

Releasing the Female Accused on Bail

Report No 48

Releasing the Female Accused on Bail

A woman involved in a non-bailable offence when arrested by police and committed to prison pending trial of offence may easily fall prey to unscrupulous elements in the jail who misuse their position either to make money from her relatives or abuse her physically and sexually where she has no relatives to pursue her case or they are unable to meet the unlawful demands of jail staff. Various complaints have been made and write ups published in newspapers, highlighting this problem and stressing the need to find ways and means of resolving it. This problem is very acute especially for women who are kept in jail for long duration during the proceedings of the case. Afterwards, even if they are proven innocent and acquitted, they carry the stigma of being in jail.

Section 496 of the Code of Criminal Procedure, 1898 provides for bail in bailable offences and Section 497(1) under its proviso gives a special concession of bail for women in non-bailable offence. The relevant sections read:

Section 496:-

“When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in-charge of a police-station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any

stage of the proceedings before such Court to give bail, such person shall be released on bail:

Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance a hereinafter provided:

Provided, further that nothing in this Section shall be deemed to affect the provisions of Section 107, Sub-section (4), or Section 117, Sub-section (3).”

Section 497 :-

“(1) When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life or imprisonment for ten years:

Provided that the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail:

Provided further that a person accused of an offence as aforesaid shall not be released on bail unless the prosecution has been given notice to show cause why he should not be so released.

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) An officer or a Court releasing any person on bail under Sub-section (1) or Sub-section (2) shall record in writing his or its reasons for so doing.

(4) If, at any time after the conclusion of the trial or a person accused of a non-bailable offence and before Judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

(5) A High Court or Court of Session and, in the case of a person released by itself, any

other Court may cause any person who has been released under this section to be arrested and may commit him to custody.”

But except a pre-arrest bail, a woman have to first undergo the process of judicial custody by detention in lockup before seeking such concession of bail from the court after her arrest. There are also instances where a family abandons the woman and does not come forward to furnish surety bond for her release on bail.

In some cases no one from the relatives turns up to conduct bail proceedings or defend the trial therefore, she remains in detention even in minor offences for longer periods, at times more than the period of punishment prescribed for the offence or actually awarded by the court. The fact is also endorsed by a study of a Foundation for Research and Development working in Pakistan which shows that in cases of most of the undertrial women involved either in Hudood cases or narcotics, no relative comes forward for their bail. This can also be the position in case of offences providing punishment of less than ten years.

The object of detaining a person accused of an offence is to avoid his absconding from inquiry or trial, or prevailing upon the witnesses by any manner or to disturb the investigation or defeat the trial. However, in the existing social setup of the society it is unusual for a woman to abscond from trial or influence or disturb the pace of investigation or trial; and perhaps this factor prevailed upon the legislature when it provided her the concession of bail in non-bailable offences, under the first proviso to Sub-section (1) of Section 497 Cr.PC. This concession was allowed more than hundred years before in British India.

The existing first proviso to Sub-section (1) of Section 497 also provides such concession of bail to a person below the age of sixteen years. But under sub-section (5) of section 10 of the Juvenile Justice System Ordinance, 2000, for a person below the age of fifteen years, a non-bailable offence, with punishment not exceeding ten years imprisonment under any law, is made bailable. However, under first proviso to Section 497 (1) a woman and a person below the age of sixteen years, are in the same class of beneficiaries of concession of bail in a non-bailable offence. Therefore, the law relating to grant of bail under Section 497 Cr.PC requires to be reviewed in view of the problems experienced by women in custody. She may be made entitled to avail the bail concession on committing a non-bailable offence, by depositing personal bond at the time of her arrest in non-bailable offence, where punishment of less than ten years is prescribed; For this purpose, Sections 496 and 497 Cr.PC may be amended as follows:-

(a) In Section 496 after the words "non-bailable offence" the following words shall be added

“, or a woman accused of a non-bailable offence providing punishment of

imprisonment not exceeding ten years,“

Consequently, the amended clause shall read.-

“When any person other than a person accused of a non-bailable offence, **or a woman accused of a non-bailable offence providing punishment of imprisonment not exceeding ten years**, is arrested or detained without warrant by an officer in-charge of a police-station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail: Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance a hereinafter provided:

Provided, further that nothing in this section shall be deemed to affect the provisions of Section 107, Sub-section (4), or Section 117, Sub-section (3).”

b, In Section 497 after the second proviso a new proviso shall be added namely.-

“Provided further that the court, shall release a woman, accused of committing an offence punishable with imprisonment of not exceeding ten years, on her executing a bond for her appearance as if she has committed a bailable offence”

Accordingly, the aforementioned suggested amendments in Sections 496 & 497 Cr. PC were placed before the Commission for consideration.

Commission’s deliberations:

The Commission discussed the matter thoroughly but did not agree with the proposal of the Secretariat and expressed the apprehension that the concession may be abused/misused as under this mechanism, the appearance of the accused before the court cannot be ensured. The Commission, however, taking notice of the complaints of hardships, faced by women in detention and their possible abuse while in police custody or on judicial remand, decided that through appropriate amendment in the Cr.PC, bail shall be allowed to women, in nonbailable offences, where the punishment prescribed is not more than 10 years, but such bail shall be subject to the

production of proper surety bonds. Accordingly, a revised draft Bill is at Appendix.

A
BILL

further to amend the Code of Criminal Procedure 1898.

WHEREAS it is expedient further to amend the Code of Criminal Procedure 1898 (Act V of 1898) for the purpose hereinafter appearing;

It is hereby enacted as follows:-

1. Short title and commencement.- (1) This Act may be called the Code of Criminal Procedure (Amendment) Act 2002.

(2) It shall come into force at once.

2. Amendment of Section 497, Act V of 1898.- In the Code of Criminal Procedure 1898 (Act V of 1898), in Section 497, in Sub-section (1), after the words “ nonailable offence” the words “ or a woman accused of an offence punishable with imprisonment of less than ten years” shall be inserted.