



Transit Anticipatory Bail

For Prelims: First Information Report (FIR), [Anticipatory Bail, Bail and its Types, Code Of Criminal Procedure \(CrPC\), 1973, Article 21](#)

For Mains: Protection of Fundamental Rights in Criminal Justice Process, Judiciary, Constitutional Protection, Types of Bail.

[Source: IE](#)

Why in News?

Recently, the [Supreme Court \(SC\) of India](#) in the case of **Priya Indoria vs State of Karnataka and Ors, 2023** ruled that a **Sessions Court or the High Court** in a state can **grant transit anticipatory bail** to an accused though the [First Information Report \(FIR\)](#) is registered outside their jurisdiction.

- The SC emphasizes the constitutional imperative of **protecting citizens' right to life and personal liberty** as enshrined in [Article 21 of the Constitution of India](#).

Note:

- Transit anticipatory bail serves as a **form of protection for the accused** against arrest **until they can reach a court with territorial jurisdiction** for the alleged offense.
 - The term "transit anticipatory bail" is **not explicitly defined in the [Code Of Criminal Procedure \(CrPC\)](#) or any other legislation**.
 - The SC introduced the concept of transit anticipatory bail in the case of **State of Assam v. Brojen Gogol in 1998**.
- This type of bail provides **equitable and interim relief**, particularly for individuals residing in a different state, allowing them to seek anticipatory bail.

What is the SC's Ruling on Transit Anticipatory Bail?

- SC rules that the **High Court/Sessions Courts should grant transit anticipatory bail** in the form of interim protection under [Section 438](#) of the [Code Of Criminal Procedure \(CrPC\), 1973](#) in the interest of justice concerning **FIR registered outside the territorial jurisdiction** of the said court,
 - SC highlighted that an absolute bar on jurisdiction **could lead to unjust consequences**, especially for bona fide (genuine) applicants facing wrongful, mala fide, or politically motivated prosecution.
- The SC noted transit anticipatory bail should be granted in **"exceptional and compelling circumstances only"** to prevent irreparable harm to the applicant.
- **The SC Laid Down Conditions for Interim Protection:**

- Notice to the investigating officer and public prosecutor is mandatory during the first hearing.
- The order granting limited relief must explicitly record reasons explaining why the applicant anticipates an **inter-state arrest** and the potential impact of such protection on the ongoing investigation.
- The applicant must satisfy the court regarding their inability to seek anticipatory bail from the court with territorial jurisdiction over the FIR.
 - The satisfaction could be based on apprehension of threats to life or **personal liberty** in the jurisdiction where the FIR is registered, concerns about arbitrariness, or medical reasons.
- The ruling acknowledges the possibility of accused **individuals choosing a favourable court for interim protection.**
 - To prevent abuse, the court highlights the importance of a territorial connection between the accused and the court's jurisdiction.

What is Bail and What are its Types?

▪ Definition:

- Bail is the **conditional/provisional release** of a person held under legal custody (in matters which are yet to be pronounced by the Court), by undertaking a promise to appear in the Court as and when required.
- It signifies a **security/collateral deposited before the Court** for release.
 - In the **Supt. and Remembrancer of Legal Affairs v. Amiya Kumar Roy Choudhry** (1973) case, the Calcutta High Court explained the **principle behind giving Bail.**

▪ Types of Bail in India:

- **Regular Bail:**
 - It is a direction given by the **Court (any Court within the country) to release** a person who is already under arrest and kept in police custody.
 - For such Bail, a person can file an application under Sections 437 and 439 of the **Code Of Criminal Procedure (CrPC), 1973.**
- **Interim Bail:**
 - Bail granted for a **temporary and short period** by the Court till the application seeking Anticipatory Bail or Regular Bail is pending before a Court.
- **Anticipatory Bail or Pre-arrest Bail:**
 - It is a legal provision that allows an accused person to apply for bail before being arrested. In India, pre-arrest bail is granted under **section 438 of the CrPc, 1973.**
 - It is issued only by the **Sessions Court and High Court.**
 - The provision of pre-arrest bail is discretionary, and the court may grant bail after considering the nature and gravity of the offence, the **antecedents of the accused**, and other relevant factors.
 - The court may also impose certain conditions while granting bail, such as surrendering the passport, refraining from leaving the country or reporting to the police station regularly.
- **Statutory Bail:**
 - The remedy of statutory bail, also known as **default bail.** is distinct from bail obtained in the **ordinary procedure under CrPC Sections 437, 438, and 439.**
 - As the name implies, statutory bail is **given when the police or investigating agency fails to file its report/complaint** within a certain time frame.
 - This is enshrined in Section 167(2) of the CrPC.

Legal Insights: [Transit Anticipatory Bail](https://www.drishtijudiciary.com/en)

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