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Day-2 Legal Rumble [EDZORB30158]

Code of Criminal Procedure, 1973.

→ Arrest of Person:-

5/20

1. When a police office can arrest a person without warrant? How such arrest can be effected?

A-) Arrest is the deprivation of personal liberty of individual, therefore, it must be done in accordance with the provision provided in law for it to be legal.

* chapter V of Cop 6 deals with arrest of persons

Under code of criminal procedure ('code') arrest can be done by 1) Police officer — ① with warrant ② without warrant

② By Magistrate

③ By any person.

Under section 41 of the code, arrest without the warrant and order of Magistrate is provided. Such arrest is made by police officer in respect of cognisable offence committed by person.

* Section 151 Power to Prevent Commission of Cognizable offence

Further, section 41 provides that, police officer may arrest without warrant and Order of Magistrate if:-

① Cognisable offence has been committed in his presence

② If there exist Reasonable suspicion or

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Reasonable complaint has been made or credible information, has been recieved by police officer that person has committed offence, which is punishable upto 7 year of imprisonment and :-

Arnesh Kumar and DK Basu's case

(1) Police officer has reason to believe that arrest of such person is neccessary to :-

(a) prevent him from committing further offence

(b) Prevent him from tampering any evidence

(c) Causing injury, threat or promise to any witnesses

(d) make him comply with the procedure of court,

then such police officer may arrest without warrant.

Relate with Section 41B CDPC & Procedure for arrest

(3) If credible information has been recieved that any person has committed cognisable offence punishable for more than 7 year of imprisonment

(4) Any person is in possession of any stolen property or has recieved or is Theft of such stolen property committed by him

(5) Any person is Deserter of Armed forces of Union

(6) Any person is proclaimed offender

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(7) Any person obstructs the execution of duty by police officer, or escapes from the custody of such police officer

Offence u/s 353, 334

(8) His arrest is required by any police officer in whose jurisdiction he is committed crime

(9) If offence committed by him outside India, is punishable in India, then by law of extradition, he is required to be tried within India

41(2) In such circumstances under section 41, arrest w/o warrant can be made.

Further, under section 151 of code, to prevent any commission of cognizable offence arrest can be made by police officer without warrant.

Cognizable offence

Further, if there is any breach of condition imposed upon accused under section 432(3) then arrest can be made without warrant.

→ Such arrest can be effected by bringing the person into custody of police officer and then being produced before nearest Magistrate before 24 hours of his arrest.

Section 46 provides that arrest is made by touching the body of person to be arrested

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unless there is surrender of body to police officer on oral intimation.

Q2. Discuss the pre and post arrest procedure as mentioned under GPC.

6/20

Procedure of arrest is provided under section 46 of the code, however, before making such arrest certain requisites have to be fulfilled by police officer that are:-

* D.K. Basu v/s state of West Bengal

1) ~~[illegible]~~ Notice of appearance before police officer can be provided u/s 41A of code.

2) Person arrested to be informed of ground of arrest and his right of Bail in cases of Bailable offence [s.50]

3) Further, every police officer making arrest shall under section 41B, :-

* 41D relate with section 303 crpc

> Bear an accurate, visible identification of ~~[illegible]~~ his name

> Make memorandum of arrest which shall be attested by atleast one witness, and by the person arrested (respected member of the locality)

> inform the arrested person that he can inform about his arrest to his

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Sections 57 and 76 CrPC

Right to medical examination
Section 53A, 54 CrPC

family or friends.

Post arrest procedure:-

(1) Right of arrested person to meet his advocate during interrogation [s.41D]

(2) Produces such arrested person before Magistrate, before 24 hour of arrest [s.57]

(3) No unnecessary restraint to be made while arresting such person.

Right against self incrimination 20(3)

(4) Examination of arrested person by a medical practitioner [s.53]

(5) Identification of arrested person after arrest [s. 54A]

Q3. Discuss the guideline laid down by Honable supreme Court in relation to safeguard of Arrestee.

5

→ Arrest is restrain on liberty of individual to move freely which is also violation of fundamental right, therefore, such arrest must be legal and authorised by law to not violate the fundamental right of freedom under Article 19 of Constitution.

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Sec 167 ↓ When investigation cannot be completed within Period of 24 hours

While making arrest, police officers often use force which causes injury to persons, further, arrest of person who is not proved guilty, brings shame in society as his reputation goes down, therefore, in case of Jogindar Singh V. State of Bihar, Apex Court has laid down certain guidelines which needs to be followed mandatorily by police officer.

Such guidelines was further upheld in case of D.K Basu V. State of West Bengal, which was later incorporated under the code, by amendment (2005)

(1) Right to know the ground of his arrest. under section 50(1)

* Section 46 (2) Right to inform friends, family member of arrest [S. 41 A]

(3) Right to meet advocate during interrogation [S. 41D]

* Sec. 46 (4), Arrest in Case of Females (4) Bail can be provided to accused person in case of arrest of a Bailable offence & his right to Bail shall be informed to him [S. 50(2)] [Hussainara Khatoon V. State of Bihar]

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(5) Person arrested should not be detain for more than 24 Hour and should be bought before nearest magistrate. [Article 22 and section 57].

Further in case of Prem shankar shukla Vs. Delhi Administration, Apex court has held that No Handcuffing of person while arrest if it is not necessary.

Further such guideline was stated in Case of Arnesh Kumar V. State of Bihar, for stating the rights of persons arrested. and to safeguard this arrest.

→ Process to Compel Appearance And production of things.

Q1. When the warrant against an accused is not executed, what is the next step for compelling his appearance before the Court? (5+2)

→ Warrant is executed against person under chapter 6 of code, to compel the appearance of such person before court.

However, when warrant is not executed against the person, then court issue proclamation against such person for his appearance under section 82

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- Proclamation for person absconding

Section 82 Code.

Proclamation is issued, in writing, by the court, ordering the person to appear before court within 30 days of such issuance.

Such proclamation can be published and read publically before the residence of such person or; it can be fixed at some conspicuous place of house in which such person ordinarily resides. or; copy thereof shall be affixed at court house.

Court can also order that such publication in daily newspaper circulating in the place of residence.

Sec 83 Attachment of Property of person absconding

Under section 83 of the code, where the court has reason to believe, or is satisfied that such person is absconding or concealing himself, or will not obey the proclamation then can order for the attachment of property of such person

Sec 84 claims and objections to attachment

Attachment can be made along with the proclamation if the court is satisfied that such person is:-

① Ready to remove the property outside the Jurisdiction of court or.

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Sec 86 → Release, Sale and Restoration of Property.

(2) moving outside the Jurisdiction of court and about to dispose off such property.

* Make proper heading

Person who is proclaimed offender under section 82(4), is under the obligation to appear before court, when the warrant against him can not be executed.

Q2. When can warrant be issued by a court in lieu of summon?

→ Summon is issued by the court in cases of summon case, which are not punishable for more than 2 year of imprisonment [s. 2(x)], however, warrant is issued under warrant cases, which is punishable for offences with punishment of death, life imprisonment or more than 2 years of imprisonment. [s. 2(w)]

* even before or after the issue of summons

But before appearance

Under section 87, of code, court issuing summon can additionally or in lieu of summon, issue warrant, when it has reason to believe that the person to whom such summon to be issued has escaped or concealing himself or will not obey the summon duly served to him.

Or when the summon has been duly

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served has failed to appear with no reasonable excuse for such failure.

In such circumstances, warrant can be issued to summon case.

Q-3. What are ground on the basis of which search warrant may be issued?

Ans →

Search warrant is issued by court under the chap 7 of code, for production of things or document, which are required by court to be inspected for the purpose of investigation, inquiry and Trial.

Also mention Section 91 and 92 in brief

Search warrant is issued under section 93 of code, where by, any court, if has reason to believes that any thing or document is required and:-

(1) In Possession of other Party, to whom summon has been served and has not obeyed;

(2) Not known to the court, where such thing or document, is possessed by whom;

(3) For making any general search, not in respect of any thing specific,

may order to the police officer, not below the rank of sub-inspector, to

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search any place.

Section 94 Search of place suspected to contain Stolen Property / Forged documents

However, no such search warrant be issued for any thing or document in possession of postal or telegraph authority, or upon document's of a kind protected under Bankers Book Act

Such order however can be made by District Magistrate, or SDM or Chief Judicial Magistrate, under section 93(2) to search thing, document in custody of postal or telegraph authority.

Further, search warrant can issued for any thing, document which is in court's opinion objectionable or is received as stolen property by any person under section 94 of code by the court of Judicial Magistrate first class.

Objectionable item includes - (1) counterfeit coin, Forged docum. Stamps

(2) items under section 292 of IPC

The person against whom such order has been issued is supposed to be in possession

Further, under section 95 of code, search warrant can be issued for

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any thing, or document which has been forfeited by State government, and court has reason to believe that such forfeited thing or document is in possession or is at any place, then, it can issue for search warrant.

→ Information to Police and their power to investigate.

Chapter XII Info. to Police and their Power to investigate

Q1a What is FIR? Discuss it's evidentiary Value. What is the difference between FIR and complaint?

1. First information Report is the information in relation to the offence committed, given to police officer by any person.

FIR is not defined term in the code, however, section 154 of code provides, if any person reports any commission of cognisable offence to police officer, in writing or orally, shall be reduced in writing by such police officer, in his case diary as well.

Information must relate to an offence, it is recorded by police officer & made signed by the person giving such information. If the information relates to commission of any offence under section 376[A-D] then, it must be recorded by a woman

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police officer.

FIR is a substantive piece of evidence, but conviction cannot be based solely on the information received. Therefore, evidentiary value of FIR is merely corroborative in nature.

Under section 145 and 157, corroboration and cross-examination can be made on the bases of FIR as held in case of Aghnoo Nagesia V. State of Bihar.

FIR can be also be dying declaration under section 32(1), if the person giving such information has died, and the information relates to the cause and circumstance of his death.

In the case of Lalita Kumari V. State of UP, it has been held that FIR should be registered for it to be corroborative evidence by a police officer.

Further in case of State of Haryana V. Bhajan lal, it was held that it is mandatory for Police officer to lodge FIR, if the information is about commission of any cognizable offence.

FIR is different from complaint, as complaint as provided under section 2(d) means an allegation of any offence made before the Magistrate. Complaint is made by the

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* FIR as subsequent conduct u/s 8 IEA

person against whom an offence has been committed, therefore, only specific people can make complain, not as FIR, which can be made by any person.

	FIR	Complain
* FIR as dying declaration u/s 32(1)	(1) It is not defined under CrPC, however, Content of FIR is provided under section 154.	(1) It is defined under section 2(d) of code.
	(2) It is made before a police officer.	(2) It is made before a Magistrate
	(3) Purpose of FIR is to provide first hand information of commission of offence.	(3) Purpose of complaint is to take action from the Magistrate in respect of complaint made.
	(4) It is made in Cases of Cognisable offence.	(4) Complaint can relate to both Cognisable as well as Non-Cognisable offence
	(5) FIR can be made by any person	(5) Complaint is made by specific person only.

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Q2. Note on procedure to be followed for recording the confession of accused under section 164 of CrPC?

4

→ Confession is the acceptance of guilt by the accused, that he has committed the offence, thereby making him liable.

24/10/20

Under the code, confession of accused is recorded by Magistrate under section 164, as because, as per section 25 and section 26 of evidence act, confession recorded by the police officer is not admissible or recorded under the custody of police is not admissible unless they are recorded in the immediate presence of Magistrate [S. 26]

IEA

Write all the points mentioned U/S 164 CrPC

Further, under section 164 of the code, Magistrate before recording such confession shall warn the accused that he is not liable to make such confession and intimidate him that on making such confession he will liable for the offence.

Recording of statements

Magistrate, shall ensure that the confession made by accused is made voluntary and no threat, inducement or promise had been given to accused for making confession.

Further, refusal of accused on making

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Statement of offence against disable women

Confession or being silent upon question made by Magistrate, will not raise adverse inference against accused.

Confession recorded by Magistrate shall be recorded in writing, and signed by the accused after reading out the whole confession to him as recorded.

Q.3. Write detailed Note about the procedure given in CPC, when investigation can not be completed in 24 hour?

5

→ Under section 167 of the code, it is provided that the investigation by police officer shall be made and compeleted as soon as possible or within 24 hour. [Section 167(1)] The purpose of completing investigation soon, is to reduce the chance of evidence being lost or tampered by the accused.

Section 57 and 76 Cmpl

However, if the investigation is not completed within such 24 Hour, then, if police officer if thinks fit that further time is necessary for such completion, can request the Magistrate or court in writing for granting additional time for such completion of investigation and detention of accused is necessary.

→ Further, till the investigation is completed accused is sent to the custody of

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Magistrate not having jurisdiction.

police where grounds of information against accused is well-founded

→ If the Magistrate deems fit, can grant such detention of accused either in police custody or in Judicial custody for a term not exceeding 15 days in whole.

Such order can be made by Magistrate, having Jurisdiction or not, further, if the further detention is necessary, then such Magistrate may order the accused to be forwarded to the Magistrate having Jurisdiction to try.

→ Further under section 167(2), if further detention of period exceeding 15 days is necessary then Magistrate may grant Judicial custody of accused but not more than:

① 90 days, in cases of offence punishable with death, Life imprisonment or 10 years or more imprisonment.

② 60 days, in other cases.

Upon completion of such detention period as granted, and the police officer has still not filed with the charge sheet, then accused shall be released on Bail whether investigation has been completed or not, he is liable for bail [Default Bail] if he is prepared and does furnish Bail.

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Provided that, if the Magistrate is not available, the police officer may forward such accused to any executive Magistrate who can grant detention for accused but not more than 7 days. [S.167(2A)]

Therefore, it is a general rule as provided as under section 57 of Code, that accused shall not be detained for more than 24 hours by police officer, however, section 167 provides exception to such rule for better facilitation of investigation.

Further, if upon investigation it appears that no sufficient evidence or reasonable ground exist for keeping such accused in custody, then such police officer shall release the accused in custody.

→ Charge.

Q: Define charge. and enumerate the content of charge.

→ Charge is the allegations upon accused for which he is made liable for the criminal prosecution.
Under section 2(b) of the code, charge means and include any head of charge when the charge contains more than

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one head. i.e, charges can be made for more than one offence committed by the accused in a single transaction of offence.

Chapter 17 of the code provides for the provision of charge under section 211 to 224. As charge is made upon the offence committed by accused, it's purpose is to intimidate the accused upon which he is being prosecuted and make his defence.

Charge shall contain the details of the offence as committed, per further the punishment for such offence. Under section 211 of the code, it is provided if the offence committed by accused is not defined in the law, then charge shall contain the manner and particulars of offence committed.

Further, under section 212, the particulars as to time and place of offence shall also be recorded in charge.

eg:- If the alleged offence committed by person is cheating, then the manner in which such offence is committed shall be recorded in charge.
Accused can be made liable for more

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* Sec 212 than one offence, and for every seperate offence, seperate charge shall be framed.

* Sec 213 However, there can be Joint charge made against accused, if the offence is committed is of same type.

explaint

Content of Charge:-

- Charge shall contain the name of accused.
- the punishment of offence which he has committed
- Time and place of commission of such offence
- if such accused is liable for any previous punishment for any offence committed by him, then charge shall contain the enhanced punishment of accused.
- The particular of manner in which the offence has been committed.
- The law under which the accused is made liable.
- if the law does not provide any specific name to the offence, then such defination to be included in charge.

Q.2. For each offence there must be a separate charge, and for each charge there must be separate trial. Discuss.

2

→ Under section 211 of code, it provided that

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every charge must relate to the offence committed by the person and for every separate offence, seperate charge should be framed.

explain Section 218 to 223

Trial is the Judicial proceeding, upon which the acquittal or conviction of any person is pronounced. Trial is based upon the charge framed against the accused.

briefly

There can be separate trial for each charge or code provides that Joinder of charge for an Joint Trial.

Sec 220

Joint trial ~~of~~ upon the charges so framed must be of person only who has committed the offence.

more properly

Under section 218, it is provided that the accused in writing can apply to Magistrate to try together all or any number of charges framed against him.

eg:- A is charged with offence of theft and criminal Trespass, Magistrate if he thinks fit, on application of accused, try such accused Jointly for the charges of theft and criminal Trespass.

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Q.3. What is the effect of altering charge on the trial?

(2)

A-3. Charge once framed can be altered or added upon by the court under section 216 of the Code.

Such alteration or addition must be made before pronouncing the Judgement.

Section 216(3)

216(4) Upon adding or altering charges, the court must read and explain such charge to the accused.

216(5)

Mention with Proper heading

1) Procedure after Alteration :-

2) If the addition or alteration to the charge does not prejudice the accused or prosecution then such addition or alteration be deemed to be added as an original charge.

Section 217

2) If such addition/~~alteration~~ alteration to the charge, prejudice the accused or prosecution, then Magistrate may order for new trial of such altered charge.

However, no error or omission in framing of charge shall affect the trial unless such error or omission has caused failure of Justice. [S.215 and 464 of Code]

Recalling of witness

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→ Trial

1. Describe the procedure to be followed in session Trial:

5

→ Trial in session court is presided by session Judge, procedure of such trial is provided under section 225 to 237 [chap - 18]

Under section 225 of the code, cases which are committed to session Judge for trial u/s 209 is prosecuted by a public prosecutor only.

Public Prosecutor to open the case :-

[s.226] Prosecutor shall open his case by discribing the charge against accused and stating the evidence he proposes to prove against.

Discharge :-

[s.227] However, after hearing the submission of accused and prosecution, Judge if thinks fit, that there is no sufficient ground for proceeding, he shall then discharge the accused and record his reason.

Framing of charges :-

[s.228] However, under section 228, if considers that there is ground for trial against accused, Judge shall, if it is exclusively trial by the court of session, frame charges against accused, or if not exclusively triable by the court of session, transfer the same to Chief Judicial

Leave space

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Magistrate or any other Magistrate.

Plea of guilty :-

[S. 229] If the accused pleads guilty, Judge upon his discretion convict the accused

Entering evidence of Prosecution :-

313 / Explanation of Accused

Further u/s 230, date for examination of witness and issuance of process for compelling the attendance of any witness is fixed by court if accused does not pleads guilty.

After which the evidence and examination of prosecution is done u/s 231, upon which if Judge considers that there is no evidence against that the accused committed the offence, he shall order acquittal of such accused [S. 232].

Judgement on Acquittal or Conviction :-

[S. 233] However, if accused is not acquitted, thereafter his defence shall be called upon and evidences to be produced by him.

After the arguments under section 234, Judgement of acquittal or conviction is pronounced u/s 235, on point of law.

* Section 234 / Judgment

If the accused is convicted, judge can proceed against him u/s 360 or pass sentence accordingly.

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Q2. Discuss the Power of court to convert summon Cases into warrant cases :-

3+2

→ Under section 259 of code, court has the power to convert Case into warrant case trial.

summon trial are for the offence which are not punishable for more than 2 year of imprisonment, however, warrant trial is done in cases of punishment upto death, Life imprisonment or more than 2 year.

Make 4-5 enough

& Section 259

however, upon trial of summon Case, the Judge is of the opinion that accused shall be trial by way of warrant case and the punishment to be given to accused is more than 6 month of imprisonment, he may convert the summon trial into warrant trial.

Then explain this

Upon conversion of case, Magistrate may proceed to re-hear the case and re-examine the witnesses already examined.

Such conversion of summon trial into warrant trial is done for ends of Justice.

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Q.3. What do you understand by summary trial. what offences may tried summarily and by whom.

4/20

→ Summary trial procedure is provided under chapter 21 of the code [s.260 to 265]

Summary trial are done for the offences which are less serious in nature for which maximum punishment can be given upto 6 Month of imprisonment by Magistrate of second class [empowered by High court]

Procedure for summary trial | sec. 262

under section 260, summary trial can be done by:-

① Chief Judicial Magistrate
② Metropolitan Magistrate
③ Magistrate of 1st class (empowered by high court).

263 | Record in summary trial.

Offences which can be tried in summary way:-

① Not punishable with death, life imprisonment or exceeding 2 year.

② Theft of not more than ₹ 2000

③ Stolen property offences not more than ₹ 2000

explain property

④ Against property, where the value of it does not exceed ₹ 2000.

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(5) offences under section 456 and 454 of IPC

(6) offences under section 506 or 504 of IPC

Section (7) offence in respect of section 20 of cattle tresspass Act.

254 (8) Abetment of any such offences.

255 Further, Magistrate may upon discreation convert the procedure of summary trial

256 to any other procedure and proceed to re-examine such witness.

explain

brief Further under section 269, procedure for summarily trial shall be same as of summary procedure, however, no sentence of imprisonment for more than 3 months shall be passed in summary trial.

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→ Bail and Bond :-

Q1. Discuss in detail the provision relating to anticipatory Bail provided in CrPc.

6 → Bail is rule, Jail is exception, as said by Apex court in State of Rajasthan V. Balchand Balliya, where by court provided the importance of giving Bail to person who is confined in Jail.

Bail is provided in case of Bailable offence however, certain exception of providing bail in case of Non-Bailable offence based upon discretion of court is provided under section 437 of code.

Bail provision are provided under chapter 33 of code. The case of gurbaksh sibbia V. St. of Punjab is landmark Judgment u/s 438.

→ However, in case where the accused has apprehension that arrest can be made against him in case of commission of Non-Bailable offence, then he may apply to High court or session court, that in case of his arrest in such apprehension, he released on Bail under section 438 of the code.

The High Court or court of session upon reciving such application and

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determining the :-

① Nature and antecedent of offence alleged

② Previous antecedent of accused whether he was imprisonment or not

③ The possibility of accused fleeing from justice

④ Whether accusation is made in order to humiliate accused ;

reject or grant him the interim order for the grant of anticipatory Bail.

Further, if court does not provide such interim order or does not reject such application also, it shall be open to police officer to make the arrest of accused.

Further under section 438(2), High court or session court, while granting such application may impose condition upon the accused that :-

① He shall not leave country without court's permission

② He shall be available all the time for interrogation.

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(3) He shall not make any threat, inducement or promise to any witness.

(4) Any other condition as the court may deem fit.

Such application of anticipatory Bail is to be given only after giving public prosecutor, notice of such application and opportunity of being Heard against the accused.

Further, under section 436(3), upon the arrest of such person on apprehension shall be released upon Bail who is prepared either at time of arrest or at any time in custody of office to give Bail.

Q.2. When Bail can be taken in Non-Bailable offences?

5

Chapter XXII

Bail is provided in cases of Bailable offence under section 436, however, in cases of Non-Bailable offence, Bail can also be granted, upon the discretion of court.

Under section 437 of code, Bail in Non-Bailable offence is provided by the court, who is competent to try such

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offence.

In case of Non-Bailable offence, Application of Judicial mind is necessary as it depends upon the discreation of Judge to provide Bail or not.

However, under section 437(1), Bail may not be granted to accused if:-

(1) committed offence punishable with death or life imprisonment

(2) Had been previously convicted for such offence or for imprisonment for 7 year or more or had been previously convicted on two or more occassion of cognizable offence punishable for 3 year.

However, if such person is sick, infirm or is woman or under age of 16 year, then Bail can be given.

However under section 437(3), court can grant bail to accused on the offence committed upto 7 year of imprisonment, with certain condition imposed upon him :-

(1) that person shall attend with accordance of Bond.

(2) shall not commit an offence

Similar to which he is accused off
③ shall not make any threat, inducement or promise to any witness.
④ Any other condition as it deem fit.

Q.3. Explain the circumstances in which release on Bail is mandatory?

4

→ Bail in cases of Bailable offences are mandatorily to be given by court competent to try such offence.

Sec 436

Bailable offence is provided under s.2(a) as offences provided in the 1st schedule of code. Further, Bail can be provided in case of arrest with warrant or without warrant in such offences.

Section 437 (2)

Under Section 436 of code, Bail in Bailable offences are provided by the court.

437 (5)

Provided that if the person is indigent and unable to furnish bail/surety, then instead of taking bail from such person, court or officer, may discharge him on execution his bond.

437 (7)

→ 1 most imp.

In case of Hussainara Khatoon v. State of Bihar, it was held by court, that person arrested has right to know about

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His right to Bail in cases of Bailable offence

Further in case of Moti Ram v. State of M.P Supreme Court had held that right to be released on Bail is protected by virtue of Article 14 of constitution and Bail is Rule and Jail is an exception as said by court in case of State of Rajasthan v. Balchand Baliya.

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N Nishtha Singh

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