (PLD 2019 SC 112).

The issue regarding the constitutional validity of section 9 of the National Accountability Ordinance has not been previously raised or settled in any relevant cases. The argument against this section is that it may infringe upon fundamental constitutional rights, due process as guaranteed by Article 10A, and equality before the law as per Article 25 of the Constitution.

Until this matter is officially addressed and resolved, it is necessary to proceed assuming that section 9 stands as a legitimate piece of legislation. In other words, the understanding is that section 9 effectively removes the authority of the courts established under the Ordinance, as well as those under the Code of Criminal Procedure, to grant bail in cases defined by the Ordinance.

In order to comprehend this exclusion clause, it is vital to identify what is being excluded. Various sections of the Code of Criminal Procedure are affected, including bail after conviction under section 426, the power of High Courts and Sessions Courts to issue directions akin to habeas corpus under section 491, the power of courts in non-bailable offenses under section 497, the power of High Courts and Sessions Courts to grant bail under section 498, and the inherent power of High Courts under section 561 A to make necessary orders to uphold justice or prevent misuse of the judicial process.

From these provisions arise two key points: firstly, the statutory jurisdiction of High Courts under sections 498 and 561 A is subject to legislative authority and can therefore be revoked, as demonstrated by section 9 of the Ordinance; secondly, section 9 operates under the notion that a

High Court, in absence of the ouster, could potentially grant bail based on reasons such as the detention being an abuse of the judicial system or serving the interests of justice.

The jurisdiction of the High Courts and the Supreme Court under Articles 199 and 184(3) of the Constitution cannot be ousted by provisions such as section 9 of the Ordinance. This principle was established in the case of *Khan Asfandyar Wali v. Federation* (PLD 2001 SC 607). Initially, section 9 of the Ordinance attempted to eliminate the jurisdiction of the High Courts, but this was deemed unconstitutional by the Supreme Court. It was clarified that the superior courts have the authority to grant bail under Article 199 independently of any statutory provisions. Consequently, section 9(b) of the NAB Ordinance was deemed ultra vires the Constitution and amended accordingly.

Following this clarification, it was affirmed in the *Talat Ishaq* case (PLD 2019 SC 112) that individuals accused under the National Accountability Ordinance 1999 can seek bail from a High Court under Article 199 of the Constitution in appropriate circumstances. Precedent cases challenging prolonged detention without trial as an abuse of the court process highlighted the invocation of section 16(a) of the Ordinance. This section mandates a swift disposal of cases within thirty days.

Notably, prior to the amendment of section 497, delay alone was not recognized as a basis for bail. However, in *Riasat Ali v. Ghulam Muhammad* (PLD 1968 SC 353), it was ruled that unexplained and excessive delays in the prosecution process, constituting an abuse of legal proceedings, could be considered grounds for granting bail, even in serious cases like murder, depending on the circumstances surrounding the delay.

### **Principles for Bail in Non-Bailable Offences**

The principles that govern the granting of bail in non-bailable charges are firmly established:

1. Sections 497 and 498 are applicable only to accused individuals and do not extend to individuals who have been convicted. This was established in the case of *Muhammad Ayub v. Muhammad Yaqub* (PLD 1966 SC 1003, 1012).
2. It has been emphasized in the *Sikandar A. Karim* case (1995 SCMR 387) that bail should not be used as a form of punishment.

3. In instances of non-bailable offenses, the decision to grant bail lies at the discretion of the court and should be made with careful consideration of the specific details of each case. Bail orders are not to be treated as routine and should reflect a balanced application of justice while adhering to the legal requirements outlined in sections 496 to 498, as discussed in the *Abdul Malik* case (PLD 1968 SC 349).
4. The guiding principle derived from section 497 of the Criminal Procedure Code suggests that for non-bailable offenses categorized as Type A, the norm is to grant bail, with denial being the exception. Bail for Type-A offenses should only be refused in exceptional situations, such as:
  5. when there is a risk that the accused may flee;
  6. when there are concerns that the accused may interfere with evidence;
  7. when there is a possibility of the offense being repeated if the accused is released on bail, and
  8. When the accused is a repeat offender.
9. Hence, the decision to provide bail for cases falling under Type-A lies within the discretion of the bail-granting entity, and stating that “the grant of bail is a rule” does not imply an automatic entitlement to bail. Rather, it indicates that in the exercise of its discretion, the court is inclined towards granting bail. Factors such as the gravity of the charges, the background of the individual in custody, and the state’s interest in community safety can, under specific circumstances, outweigh an individual’s right to liberty (Bandopadhyay, Chakrawarti, & Mazumdar, 2022).
10. In cases involving category-B offenses, the court's discretion is constrained, and the accused may not be granted bail if there are justified suspicions that they have committed the offense.
11. The term “reasonable ground” conveys the idea that there should be sufficient cause linking the accused to the crime, a standard higher than mere suspicion. While a strong suspicion exists, it cannot replace the need for reasonable grounds. These grounds must withstand scrutiny based on logic for them to be accepted or rejected. The prosecution is responsible for justifying the reasonableness of the grounds by presenting the evidence it has

or expects to have, be it direct or circumstantial, as demonstrated in the Abdul Malik case (PLD 1968 SC 349). Courts evaluate the prosecution's evidence to determine if there is tangible proof against the accused that, if unchallenged, could imply guilt. It is important to note that reasonable grounds are distinct from mere allegations or suspicions, as well as from established evidence required for convicting someone of an offense, as emphasized in the Nisar Ahmad v. State case (PLD 1971 SC 174). In essence, "reasonable ground" lies between mere allegation or suspicion and proof beyond a reasonable doubt.

12. In cases where there are reasonable grounds linking the accused to the crime, bail may be denied without further examination of the merits of those grounds and the evidence supporting them. These functions should instead be addressed during the trial phase.
13. In the event that a charge is determined to be without merit, either due to lack of evidence or because the grounds for the charge are deemed to be unreasonable, the court is no longer limited in its discretion and may freely grant bail. This may occur in cases where the alleged offense is minor and does not carry a severe penalty, such as accidental death resulting from a minor injury.
14. In a similar vein, in instances where there are no justifiable reasons present but circumstances point to the need for a deeper examination into the culpability of a defendant, the situation falls within the purview of section 497(2) of the Criminal Procedure Code. Under such circumstances, bail should not be denied. This principle was elucidated in the case of Ibrahim v. Hayat Gul (1985 SCMR 382). Bail is to be granted to the accused as a matter of right in such scenarios, provided a crucial precondition is met.
15. In the realm of bail applications, the law maintains a stance of impartiality, refusing to be manipulated in favor of the prosecution. As demonstrated in the Sikandar A. Karim case (1995 SCMR 387), any uncertainties that may arise should always be resolved in favor of the accused party.
16. In the process of considering a bail application, it is crucial for the court to refrain from making statements that could potentially embarrass or bias the accused during their defense, as emphasized in the Sikandar A. Karim case (1995 SCMR 387, 399). Similarly, it is essential to avoid any remarks that might unfairly prejudice the prosecution's case. It is important to note that such observations are solely relevant to the bail proceedings and should not influence the trial court's determination of guilt or innocence, as established in the Muhammad Rafiq v. Abdur Rahman case (1986 SCMR 1978).

### **Bail to Women, Minors, and Sick Persons; Delay as Ground**

Subsection (1) of section 497 of the Criminal Procedure Code has four Provisos.

1. The first exception under subsection (1) allows for the possibility that individuals under the age of 16, women, or those who are sick or infirm may be granted bail, even if they appear to have committed a category B offense. This means that these cases are treated similarly to regular non-bailable cases, and the court has the discretion to decide whether or not to grant bail to such individuals. This was established in the case of Abdul Aziz v. Bashir Ahmad (PLD 1966 SC 658).
2. The second condition states that a person accused of the aforementioned offense cannot be granted bail unless the prosecution has been notified to provide reasons for why bail should not be granted. This rule applies to both category A and B offenses.
3. The third stipulation establishes an additional exemption by allowing the court to order the release on bail of an individual under certain circumstances:
4. If the individual is charged with a non-capital offense (not punishable with death) and has been held in custody for more than one year, or in the case of a female, more than six months, without the trial concluding; and
5. If the individual is accused of a capital offense (punishable with death) and has been detained for over two years, or in the case of a woman, over one year, without the trial concluding.
6. The decision to release individuals accused of crimes due to delays in their trials is

contingent upon the circumstances that the delay was not caused by the accused or anyone acting on their behalf, such as their legal counsel. In cases where this question arises, the court must first determine and document that the accused or their representative did not contribute to the delay before granting bail on these grounds. It is fundamental that individuals cannot benefit from their own wrongdoing.

7. In the fourth exception outlined in subsection (1) of section 497, bail shall not be granted to an accused due to delays under the following circumstances:
8. If the accused has a prior conviction for a crime that carries a penalty of death or life imprisonment.
9. If the court deems the accused to be a hardened, desperate, or dangerous criminal.
10. If the accused is charged with an act of terrorism that carries a penalty of death or life imprisonment.

## **Types of Bail**

In Pakistan, bail laws encompass various types of bail to ensure that individuals' rights are protected while maintaining law and order. Here's a breakdown of the types of bail, along with relevant provisions and recent case laws:

### **Protective Bail**

- Protective bail is granted by a higher court to protect an individual from arrest.
- This type of bail is usually granted when there's a threat of imminent arrest or apprehension by law enforcement agencies.
- The purpose is to provide temporary relief to the individual until they can seek regular bail from the appropriate forum.
- Provision: Protective bail is a concept not explicitly outlined in the Criminal Procedure Code (CrPC) of Pakistan but is acknowledged by the judiciary. Although the Criminal Procedure Code of 1898 does not contain any provision for protective bail, the High Court has utilized Section 561-A of the CrPC and Article 199 of the constitution to facilitate accused individuals in seeking legal recourse.
- Case Law: The case of (2023 PCr.LJ 290) emphasized the court's power to grant

protective bail to prevent harassment and undue arrest of individuals.

### **Ad-interim Bail**

- Ad-interim bail refers to a temporary bail that is granted by a court while waiting for a final decision on the normal bail application.
- It is often granted on a provisional basis, allowing the individual temporary freedom until the court makes a final determination.
- Provision: Ad-interim bail is provided in accordance with Section 498 of the CrPC, which authorizes the court to give bail while awaiting the final decision on the normal bail application.
- Case Law: In the case of (2023 SCMR 364), the Supreme Court granted ad-interim bail to the petitioner until the disposal of the regular bail application.

### **Pre-arrest Bail**

- Pre-arrest bail is sought by an individual apprehending arrest in a criminal case.
- It is granted to prevent the individual's arrest pending the investigation or trial of the case.
- When seeking pre-arrest bail, the petitioner must convince the court that they meet the specific requirements outlined in section 497 of the Code of Criminal Procedure, 1898. This includes demonstrating reasonable grounds to believe that they are not guilty of the alleged offense and that the case warrants further investigation (2023 SCMR 975).
- The court has the authority to discuss the merits of the case when granting pre-arrest bail (2023 SCMR 1152).
- Case Law: In the case of (2023 PCrLJ 468), the Court allowed pre-arrest bail to the petitioner because there was no Medico-legal Certificate of the victim available in the official records. Both criminal and civil suits were unresolved between the parties, therefore, it cannot be ignored that the complaining party falsely implicated the accused individuals.

### **Post-arrest Bail**

- Post-arrest bail is sought after an individual has been arrested and is in custody pending trial.
- It is granted to release the individual from

custody until the trial is concluded.

- Provision: Post-arrest bail is governed by Section 497 of the CrPC, which allows, the court has the authority to give bail to an individual who is accused of a non-bailable offense, but only under specific conditions.
- Case Law: In the case of (2023 SCMR 857), the Supreme Court of Pakistan granted post-arrest bail to the petitioner due to inconsistencies in the prosecution's case and the petitioner's health issues.

### Bail after Conviction or Acquittal

- Bail after conviction or acquittal refers to the release of an individual who has been convicted or acquitted of a crime pending an appeal or other legal proceedings.
- It is granted to ensure that the individual's rights are protected during the appellate process.
- Provision: Section 426 of the CrPC regulates the granting of bail once a person has been convicted or acquitted.

These forms of bail guarantee that persons are not unfairly denied their freedom and align with the concepts of justice and equity in Pakistan's legal framework.

### Cancellation of Bail

Certainly, the provision in section 497 subsection 5 allows a High Court, Court of Session, or any other court to order the arrest and detention of a person who has been released under this particular section. Therefore, regardless of which court granted the bail, the authority lies with the court that issued the bail along with the High Court or Court of Session to revoke the bail of the accused individual (Zahoor, Arif, & Bannian, 2022).

Bail cannot be canceled without notice to the accused *Mushtaq Ahmad v. State* (PLD 1966 SC 126).

The considerations for granting bail and its subsequent cancellation are distinct processes. Once a court of appropriate jurisdiction has granted bail, stringent and extraordinary reasons must be presented to justify its cancellation. Depriving an individual on bail of their freedom is a significant measure that requires serious deliberation. Bail should not be denied or revoked as a punitive measure, as established in the case of *Chairman NAB*

*v. Mian Muhammad Nawaz Sharif* (PLD 2019 SC 445).

### Conclusion

In this research, we have undertaken painstaking travel through the labyrinthine legal regime governing bail in Pakistan and aspire to present a detailed analysis by traveling through judicial precedents. The attempt was to enlighten these multifarious factors at play in deciding bail, imbued with an analysis of the underlying legal principles and judicial discretion at work under the Pakistani legal system.

The rich tapestry of judicial precedents we have encountered in the body below intricately weaves its unique narrative onto the jurisprudence that is coming about bail. It was an analysis that unraveled the complex interplay between legal norms, societal exigencies, and individual rights that reconstitute and gel together to form bail determinations in Pakistan.

This is one of the leading themes that emerged from our research: the sensitive balancing in bail adjudications between liberty and security. On the one hand, liberty should not be lightly interfered with, and until a person is convicted, there is a strong presumption in favor of bail. On the other hand, the state's interest in the maintenance of law and order demands cautionary measures against flight, tainting of evidence, or public safety. A synthesis of these conflicting concerns will mandate a judicious application of the principles of criminal law leavened by an appreciation for the context provided by existing circumstances.

Our analysis also highlighted the discretionary role of the judiciary in bail-related decisions. With the legal precedents to help in guidelines, application in concrete cases is often subjective, resting on the interpretation judges make. This kind of subjectivity brings out the need for transparency and consistency in judicial decision-making and accountability. Critical examination of judicial precedent helps foster a culture of jurisprudential coherence and adherence to principles of law in bail adjudications.

These findings can, therefore, be summarized to mean that deep analysis of case laws on bail in Pakistan offers valuable insight into the complex internet of legal and individual variables upon which bail decisions are based. In this paper, we have tried

to navigate through the complex terrain so that there may emerge a transparent, just, and accountable legal system with the rule of law and protection of rights for all. As we go further into this

dynamically changing legal scenario, our commitment remains to encourage dialogue, scholarship, and advocacy for the reform of bail legislation that is fair and transparent in Pakistan.

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