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## 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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