Latest Guidelines on Arrests and Bail Orders

Why in news?

The Supreme Court in *Satender Kumar Antil vs CBI* laid down fresh guidelines on arrests.

How is a person arrested?

- **Arrest**- Arrest is defined as, "when one is taken and restrained from his liberty".
- The police has wide powers to arrest under the Code of Criminal Procedure, 1973.
- In the *Joginder Kumar (1994)* verdict, the Court had stated that arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person.
- In the *case of Arnesh Kumar*, the apex Court had observed that arrest brings humiliation, curtails freedom and cast scars forever.
- **Section 41 of CrPc**- It provides for the circumstances in which arrest can be made by the police without a warrant and mandates for reasons to be recorded in writing for every arrest and non-arrest.
- **Section 41A of CrPc**- It provides for the requirement of a notice to be sent by the investigating agencies before making an arrest in certain conditions.
- **Bail-** Bail refers to the temporary release of an accused person awaiting trial, sometimes on condition that a sum of money is lodged to guarantee their appearance in court.

What are the Supreme Court guidelines?

- **Compliance**- The Court has issued specific directions and has also called for a compliance report.
- The Court said that the investigating agencies and officers are duty-bound to comply with the mandate of Section 41 and 41A and the directions issued in the Arnesh Kumar case.
- The Bench further said that the courts will have to satisfy themselves on the compliance of Section 41 and 41A.
- **Granting bails**- The Court has made a specific observation in the form of an obiter that the Government may consider the introduction of a separate law like a Bail Act to streamline the grant of bails.
- The Court directed that bail applications ought to be disposed of within a period of 2 weeks except if the provisions mandate otherwise.
- The Court also said that applications for anticipatory bail are expected to be disposed of within a period of 6 weeks with the exception of any intervening application.
- **Undertrial prisoners-** The judgment noted that crowding jails with undertrial prisoners ignored the principle of '**presumption of innocence**' and that '**bail not jail'** should be the norm.

- The High Courts have been directed to identify undertrial prisoners who cannot comply with bail conditions and appropriate action have to be taken in the light of Section 440 of CrPc, facilitating their release.
- Under Section 440, the amount of bond shall not be excessive, and high courts and sessions courts may reduce the amount prescribed by the magistrate or a police officer.
- An exercise have to be done to comply with Section 436A of CrPc, under which a person imprisoned during investigation or trial shall be released on bail on completion of half of the jail term prescribed for that offence.

Over 75% of India's prison population are undertrials while overcrowding in Indian prisons stands at 118%.

What are the concerns?

- **Safeguards against arbitrary arrest**- The safeguards exclude a significant proportion of arrested persons, especially those from disadvantaged sections of society.
- This put migrants, persons without assets or those with no contact with family at higher risk of arrest because of their socio-economic conditions.

Of the undertrials represented by the Fair Trial Programme (FTP), 18.50% were migrants, 93.48% did not own any assets, 62.22% did not have any contact with family, and 10% had a history of previous incarceration.

- **Approach to bail adjudication**- The power to grant bail is largely based on the court's discretion and depends on the facts of each case.
- The Court guidelines also validate the denial of bail or imposition of onerous bail conditions based on the gravity of the offence, character of the accused and likelihood of the accused absconding or tampering with evidence.
- **Challenges in bail compliance-** Lack of means to arrange for money/property and local sureties are the most significant reasons accounting for an undertrial's inability to comply with bail conditions.
- Lack of residence and identity proof, abandonment by family and limitations in navigating the court system also add to this issue.

In 14% of cases, undertrials were unable to comply with bail conditions and remained in prison despite being granted bail.

- **Flawed assumptions**- The current bail system has flawed assumptions that every arrested person will be propertied or have access to propertied social connections.
- It presumes that the risk of financial loss is necessary to ensure the presence of the accused in court.

What is the way forward?

- For any bail law to effectively provide relief, a careful re-evaluation of the said presumptions is imperative.
- There is an urgent need for bail reform after developing the empirical basis to understand and diagnose the problem at hand.

References

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