

Q.1. Distinguish between the expressions in any four of the following:

- a) Bailable offence and non-bailable offence
- b) - - - - -
- c) - - - - -
- d) Compoundable and non-compoundable offence.
- e) Complaint and First Information Report.

Ans:

1(a) already replied against the question of Nov. 2012

1(d) See answers of Nov 2012

1(e) do.

Q. 3(a) What is anticipatory bail? When can it be granted. (6)

Ans: Section 438 Cr.P.C. (Provided for 'Direction' for grant of bail to person apprehending arrest) does not use the term 'anticipatory bail' but that is clearly the subject with which the section deals. 'Anticipatory bail' means bail in anticipation of arrest. It is only on arrest that the order granting anticipatory bail becomes operative. (Ref: Savitri Agarwal Vs. State of Maharashtra, 2009 CRLJ 4290 (SC) at page 4292).

In fact 'anticipatory bail' is a misnomer. It is not as if bail is presently granted by the court in anticipation of arrest.

Contd.: What the Court does, is to make an order that in the event of arrest the person shall be released on bail. Manifestly there is no question of release on bail unless a person is arrested. Therefore it is only on arrest that the order granting anticipatory bail becomes operative.

(Ref: AIR 1977 SC 366).

The distinction between an ordinary bail and an order of anticipatory bail is that ~~whereas~~ whereas the former is granted after arrest and therefore, means release from the custody of police, the latter is granted in anticipation of arrest and is, therefore, effective at the very moment of arrest.

(Ref: Gurubaksh Singh Vs. State of Punjab, AIR 1980 SC 163).

Q 3(b) When can bail be granted in a non-bailable offence? Can a minor be refused bail?

Ans: According to Section 437 Cr.P.C. different considerations come into play when any person is an accused of non-bailable offence and there appear reasonable grounds for believing that he has committed an offence punishable with death or imprisonment ~~of~~^{for} life, in which case Magistrate cannot grant bail - as in Sec 437(1) Cr.P.C. Regarding all other non-bailable offences, the matter has been left to the discretion of the Court concerned and there is no dearth of decision of High Courts saying that bail should not be refused as a matter of punishment. (Ref: Bansilal Vs. State of

Contd. of Haryana, 1978 Cr.LJ 472)

Points to be assessed before granting bail in case of non-bailable offence ~~to~~ not punishable with death or imprisonment for life:

- i) nature and seriousness of the offence,
- ii) the nature of circumstances in which the offence was committed,
- iii) the prima-facie character of evidence,
- iv) the circumstances which are peculiar to the accused;
- v) position and status of the accused with reference to victim and witnesses;
- vi) reasonable possibility of presence of accused not being secure at the trial;
- vii) history of the case as well as investigation;
- viii) reasonable apprehension of witnesses being tampered with, or jeopardising his own life;
- ix) larger interest of public or the state of repeating the offences and similar other considerations which arise when a court is approached for bail in non-bailable offence.

(Ref: Gurudharan Singh Vs. State (Delhi Admn),
AIR 1978 SC 173).

The above rulings have been mentioned for only guidance. There is no hard and fast rule as to when bail should be granted.

Granting of bail in a non-bailable offence is discretionary, but discretion must be

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Contd: exercised judiciously. The principle to guide the Court is probability of accused appearing to take trial and not his supposed guilt or innocence.

(Ref: G. Narasimhulu Vs. Public Prosecutor,
(A.P.) 1978 Cr L.J 502; AIR 1978 SC 422)

Order for bail bereft of any cogent reasons cannot be sustained. Nature of offence is one of the basic considerations for the grant of bail—more heinous is the crime, the greater is the chance of rejection of bail, though, however dependent on the factual matrix of the matter.

Departmental Exam/WBCS (Exe)/Law I/Nov. 2007

Q. 1. Distinguish between the expressions in any four of the following:

- Hurt and Grievous Hurt
- Summons Case and Warrant Case.
- Robbery and Dacoity
- Inquiry and Investigation
- Wrongful restraint and Wrongful Confinement.

Ans:

- relating to I.P.C.
- Already replied in Nov. 2012 Answers.
- I.P.C.
- Replied in May 2002 Answers.
- I.P.C.

Q. 2. Explain the following terms:

(c) Offence.

Ans: Offence means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be filed made under Section 20 of the Cattle Trespasses Act, 1871 — as defined in Sec. 2(x) of the Cr.P.C.

This term has also been defined in Sec. 39 and 40 of Indian Penal Code. Details of Offences are prescribed in Sec. 39 Cr.P.C.

Q. 3(a) How is arrest made?

Ans: The term arrest has not been defined in the Act. Sections 41, 42, 43 and 44 of Cr.P.C. say that Police officers, private persons and Magistrates can arrest offenders. Sec. 46 lays down the manner of arrest by touching or by confining the body unless there is submission.

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Contd: 3 (a):

to custody. From this, it can easily be conferred that the term "arrest" means taking into ~~body~~ custody a person by arresting or by complete submission by the person to be arrested to the custody of the police or of other person. If the person to be arrested submits to the custody as said above, his arrest is complete. If, however, he does not so submit, the person executing the Warrant of arrest can touch his body or confine him to complete the arrest.

If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest. Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.

However, where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to the custody on an oral intimation of arrest shall be presumed and unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest.

Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise and if it is necessary to arrest a woman during the said period prior permission of the competent Judicial Magistrate, 1st class shall be obtained and shown to the woman to be arrested.

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Q. Nov, 2007

Q.3 (a) Is it a right of a person arrested to be informed of the grounds and of right of bail?

Ans: Yes. Every Police officer or other person making any arrest under Cr.P.C. shall forthwith give information regarding such arrest and place where the arrested person is being held.

Ans: Yes, As provided in Sec. 50 Cr.P.C.

Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

Further, as provided in Sec. 71 of the Code, the Court issuing warrant for execution may make an endorsement on the warrant to the effect that if the person arrested executes a bond with sufficient sureties for his appearance before the Court, he may be released on bail by furnishing security.

Further, as per Sec. 75 of the Code, the Police officer or other person executing a warrant of arrest shall notify the substance thereof to the person

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