A separate law for bail

Why in news?

The Supreme Court urged the Centre to bring a new law to simplify and streamline the process of bail.

What is the need for a new law?

- The Supreme Court judgment issued clarifications to a 2021 ruling on guidelines for considering bail for offences under the Criminal Procedure Code (CrPC), 1973.
- The Court observed that arrest is a draconian measure that should be used sparingly.
- It held that **bail** continues to be the rule and jail an exception, the **touchstone of Article 21**, and highlighted the presumption of **innocence until proven guilty**.
- Un warranted arrests are carried out in violation of Section 41 (empowers police to arrest without a warrant) and Section 41A (deals with the procedure for appearance before police) of the CrPC.
- In our criminal justice system, the process is the punishment, Chief Justice Ramana observed.
- Jails in India are flooded with undertrial prisoners.
- Bail is still tough to get, and once got, the conditions imposed on the accused, even by the Supreme Court, remain stringent.

What are the provisions of the present law?

- Though there isn't any separate law in the Indian legal system that defines bail, related provisions are mentioned in the CrPC and punishments under the IPC.
- The CrPC categorizes offences as bailable and non-bailable.
- As per Section 436, bail is a right in bailable offences and the police or court, whoever has custody, is bound to release the accused following furnishing of a bail bond, with or without surety.
- For a non-bailable offence, an accused cannot claim bail as a right.
- The discretion lies with the courts.
- In such cases, Section 437 empowers the Magistrate to deal with pleas,

except for offences punishable with death or imprisonment for life.
- A provision mandates the court to consider granting bail to an accused below 16 years, someone who is sick, or is a woman.
- The CrPC also lists provisions for the cancellation of bail.

What are the guidelines from the Court?

- The Supreme Court noted that despite modifications, the CrPC continues to retain its pre-independence form.
- It observed that unwarranted arrests curtail liberty.
- Stressing the need to ensure due procedure for arrests and a time limit for disposal of bail applications, the Court asked the Centre to consider introducing an enactment in the nature of a Bail Act to streamline the process.
- Bail applications have to be disposed of within two weeks except when provisions mandate otherwise, the Court stated.
- On anticipatory bail, it said a plea has to be decided within six weeks.
- The Court said that **there need not be any insistence on a bail plea** while considering a plea under **Sections 88, 170, 204 and 209** of CrPC.
- This significantly increases the bail prospects of an accused, as courts typically tend to remand the accused on production by the police or on appearance before it in response to a summons or a warrant, and consider bail only if the accused files an application.
- Following these guidelines, the accused can be granted bail on the court's own discretion in some situations.
- For instance, when a person is present in court and is required to appear in the same or in another court later, it can take a bond (under Sec. 88) instead of remanding in custody.
- Bail can also be granted when one has been produced by a police officer (Sec. 170) or when the court issues process, either a summons to answer a complaint, or a warrant to appear after the police files a charge sheet (Sec.204) or when a case is committed by a magistrate for trial to a sessions court (Sec. 209).
- Investigating agencies and officers have to comply with Sections 41 and 41A, it said, adding that action will follow any dereliction of duty.
- It ruled that non-compliance with Sections 41 and 41A at the time of arrest will entitle the accused to bail.
- Section 41 deals with the arrest in a cognizable offence where punishment is imprisonment for a term which may be less than seven years.
- Section 41A relates to the procedure of the notice of appearance before a policeman in cases where the arrest is not required.

- Notably, a police officer is required to record reasons for arrest or not to arrest in writing as per the rule.
- The Bench directed State Governments and Union Territories to facilitate standing orders for the procedure to be followed under Sections 41 and 41A to avoid unwarranted arrests.
- The Court directed high courts to identify undertrials who are unable to comply with bail conditions and take action to facilitate their release.

What is the U.K. law on bail?

- In the United Kingdom, the Bail Act of 1976 governs the procedure for granting or denying bail.
- The Act recognizes a "general right" to bail and aims to reduce the number of inmates to prevent clogging of jails.
- It mentions the presumption that an accused should be granted bail unless there is a justified reason to refuse it.
- Bail can be rejected if the court finds substantial grounds for believing that the defendant will fail to surrender, commit an offence, or interfere with witnesses if released on bail.
- The court has to give reasons in case it withholds or alters bail conditions.

What is the way forward?

- The guidelines provided by the court would certainly take care of not only the unwarranted arrests but also the clogging of bail applications before various Courts as they may not even be required for the offences up to seven years.
- There is a pressing need to reform bail laws considering the abysmally low conviction rate.
- Such detentions reflect a colonial mindset and create the impression of a police state.
- In a democracy, there can never be an impression that it is a police state, since, both are conceptually opposite to each other.

Reference

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