

# LAW CAPSULE

For Law Competitive Exams

## LAW OF BAIL



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### Introduction

Purpose of arresting a person is to secure the presence of the accused at the time of enquiry, trial or other proceedings. However, consequences of pre-trial confinement are grave, therefore, the provision of Bail is provided. Objective is to release on bail maximum number of accused persons without seriously endangering the objective of arrest and trial since there is presumption of innocence of an accused till he is found guilty.

It is improper to release on bail a person who-

- Absconds or jumps bail
- Is likely to destroy evidence
- Tempers with prosecution witness or is likely to commit more offences

### Circumstances in which release on bail is mandatory

1. Arrestee not accused of non-bailable offence
  - Ready to execute / furnish bond
  - Bail- not excessive
  - Detention illegal (contravention of Section 436) (Officer will be guilty of wrongful confinement under section 342 of IPC)
2. Investigation not complete within time prescribed
  - Maximum detention
    - 90 days - when punishment from the crime is more than 10 years
    - 60 days - all other cases
  - Object - investigation must be completed expeditiously and within reasonable time
3. No reasonable ground exists for believing the accused guilty of non-bailable offence
4. Trial before Magistrate not concluded within 60 days
5. No reasonable ground exists for believing the accused guilty after conclusion of trial but before judgment

### Discretion in granting bail in cases of non-bailable offences

- "May" clearly indicates discretion
- Allowance of bail is the rule and refusal of it is an exception
- Circumstances for granting bail
  - Severity of punishment
  - Evidence in support
  - Danger of witness being tempered
  - Likelihood of accused fleeing from justice
  - Access to his counsel
  - Health, age and sex of the accused
- Accused required for identification parade not a ground for refusing bail
- No bail in case of offence punishable with death or imprisonment for life
  - Exception
    - Person under 16 years
    - Woman
    - Sick or infirm person
- Conditions for bail
  - Comply with conditions of bail bond (Chapter 33)
  - Ensuring the accused shall not commit similar offence
  - In the interest of justice