

# Bail - UPSC Notes

[Current Affairs Topics]

**Bail** refers to a legal agreement in which an accused can be released temporarily upon payment of a sum of money. An essential part of this agreement is that the accused provides a guarantee to appear in court. Applying for bail is a constitutional right for the accused in civil or criminal offences.

Although it is a constitutional right, this permission of leaving jail upon a legal promise is not granted in certain cases. Examples of such cases include repeat offenders. In this article, we have shared further information on bail, its types, provisions and significance.

## What is Bail?

***A bail is a legal procedure granted to an accused before their trial in court.*** Through the means of this legal agreement, an accused can pay a sum of money to the court in the assurance of their presence in court on the decided date and time. Bail is considered an important criminal procedure in democratic countries like ours.

Bail is defined differently in different countries. In the UK, a person on bail is obligated to abide by a set of restrictions. On the other hand, in the US, bail only refers to a bail bond of some sort of monetary or property deposit.

## Types of Bail (in India)

The Indian Constitution has a provision that offers every accused a fundamental right to apply for bail. It can be offered to the accused after determining the seriousness of their offence. Here are the **types of bail in India**.

### Interim Bail

This is a temporary bail where the higher court calls for documents before a final decision regarding the bail application can be taken. After

getting the documents, the higher court can decide if the accused will get permanent bail, an extension of the interim bail, or if the bail application will be completely rejected.

### Regular Bail


This type of bail is granted to a person who is in police custody. People who are accused of minor offences (criminal or civil in nature) usually apply for this type of bail. People can apply for regular bail under sections 437 and 439 of CrPC.

### Anticipatory Bail

This type of bail is granted by the Session Court or High Court, under section 438 of CrPC. Any person who believes that he/she will be arrested for a non-bailable offence can apply for anticipatory bail.

## Other Types of Bail

There are other types of bail that an accused can avail of, depending upon the location where he/she is at. Check out the information on some other types of bail here:

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- **Permanent Bail:** This bail is granted after hearing both the petitioner and the prosecution. The accused does not have to appear in court after this.
  - **Bail Before Arrest:** If the court feels that someone has been falsely accused, they grant bail before arrest. This bail is granted since the court would not like anyone's honour and dignity to be adversely affected.
  - **Protective Bail:** The accused gets protective bail by approaching the provincial court so that they can get a pre-arrest bail without touching its merit.
  - **Bail on Arrest:** This is granted under Section 497 of the Code of Criminal Procedure. This is available for both bailable and non-bailable offences by the accused.

- **Approaching Superior Court Directly:** If the accused has been prevented from approaching the lower courts for pre-arrest bail, the superior courts can grant it depending on the merit of the case.
- **Bail for Convict:** If the court feels that are accused deserves bail depending on the grounds of the case, they can grant bail even if the accused is convicted.

## How to Apply for Bail?

The process of applying for bail is quite specific. Here is information on how to apply for bail in India.

- When someone files an FIR (First Information Report), you will need to apply for bail.
- You are required to provide information about yourself and your thumbprints.
- Your background will be verified for any criminal records when you are applying for bail.
- The time required for the application of bail will depend on the severity of the charge.
- For minor offences, bail can be applied immediately.
- For major offences, you may need to wait for 24 hours; however, certain offences are non-bailable.

## Pre-Conditions for Getting Pre-Arrest Bail

Getting a pre-arrest bail is an uncommon circumstance. Here are some of the pre-conditions that are ascertained in order to give an accused a pre-arrest bail.

- **The seriousness of the Offence:** The gravity of the offence does not have any importance in pre-arrest bail cases.
- **Personal Motive:** If the accused can prove to the court that the plaintiff (who has filed the case) has some personal gain or an ulterior motive vis-a-vis the accused, pre-arrest bail can be granted.

- Not Guilty: If the initial investigation proves that someone has been falsely accused, it's easy to get pre-arrest bail.
- Fit Case: A civil case can be a fit case for appeal to the Supreme Court if the high court certifies that a point of law is involved and Constitutional interpretation is required.
- Surrender: The pre-arrest bail can be granted if the accused surrenders before arrest. However, this form of bail cannot be granted if the accused absconds.
- Submission of Bonds: If the accused submits the required bonds, they can get bail even for criminal cases.

