Granting bail is the rule

What is the issue?

- Currently, lots of bail applications are rejected by subordinate courts leading to demoralising conditions.
- Hence, any reforms in bail system should focus on two aspects of criminal justice system-judicial discretion & monetary surety bonds.

What is the problem with rejecting the bail application?

- The power to grant bail is a discretionary power of judges & it should be exercised liberally.
- But today it is exercised rarely as even subordinate courts routinely reject bail application even for minor offences.
- Hence the accused persons are forced to approach the High Court or the Supreme Court.
- Consequently, most accused persons remain as under trials for longer periods of time leading to congestion of prisons.
- Two-thirds of India's prison population comprise of under trials who are marginalised communities accused of minor offences.
- Even Supreme Court has consistently reiterated that "bail is the rule, jail is an exception".
- During the pandemic, pendency of bail applications has increased due to shutting down of courts & increasing arrests by the police for minor offences.
- Refusing to grant bail deprives individual's liberty& confines them in jails without trial and conviction.

What is the issue with providing surety bonds?

- To grant bail, surety bonds whose value determined by the concerned judge should be furnished to the court.
- Subordinate courts fix this bail amount to Rs 10,000 even for petty offences punishable by less than three years.
- In cases of bail before the High Courts and the Supreme Court, this amount usually exceeds Rs 30,000.
- For instance, a 14-year-old minor's surety for four cases of theft & house breaking was set Rs 2 lakh by the session's court in Bhopal.

- In **Moti Ram v. State of Madhya Pradesh case**, judges said that an unreasonable high surety is a human rights problem.
- As per report by Azim Premji University, 57% Indians earn less than Rs 10,000 per month.
- Therefore persons without assets either end up living in jails or incur debt by paying others when granted bail.
- A bogey of middlemen has also emerged due to these high bail amounts.

What are the other worrisome bail conditions?

- During the lockdown, the Gwalior Bench of the M.P. High Court imposed peculiar conditions while granting bail.
- The court asked to install a non-Chinese LED TV at the District Hospital, register as a voluntary COVID-19 warrior & donate money for COVID-19 relief when granting bail.
- These conditions continued despite the orders of Principal Bench of the High Court which said that cash deposits for bail orders are unjust, irregular and improper.

What can be done now?

- Apex Court should overview the rejections of bail applications by judges of lower courts & make them accountable.
- Courts should introspect standards of liberty, reasonableness and proportionality while deciding bail matters.
- Centre for Law and Policy Research recommends creating checklists to address individual discretion while deciding bail applications.
- Although granting bail without surety bond is permissible in law, it is rare phenomenon & this idea can be thought of.
- Surety amounts should be determined taking into consideration the socio-economic location of the accused person.

Source: The Hindu



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