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**REVISITING BAIL JURISPRUDENCE IN INDIA UNDER THE  
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023: A CRITICAL  
STUDY OF CONSTITUTIONAL SAFEGUARDS AND JUDICIAL  
DISCRETION**

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**ABSTRACT**

The law of bail is a fundamental safeguard of personal liberty within India's criminal justice system, balancing the rights of an accused with the State's interest in ensuring the effective administration of justice. The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which came into force on 1 July 2024, replaces the Code of Criminal Procedure, 1973 and introduces procedural reforms relating to arrest, detention and bail. While these reforms modernise criminal procedure, they also invite examination of whether the existing framework adequately protects the constitutional guarantee of personal liberty under Article 21 of the Constitution of India.

This paper critically examines the legal framework governing regular, anticipatory and default bail under the BNSS against the backdrop of constitutional principles and judicial interpretation. It analyses the evolution of bail jurisprudence through leading decisions of the Supreme Court and evaluates the continuing relevance of the principle that "bail is the rule and jail is the exception." The study further considers the practical challenges affecting the administration of bail, including undertrial detention, prison overcrowding, judicial discretion and access to justice.

The paper adopts a doctrinal research methodology based on the analysis of constitutional provisions, statutory law, judicial precedents, Law Commission Reports and recognised academic literature. It argues that although the BNSS introduces important procedural reforms, it does not fundamentally alter the constitutional philosophy governing bail. The effectiveness of the new framework will depend upon consistent judicial application,

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responsible exercise of arrest powers and timely disposal of bail applications. The paper concludes by suggesting measures to strengthen the administration of bail while ensuring that constitutional values continue to guide criminal justice in India. The study concludes that the BNSS represents procedural continuity rather than a substantive departure from established constitutional bail jurisprudence.

**Keywords:** *Bail; Personal Liberty; Article 21; BNSS; Criminal Justice Administration; Undertrial Prisoners; Judicial Discretion*

## **INTRODUCTION**

The law of bail constitutes one of the most significant safeguards of personal liberty within India's criminal justice system. It seeks to maintain a balance between the fundamental rights of an accused person and the State's obligation to ensure the effective administration of criminal justice. Since every accused is presumed innocent until proven guilty, detention before conviction should ordinarily remain an exception rather than the rule. Bail, therefore, serves as a legal mechanism that secures the presence of the accused during investigation and trial without subjecting them to unnecessary deprivation of liberty.<sup>2</sup>

The constitutional foundation of bail is derived from Articles 14, 21 and 22 of the Constitution of India, which collectively guarantee equality before the law, protection of life and personal liberty, and safeguards against arbitrary arrest and detention. Although the Constitution does not expressly recognise a fundamental right to bail, judicial interpretation has consistently treated the grant of bail as an indispensable component of a fair, just and reasonable procedure under Article 21. Consequently, the Supreme Court has repeatedly affirmed that "bail is the rule and jail is the exception," thereby reinforcing the constitutional commitment to safeguarding individual liberty against arbitrary pre-trial detention.<sup>3</sup>

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which came into force on 1 July 2024, replaces the Code of Criminal Procedure, 1973 and introduces procedural reforms aimed at improving efficiency, accountability and the use of technology in criminal proceedings. While the procedural framework has undergone significant reform, the constitutional principles governing bail continue to be shaped primarily by judicial precedent.

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<sup>2</sup> *State of Rajasthan v. Balchand*, (1977) 4 SCC 308; *Gudikanti Narasimhulu v. Public Prosecutor*, (1978) 1 SCC 240.

<sup>3</sup> CONSTITUTION OF INDIA. arts. 14, 21 and 22; *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

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Consequently, the interpretation of bail under the BNSS remains closely aligned with the jurisprudence developed under the earlier criminal procedure regime, making it necessary to examine whether the new procedural framework adequately protects the constitutional guarantee of personal liberty.<sup>4</sup>

Despite an expansive body of constitutional jurisprudence, the practical administration of bail continues to present significant challenges. Undertrial prisoners constitute a substantial proportion of India's prison population, reflecting persistent systemic concerns such as unnecessary arrests, prolonged investigations, judicial delays, overcrowded prisons and unequal access to effective legal representation. These realities reveal a continuing gap between constitutional guarantees and their implementation, underscoring the need to critically evaluate whether the reforms introduced under the BNSS are capable of addressing these long-standing deficiencies in the criminal justice system.<sup>5-6</sup>

This paper argues that although the BNSS modernises criminal procedure, it does not fundamentally alter the constitutional approach to bail. The effectiveness of bail jurisprudence continues to depend upon the consistent application of constitutional principles by courts and investigating agencies. Against this backdrop, the paper critically examines the statutory framework governing bail under the BNSS, analyses the constitutional and judicial principles that shape bail jurisprudence, identifies the principal challenges affecting the administration of bail, and proposes reforms aimed at strengthening the protection of personal liberty while ensuring the effective administration of criminal justice.

### **Research Gap:**

Although the law of bail under the Code of Criminal Procedure, 1973 has been widely examined, the enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023 necessitates renewed scholarly analysis. Existing literature primarily describes the statutory changes without critically evaluating whether the BNSS has substantively altered the law relating to bail or merely preserved the constitutional principles developed under the previous legal regime. This paper addresses that gap by analysing the interaction between the BNSS, constitutional guarantees under Articles 14, 21 and 22, and contemporary

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<sup>4</sup> The Bharatiya Nagarik Suraksha Sanhita, 2023.

<sup>5</sup> National Crime Records Bureau, Prison Statistics India 2022 (Ministry of Home Affairs, Government of India, 2023).

<sup>6</sup> Law Commission of India, 268th Report: Amendments to Criminal Procedure Code, 1973 – Provisions Relating to Bail (2017).

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judicial interpretation. The study further seeks to evaluate whether procedural reform under the BNSS has been accompanied by any corresponding shift in constitutional reasoning relating to personal liberty and judicial discretion.

### **Research Objectives:**

#### **The present study seeks to:**

1. Examine the constitutional foundations of bail in India.
2. Analyse the statutory framework governing bail under the Bharatiya Nagarik Suraksha Sanhita, 2023.
3. Evaluate the contribution of judicial precedents to bail jurisprudence.
4. Assess whether the BNSS has introduced any substantive changes to the law relating to bail.
5. Suggest reforms for strengthening the administration of bail.

### **Research Questions**

#### **The study seeks to answer the following questions:**

1. What is the constitutional basis of bail in India?
2. Has the Bharatiya Nagarik Suraksha Sanhita, 2023 introduced any substantive change in bail jurisprudence?
3. How have constitutional courts balanced personal liberty with the interests of criminal justice administration?
4. What reforms are necessary to strengthen the administration of bail in India?

### **Research Methodology**

This study adopts a doctrinal research methodology based on the analysis of primary and secondary legal sources. Primary sources include the Constitution of India, the Bharatiya Nagarik Suraksha Sanhita, 2023, judicial decisions of the Supreme Court and High Courts, and relevant Law Commission Reports. Secondary sources include authoritative textbooks, peer-reviewed journal articles, government publications and recognised commentaries. The study critically evaluates bail jurisprudence in light of constitutional principles, judicial interpretation and the legislative reforms introduced under the BNSS.

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## **II. CONCEPT, OBJECTIVES AND PHILOSOPHY OF BAIL**

### **2.1 Concept of Bail**

The term bail is not expressly defined under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). In legal parlance, it refers to the release of an accused person from judicial or police custody upon furnishing a bond or surety, subject to such conditions as the court considers necessary to secure the accused's presence during investigation and trial. The primary purpose of bail is not to absolve an accused of criminal liability but to ensure that detention before conviction is resorted to only when justified by the circumstances of the case.<sup>7</sup>

The law governing bail is founded on the presumption of innocence, which remains one of the cardinal principles of criminal jurisprudence. Since guilt can only be established after a fair trial, pre-trial detention must remain an exception. The Supreme Court has consistently held that deprivation of personal liberty cannot be justified merely because criminal proceedings are pending against an accused.<sup>8</sup>

### **2.2 Objectives of Bail**

The object of bail is to maintain an appropriate balance between the liberty of the individual and the interests of justice. Granting bail enables an accused person to participate effectively in their defence while ensuring their availability during investigation and trial. Courts generally consider factors such as the nature and gravity of the offence, the possibility of absconding, the likelihood of influencing witnesses or tampering with evidence, the antecedents of the accused, and the larger interests of justice before exercising judicial discretion.<sup>9</sup>

Bail also serves an important constitutional function by preventing unnecessary incarceration. Excessive pre-trial detention not only undermines the presumption of innocence but also contributes significantly to prison overcrowding and delays in the criminal justice system.

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<sup>7</sup> K.N. Chandrasekharan Pillai, *R.V. Kelkar's Criminal Procedure* (7th ed., Eastern Book Company, 2016); Ratanlal & Dhirajlal, *The Bharatiya Nagarik Suraksha Sanhita, 2023* (LexisNexis, 2024).

<sup>8</sup> *Gudikanti Narasimhulu v. Public Prosecutor*, (1978) 1 SCC 240; *State of Rajasthan v. Balchand*, (1977) 4 SCC 308.

<sup>9</sup> *Gurbaksh Singh Sibbia v. State of Punjab*, (1980) 2 SCC 565; *Sanjay Chandra v. CBI*, (2012) 1 SCC 40.

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Consequently, courts are expected to exercise their discretion in a manner that protects personal liberty without compromising the integrity of criminal proceedings.

### 2.3 Philosophy of Bail

The philosophy underlying bail is rooted in constitutional values of fairness, equality and personal liberty. Article 21 of the Constitution requires that any deprivation of liberty must be just, fair and reasonable. Judicial interpretation has consistently recognised that arrest does not automatically warrant continued detention and that imprisonment before conviction should ordinarily be avoided unless it is necessary to secure the administration of justice.<sup>10</sup>

The Supreme Court's observation that "bail is the rule and jail is the exception"<sup>11</sup> continues to guide the exercise of judicial discretion in bail matters. At the same time, the grant of bail is neither absolute nor mechanical. Courts must balance the rights of the accused against legitimate public interests, including the need to ensure a fair investigation, prevent interference with evidence, protect victims and witnesses, and maintain public confidence in the administration of criminal justice. The ultimate objective of bail law is therefore to reconcile individual liberty with the effective enforcement of criminal law.

### **III. LEGAL FRAMEWORK OF BAIL UNDER THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023**

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) replaced the Code of Criminal Procedure, 1973 with effect from 1 July 2024, while substantially retaining the established principles governing bail. The law continues to recognise bail as an essential safeguard of personal liberty, subject to judicial discretion and the requirements of a fair criminal process. Although the BNSS introduces procedural reforms such as digitisation, forensic integration and time-bound investigation, the jurisprudential basis of bail remains anchored in constitutional guarantees under Articles 14 and 21 of the Constitution. Although the BNSS repeals and replaces the Code of Criminal Procedure, 1973, it largely preserves the statutory framework governing regular bail, anticipatory bail and default bail. The principal reforms concern procedural modernisation, including greater use of digital processes, electronic

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<sup>10</sup>CONSTITUTION OF INDIA. art. 21; *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248; *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81.

<sup>11</sup>*State of Rajasthan v. Balchand*, (1977) 4 SCC 308; *Gudikanti Narasimhulu v. Public Prosecutor*, (1978) 1 SCC 240.

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communication, forensic support and time-bound investigations, rather than a fundamental restructuring of the legal principles governing bail. Consequently, judicial precedents decided under the Code of Criminal Procedure continue to provide persuasive guidance in interpreting the corresponding provisions of the BNSS.

A comparison of the BNSS with the Code of Criminal Procedure, 1973 demonstrates that the law relating to bail has undergone more structural renumbering than substantive transformation. The provisions governing bail in bailable offences, non-bailable offences, anticipatory bail and default bail have been substantially retained, with corresponding provisions reorganised under the BNSS. While the new legislation introduces procedural reforms through greater use of technology, electronic communication and time-bound investigation, it does not materially alter the principles governing judicial discretion in granting or refusing bail. Consequently, judicial precedents interpreting the corresponding provisions of the Code of Criminal Procedure continue to provide persuasive guidance under the BNSS.

### 3.1 Bail in Bailable Offences

The BNSS recognises the right of an accused to be released on bail in bailable offences, subject to compliance with the statutory requirements relating to the execution of bonds and conditions imposed by the court. In such cases, the discretion of the police officer or the Magistrate is limited because the grant of bail is a statutory right rather than a matter of judicial indulgence. This distinction reflects the legislative intent that detention should not be prolonged where the offence is comparatively less serious and the accused is willing to cooperate with the investigation.<sup>12</sup>

### 3.2 Bail in Non-Bailable Offences

In non-bailable offences, the grant of bail remains discretionary. Courts are required to balance the constitutional value of personal liberty against competing considerations such as the seriousness of the allegation, the possibility of the accused absconding, the likelihood of influencing witnesses or tampering with evidence, the criminal antecedents of the accused and the broader interests of justice. Judicial discretion, however, is not unfettered. It must be

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<sup>12</sup> The Bharatiya Nagarik Suraksha Sanhita, 2023, s.478 relating to bail in bailable offences; K.N. Chandrasekharan Pillai, *R.V. Kelkar's Criminal Procedure* (7th ed., Eastern Book Company, 2016).

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exercised in accordance with constitutional principles and settled judicial precedents rather than the gravity of the accusation alone.<sup>13</sup>

### 3.3 Anticipatory Bail

Anticipatory bail protects an individual who has a reasonable apprehension of arrest for a non-bailable offence. The Supreme Court has consistently held that this remedy is intended to protect individuals against arbitrary or motivated arrests while preserving the interests of effective investigation. Courts ordinarily examine the nature of the accusation, the applicant's antecedents, the possibility of misuse of liberty and the necessity of custodial interrogation before granting relief. The protection granted under anticipatory bail cannot be refused merely because the allegations are serious; each case must be assessed on its own facts.<sup>14</sup>

### 3.4 Default Bail

Default bail, often described as a statutory right, arises where the investigating agency fails to complete the investigation within the period prescribed by law. Once the statutory conditions are fulfilled and the accused is prepared to furnish bail, continued detention would be inconsistent with the constitutional guarantee of personal liberty. The Supreme Court has repeatedly affirmed that this right is indefeasible and cannot be defeated by subsequent filing of a charge-sheet after the right has accrued.<sup>15</sup>

### 3.5 Judicial Approach under the BNSS

Although the BNSS modernises criminal procedure, it does not alter the constitutional philosophy governing bail. Courts continue to rely upon precedents developed under the Code of Criminal Procedure because the underlying principles of liberty, fairness and proportionality remain unchanged.

The continuing relevance of decisions such as *Gurbaksh Singh Sibbia*, *Sanjay Chandra*, *Arnesh Kumar* and *Satender Kumar* Antidemocratically demonstrates that procedural reform cannot

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<sup>13</sup>*Gudikanti Narasimhulu v. Public Prosecutor*, (1978) 1 SCC 240; *Sanjay Chandra v. CBI*, (2012) 1 SCC 40; *State of Rajasthan v. Balchand*, (1977) 4 SCC 308.

<sup>14</sup>*Gurbaksh Singh Sibbia v. State of Punjab*, (1980) 2 SCC 565; *Sushila Aggarwal v. State (NCT of Delhi)*, (2020) 5 SCC 1.

<sup>15</sup>*Uday Mohanlal Acharya v. State of Maharashtra*, (2001) 5 SCC 453; *Rakesh Kumar Paul v. State of Assam*, (2017) 15 SCC 67.



substitute for careful judicial exercise of discretion.<sup>16</sup> Effective implementation of the BNSS therefore depends not merely upon statutory provisions but upon consistent adherence to constitutional values and judicial discipline.

#### **IV. CONSTITUTIONAL DIMENSIONS OF BAIL**

The jurisprudence of bail in India derives its constitutional legitimacy from the guarantees of equality, personal liberty and due process embodied in Articles 14, 21 and 22 of the Constitution. Although the Constitution does not expressly recognise a fundamental right to bail, the Supreme Court has consistently held that any restriction on personal liberty must satisfy the test of fairness, reasonableness and non-arbitrariness. Consequently, decisions relating to arrest and detention must conform to constitutional principles rather than merely statutory requirements.<sup>17</sup>

##### **4.1 Article 21 and Personal Liberty**

Article 21 provides that no person shall be deprived of life or personal liberty except according to the procedure established by law.<sup>18</sup> Judicial interpretation has transformed this provision from a procedural guarantee into a substantive protection against arbitrary State action. In the context of bail, Article 21 requires courts to examine whether continued detention before conviction is necessary or whether the objectives of criminal justice can be achieved by imposing appropriate conditions of release. Bail, therefore, is not merely a procedural remedy but an important constitutional safeguard against excessive pre-trial detention.<sup>19</sup>

The Supreme Court has repeatedly observed that imprisonment before conviction should not become a substitute for punishment. Unless detention is necessary to prevent absconding, protect witnesses, preserve evidence or maintain public order, personal liberty must ordinarily prevail. This constitutional approach has significantly influenced the development of bail jurisprudence in India.

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<sup>16</sup>*Gurbaksh Singh Sibbia v. State of Punjab*, (1980) 2 SCC 565; *Sanjay Chandra v. CBI*, (2012) 1 SCC 40; *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273; *Satender Kumar Antil v. CBI*, (2022) 10 SCC 51.

<sup>17</sup>CONSTITUTION OF INDIA. arts. 14, 21 & 22; *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

<sup>18</sup>M.P. Jain, *Indian Constitutional Law* (8<sup>th</sup>ed., LexisNexis 2018)1220; V.N. Shukla, *Constitution of India* (13<sup>th</sup>ed., Eastern Book Company 2017) 336.

<sup>19</sup>*Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81; *Gudikanti Narasimhulu v. Public Prosecutor*, (1978) 1 SCC 240.

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#### 4.2 Equality and Judicial Discretion

Article 14 requires that judicial discretion in bail matters be exercised fairly, consistently and without arbitrariness. While courts enjoy considerable discretion in deciding bail applications, such discretion must be guided by established legal principles rather than subjective considerations. Unequal treatment of similarly placed accused persons undermines public confidence in the administration of criminal justice and conflicts with the constitutional guarantee of equality before the law.<sup>20</sup>

The Supreme Court has therefore emphasised that factors such as the seriousness of the allegation, the likelihood of absconding, the possibility of influencing witnesses and the overall interests of justice must be assessed objectively. Mechanical refusal of bail merely because of the gravity of the offence is inconsistent with constitutional values.

#### 4.3 Constitutional Safeguards against Arbitrary Arrest

Article 22 complements Article 21 by prescribing procedural safeguards for persons arrested or detained. These include the right to be informed of the grounds of arrest, the right to consult and be defended by a legal practitioner of one's choice, and the requirement that every arrested person be produced before the nearest Magistrate within twenty-four hours. Compliance with these safeguards ensures that arrest does not automatically result in prolonged detention without judicial scrutiny.<sup>21</sup>

The decision in *Arnesh Kumar v. State of Bihar* marked an important step towards preventing unnecessary arrests by directing police authorities to exercise their powers with restraint and in accordance with statutory safeguards. The judgment reaffirmed that arrest is not mandatory merely because an offence is cognisable and highlighted the constitutional obligation to protect personal liberty during criminal investigations.<sup>22</sup>

#### 4.4 Critical Analysis

Despite the constitutional safeguards developed through judicial interpretation, their

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<sup>20</sup>*Sanjay Chandra v. CBI*, (2012) 1 SCC 40; *State of Rajasthan v. Balchand*, (1977) 4 SCC 308.

<sup>21</sup>CONSTITUTION OF INDIA. art. 22.

<sup>22</sup>*Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.

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implementation remains inconsistent. The continued predominance of undertrial prisoners in Indian prisons demonstrates that constitutional guarantees alone cannot prevent unnecessary incarceration. Delays in investigation, inadequate legal representation, routine denial of bail in appropriate cases and inconsistent application of judicial precedents continue to undermine the effectiveness of the constitutional framework.

The BNSS retains these constitutional protections but does not fundamentally alter the principles governing the grant of bail. Consequently, meaningful reform depends less on legislative change and more on the consistent application of constitutional values by investigating agencies and courts. Strengthening legal aid, ensuring timely disposal of bail applications and promoting reasoned judicial orders are essential to translating constitutional guarantees into practical reality.

## **V. LANDMARK JUDICIAL DECISIONS SHAPING BAIL JURISPRUDENCE**

Judicial interpretation has played a decisive role in shaping the law of bail in India. Although statutory provisions provide the framework for granting or refusing bail, constitutional courts have developed principles that ensure judicial discretion is exercised consistently with the guarantees of personal liberty and fair procedure. The following decisions have significantly influenced contemporary bail jurisprudence.

### **5.1 State of Rajasthan v. Balchand (1977)**

The Supreme Court's decision in *State of Rajasthan v. Balchand* laid the foundation of modern bail jurisprudence by observing that "bail is the rule and jail is the exception." The Court recognised that pre-trial detention should not become punitive and that deprivation of liberty before conviction must be justified by compelling reasons. This principle continues to guide courts while exercising discretion in bail matters.<sup>23</sup>

### **5.2 Gudikanti Narasimhulu v. Public Prosecutor (1978)**

In *\*Gudikanti Narasimhulu\**, Justice V.R. Krishna Iyer emphasised that bail decisions require a careful balancing of individual liberty and societal interests. The Court held that judicial discretion must be exercised on objective considerations such as the possibility of absconding, interference with witnesses and the nature of the offence, rather than on

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<sup>23</sup>*State of Rajasthan v. Balchand*, (1977) 4 SCC 308.

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subjective assumptions. The judgment reinforced that liberty occupies a preferred position within the constitutional framework.<sup>24</sup>

### 5.3 Gurbaksh Singh Sibbia v. State of Punjab(1980)

This Constitution Bench judgment remains the leading authority on anticipatory bail. Rejecting rigid limitations on the exercise of judicial discretion, the Court held that applications for anticipatory bail must be decided on the facts of each case. It clarified that anticipatory bail is intended to protect individuals against arbitrary arrest while ensuring that legitimate criminal investigations are not obstructed.<sup>25</sup>

### 5.4 Sanjay Chandra v. CBI (2012)

The Supreme Court reaffirmed that the object of bail is to secure the presence of the accused during trial rather than to impose punishment before conviction. The Court observed that prolonged incarceration of undertrial prisoners is inconsistent with the constitutional presumption of innocence and highlighted that detention cannot be justified solely on the seriousness of the allegations.<sup>26</sup>

### 5.5 Arnesh Kumar v. State of Bihar (2014)

Recognising the widespread misuse of arrest powers, the Supreme Court directed police authorities to comply strictly with statutory safeguards before making arrests in offences punishable with imprisonment up to seven years. The judgment emphasised that arrest should not be automatic and strengthened constitutional protections against arbitrary deprivation of liberty.<sup>27</sup>

### 5.6 Satender Kumar Antil v. CBI(2022)

In Satender Kumar Antil, the Supreme Court undertook a comprehensive review of bail jurisprudence and reiterated that unnecessary arrests contribute significantly to prison overcrowding and prolonged detention of undertrial prisoners. The Court issued detailed guidelines for investigating agencies and subordinate courts to promote a more liberal and

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<sup>24</sup>*Gudikanti Narasimhulu v. Public Prosecutor*, (1978) 1 SCC 240.

<sup>25</sup>*Gurbaksh Singh Sibbia v. State of Punjab*, (1980) 2 SCC 565.

<sup>26</sup>*Sanjay Chandra v. CBI*, (2012) 1 SCC 40.

<sup>27</sup>*Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.

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constitutionally consistent approach towards bail. The decision remains particularly relevant under the BNSS because the constitutional principles governing bail continue unchanged despite procedural reforms.<sup>28</sup>

### **Critical Evaluation**

These decisions collectively establish that the law of bail is founded upon constitutional values rather than mere statutory discretion. They consistently recognise personal liberty as the norm while permitting restrictions only where necessary to protect the administration of justice. Nevertheless, the persistent overrepresentation of undertrial prisoners indicates that judicial principles are not always implemented effectively at the trial court level. The continuing challenge therefore lies not in the absence of legal safeguards but in their consistent and principled application.

### **VI. WHETHER THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 HAS BROUGHT A PARADIGM SHIFT IN BAIL JURISPRUDENCE?**

The enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) represents one of the most significant reforms of India's criminal procedural law in recent decades. While the legislation replaces the Code of Criminal Procedure, 1973 and introduces several procedural innovations, it does not fundamentally alter the principles governing the grant of bail. The philosophy underlying bail continues to be shaped by constitutional guarantees of equality, personal liberty and fair procedure under Articles 14, 21 and 22 of the Constitution of India rather than by a radical statutory departure.<sup>29</sup>

The BNSS introduces reforms intended to improve the efficiency of criminal proceedings through greater use of technology, electronic communication, forensic investigation and time-bound procedural requirements.<sup>30</sup> These measures may facilitate quicker investigations and reduce unnecessary delays, thereby indirectly strengthening the right to seek bail. However, the statutory criteria governing the grant or refusal of bail remain substantially consistent with the earlier framework under the Code of Criminal Procedure. Consequently, the

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<sup>28</sup>*Satender Kumar Antil v. CBI*, (2022) 10 SCC 51.

<sup>29</sup>CONSTITUTION OF INDIA. arts. 14, 21 & 22; *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

<sup>30</sup>The Bharatiya Nagarik Suraksha Sanhita, 2023.

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principles developed by the Supreme Court under the previous regime continue to guide judicial discretion under the BNSS.<sup>31</sup>

The continuing relevance of decisions demonstrates that constitutional jurisprudence remains the primary source governing bail.<sup>32</sup> These decisions emphasise that arrest should not be routine, pre-trial detention must remain exceptional and judicial discretion must be exercised consistently with the constitutional commitment to personal liberty. The BNSS neither dilutes nor replaces these principles; instead, it operates within the constitutional framework established through judicial interpretation.

Notwithstanding these reforms, several structural challenges continue to affect the effective administration of bail. Delays in investigation, overcrowded prisons, inconsistent exercise of judicial discretion, limited access to competent legal representation and socio-economic disparities continue to contribute to prolonged detention of undertrial prisoners. Legislative reform alone cannot address these systemic deficiencies unless accompanied by effective implementation and institutional accountability.

Accordingly, the BNSS should be viewed as an important procedural reform rather than a substantive transformation of bail jurisprudence. Its long-term success will depend upon faithful implementation by investigating agencies and courts, timely disposal of bail applications and continued adherence to the constitutional principles evolved through judicial precedent.

## **VII. CHALLENGES IN THE ADMINISTRATION OF BAIL AND THE WAY FORWARD**

Despite a well-developed constitutional and statutory framework, the effective administration of bail in India continues to face significant institutional and procedural challenges. Judicial pronouncements have consistently reaffirmed that personal liberty occupies a preferred position within the constitutional order; however, the practical implementation of these

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<sup>31</sup>*Gurbaksh Singh Sibbia v. State of Punjab*, (1980) 2 SCC 565; *Sanjay Chandra v. CBI*, (2012) 1 SCC 40; *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273; *Satender Kumar Antil v. CBI*, (2022) 10 SCC 51.

<sup>32</sup>*State of Rajasthan v. Balchand*, (1977) 4 SCC 308; *Gudikanti Narasimhulu v. Public Prosecutor*, (1978) 1 SCC 240; *Gurbaksh Singh Sibbia v. State of Punjab*, (1980) 2 SCC 565; *Satender Kumar Antil v. CBI*, (2022) 10 SCC 51.

principles remains uneven. The continued predominance of undertrial prisoners in Indian prisons illustrates the gap between constitutional guarantees and their actual enforcement.<sup>33</sup>

One of the principal challenges is the routine exercise of arrest powers even in cases where custodial interrogation is unnecessary. Although the Supreme Court has repeatedly cautioned that arrest should not be automatic, investigating agencies frequently resort to unnecessary detention, resulting in avoidable deprivation of personal liberty. Such practices not only burden correctional institutions but also undermine the constitutional presumption of innocence.<sup>34</sup>

Another persistent concern is the delay in investigation and trial. Bail applications often remain pending for extended periods, while prolonged criminal proceedings result in undertrial prisoners spending years in custody before the determination of guilt. For economically weaker sections, these delays are further aggravated by limited access to competent legal representation and difficulties in furnishing bail bonds or sureties. Consequently, the availability of bail frequently depends not only upon legal entitlement but also upon an accused person's financial and social circumstances.<sup>35</sup>

The BNSS introduces several procedural reforms, including greater use of digital processes, forensic support and time-bound investigations, which have the potential to improve the efficiency of criminal proceedings. However, legislative reform alone cannot ensure effective protection of personal liberty. Meaningful implementation requires strict adherence to constitutional principles by investigating agencies, prosecutors and courts alike. Judicial discretion must be exercised consistently, supported by reasoned orders that balance the rights of the accused with the legitimate interests of society.

Strengthening the administration of bail therefore requires a combination of legal and institutional reforms. Arrest should remain a measure of last resort where statutory conditions permit. Bail applications should be decided expeditiously through reasoned judicial orders, while legal aid mechanisms must be strengthened to ensure that economically disadvantaged accused persons receive effective representation. Continuous judicial training, greater accountability in the exercise of arrest powers and regular monitoring of undertrial detention

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<sup>33</sup>National Crime Records Bureau, Prison Statistics India 2022 (Ministry of Home Affairs, Government of India, 2023); *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81.

<sup>34</sup> *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273; *Satender Kumar Antil v. CBI*, (2022) 10 SCC 51.

<sup>35</sup> *Moti Ram v. State of M.P.*, (1978) 4 SCC 47; *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81.

would further promote the constitutional objective of protecting personal liberty without compromising the administration of criminal justice.

The effectiveness of bail jurisprudence ultimately depends not upon the existence of statutory safeguards alone but upon their faithful implementation. A criminal justice system committed to constitutional values must ensure that liberty is restricted only where strictly necessary and that pre-trial detention does not become a substitute for punishment.

### **VIII. CONCLUSION**

The law relating to bail has always reflected the delicate balance between protecting individual liberty and ensuring the effective administration of criminal justice. While the Bharatiya Nagarik Suraksha Sanhita, 2023 has replaced the Code of Criminal Procedure, 1973 and introduced several procedural reforms, the underlying principles governing the grant of bail remain largely unchanged. The study therefore concludes that the BNSS has modernised the procedural framework governing bail without fundamentally altering its constitutional philosophy, which continues to be shaped by Articles 14, 21 and 22 of the Constitution and the judicial precedents interpreting those provisions. Constitutional values, particularly the protection of personal liberty and the requirement of fair procedure, continue to guide courts in deciding whether an accused should be released on bail.

This paper has demonstrated that the development of bail jurisprudence in India has been shaped primarily through judicial interpretation. Over the years, the Supreme Court has consistently emphasised that arrest should not be routine and that detention before conviction must remain an exception, justified only where the interests of justice genuinely require it. These principles continue to retain their relevance under the BNSS and provide the framework within which judicial discretion must be exercised.

At the same time, the practical difficulties associated with the grant of bail cannot be overlooked. Delays in investigation and trial, overcrowded prisons, inconsistent decision-making and unequal access to legal assistance continue to affect the effective implementation of the law. These issues demonstrate that legislative reform alone cannot guarantee the protection of personal liberty. The success of the BNSS will ultimately depend on its fair and consistent implementation by investigating agencies, prosecutors and the judiciary.

It is submitted that the BNSS should be regarded as an important step towards modernising criminal procedure rather than as a complete departure from the existing law on bail. The

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constitutional principles that have guided Indian courts for decades remain equally relevant under the new framework. A criminal justice system that truly respects the rule of law must ensure that personal liberty is curtailed only when there are compelling legal reasons to do so and that the power to arrest or detain is exercised with restraint and accountability.

Therefore, the effectiveness of bail jurisprudence should not be measured solely by legislative reform but by its ability to protect constitutional rights while preserving public confidence in the administration of criminal justice. The BNSS provides an opportunity to improve procedural efficiency, but its true success will depend on how consistently its provisions are implemented in practice. Ultimately, safeguarding personal liberty while ensuring the fair administration of justice remains the central objective of India's bail jurisprudence, and it is this balance that must continue to guide the evolution of the criminal justice system.

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