

Good article to know about your right !!!

On Your Rights If Arrested

Arrest of a person

A person is arrested when a police officer or a citizen takes him into custody or otherwise substantially deprives him of his freedom of action so that he may be held to answer for a crime or an offence. The police in India do not have any power to detain anybody for questioning unless he is arrested with or without warrant.

Warrant of Arrest

It is a written order issued by a Court to a police officer to arrest and produce an offender or to search his premises for a particular thing. A police officer who executes the warrant shall notify the substance thereof to the person to be arrested and if he demands, shall show him the warrant. He is expected to bring the required person before the Court without unnecessary delay.

Valid Warrant

A warrant of arrest should be (i) in writing (ii) signed by the presiding officer of the Court and (iii) should bear the seal of the Court. It should also contain the name of the accused, his address and indicate the offence with which he is charged. If any of these factors is absent, the warrant is not in order and an arrest made in execution of such a warrant is illegal. Warrants are of two kinds:

i) Bailable

ii) Non-Bailable

A bailable warrant is a Court's order which contains a direction that if the person arrested executes a bail with sufficient sureties for his attendance before the Court, he may be released from custody. In that case it shall further state the number of sureties, the amount of the bond, and the time for attending the Court. (Section 71 Cr.P.C.) In case of a non-bailable warrant the direction for bail will not be endorsed on the warrant.

Arrest without Warrant

A police officer has power to arrest a person without warrant if he is suspected of having committed a cognizable offence. Normally in non-cognizable offences a police officer cannot arrest a person without a warrant from a Magistrate.

In the first Schedule of the Criminal Procedure Code (Cr.P.C.) offences have been classified and enumerated as cognizable and non-cognizable. The more serious offences such as murder, rape, robbery, theft, waging war against the State etc. are cognizable.

When can a person be arrested without a warrant?

A person can be arrested without a warrant:

1. If he is concerned in a cognizable offence or if there is a reasonable suspicion, complaint or information that he has committed a cognizable offence;
2. If he possesses implements of house breaking;
3. If he possess stolen property;
4. If he is proclaimed an offender;

5. If he obstructs a police officer on duty'
6. If he escapes from a legal custody;
7. If he is a deserter from the army, navy or airforce;
8. Where he is out of India, if he commits an offence punishable under any extradition law or under the Fugitive Offenders Act;
9. If he is released convict who breaks the restrictions imposed by the Court on his movements;
10. If he is suspected of preparing to commit a cognizable offence;
11. If he is habitual criminal;
12. If he, after committing a non-cognizable offence in the presence of a police officer, refuses to give the police his name and address or has given him a false name and address;
13. If he is required by a police officer of another police station who suspects that he has committed a cognizable offence;

How is Arrest made?

Arrest is complete when there is submission to custody by word or action, and in such a case touching or confining of the body of the person arrested is not necessary, but mere surrounding of a person by the police does not amount to arrest. (Section 46).

What happens if you resist arrest?

If you forcibly resist arrest, the police officer can use all means necessary to effect the arrest. (Sec. 46). He can even cause your death provided you are charged with an offence punishable with death or imprisonment. However, he is not justified in using force more than necessary to obtain the arrest (Sec.46). Therefore, unnecessary restraints or causing physical inconveniences tying of hands and feet are not permissible if there is no necessity for doing so.

What are your rights when you are arrested?

If you are arrested:

1. You must be informed of the reasons for your arrest (Fundamental Rights : Article 22 and Sec.50 Cr.P.C.)
2. You have a right to see the warrant if you are arrested under warrant (Sec.75 Cr.P.C.)
3. You have a right to consult a lawyer of your choice. (Fundamental Rights: Article 22 of the Constitution);
4. You must be produced before the nearest Magistrate within 24 hours (Fundamental Rights: Article 22 of the Constitution);
5. You must be told whether you are entitled to be released on bail. (Sec.50 Cr.P.C.)

Can you be handcuffed?

According to the latest ruling of the Supreme Court, normally an arrested person should not be handcuffed unless he is violent or he is desperate character or he is likely to attempt to escape or to commit suicide. Arrest is not a punishment. Hence unnecessary restraints are not permissible, if there is no necessity for doing so.

Search of a place entered by a person sought to be arrested Sec.47 of Cr.P.C. compels all persons to afford to the police facilities for search in a place for a person sought to be arrested.

Police officers have power to break open any door or window to carry out a search and to liberate himself or any person who is detained inside a premises.

Search of an arrested person

A Police officer has the right to search a person only after he is arrested. After the search the police officer must keep in safe custody all the articles taken from the person and give him a receipt for the same. A search of an arrested female should be done with strict regard to decency. A woman can be searched only by another women. (Sec.51)

Examination of arrested person by medical practitioner

A police officer not below the rank of a sub-Inspector may require an arrested person to be medically examined if he feels that this may provide evidence to prove the offence. (Sec.53)

- He may use reasonably necessary force to have the medical examination performed;
- The accused person can make a request to the Magistrate that he had not committed the offence. (Sec.54);
- A woman has a right to demand that she be examined by a woman doctor. (Sec. 53 A(2), 54);
- In case of torture in police custody, this provision of law must be taken advantage of and the victim should demand in the Court that he be medically examined to prove torture by the police.

Detention of an arrested person

Article 22 (2) of the Constitution lays down that every person who is arrested and detained in custody should be produced before the nearest Magistrate within a period of 24 hours of such arrest exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court. However, Sec.167 of the Cr.P.C. vests the power in the Magistrate to authorize the detention of the arrested person for more than 24 hours of the investigation cannot be completed within that period. In no circumstances can the accused be detained in custody for a moment more than twenty four hours without a special order of a Magistrate who can order his detention for a term exceeding 15 days on the whole. At the end of the 15 days he must be produced before the Magistrate. If there are adequate grounds for further detention in judicial custody (jail), he can pass an order to that effect, for a period not exceeding 15 days. But the total period of detention cannot exceed 60 days, whether the investigation of offence against him has been completed or not. The order of a Magistrate sanctioning the detention for an indefinite period is illegal. If the accused is not able to furnish bail during the stage of investigation he may be detained in judicial custody beyond 60 days. In case of a non-bailable offence the arrested person may be kept in jail until the trial is over.

Search Warrant

Search warrant is issued by the Magistrate for the following purposes:

- For the recovery of a document or thing which may not be produced in the court otherwise;
- For search of a house suspected to contain stolen property, forged documents, etc;
- Seizing any publication banned by the government;
- For discovery of a person wrongfully confined.

A search warrant gives the power to the police officer to search the required place and to seize the objectionable article known as "Mudammal". Police may use force to effect a legal entry provided that they have come, demanded entry and are unreasonably refused. The police officer executing the warrant may search any person in or about such place if that person is reasonably suspected of concealing on his person any article for which search is made. If the person to be searched is a female, then the search shall be made by another woman with the strictest possible decency.

Procedure to be followed

The officer making a search shall:

- Call upon two or more respectable residents of the locality (called Panches) to attend and witness the search. Failure to attend is an offence under Sec.187 I.P.C.
- Make the search in their presence. So, the search would be illegal if the panches: are kept outside while the search takes place inside the building;
- Make a list of all things seized and of all places in which they are found. (The list is called the panchanama);
- Get the list signed by the witnesses - Panchas
- Permit the occupant of the place to attend the search and give him a copy of the list of things signed at his request;
- Panches are not required to attend the court as witnesses unless specially summoned by the Court.

Rights of the occupants of the premises searched

- The accused himself cannot be compelled to produce any document or property which is likely to involve him in any criminal charge. Hence police have to get a warrant issued by a Court of Law;
- The police have no general power to enter or search your premises without your consent;
- The court may specify in the warrant a particular place only to which the search will extend;
- It is important that the warrant is read and the directions are taken note of before the police are allowed to make inspection;
- If the police have no legal authority to enter your premises you can refuse the entry;
- If they have no legal authority to remain, you have a right to insist that they leave;
- If they refuse you have the legal right to use reasonable force to remove them. (Sec.97, of I.P.C.)

Bail

Bail means releasing an arrested person from legal custody until his trial. Bail gives the freedom to seek advice from friends to consult a lawyer, to trace witnesses and to collect evidence for one's defence and to continue his job. When bail is not granted, the arrested person will be on remand and will be kept in custody to facilitate the investigation and to obtain evidence. Provisions regarding bail can be classified into 2 categories: i.e.,

- (1) Bailable cases
- (2) Non-Bailable Cases.

Bailable Cases

In the case of bailable offences, granting of bail is a matter of legal right. This means that bail cannot be refused and shall be granted by a police officer in charge of a police station having the accused in his custody. The release may be ordered on the accused executing a bond, even without sureties.

Non-Bailable Cases

In non-bailable cases, only the Court can order release of the accused person on bail. However, if the police officer or the Magistrate is of the opinion that there is no sufficient material against the accused and that the complaint needs further investigation he may also release the accused on bail.(Sec.437 (2) Cr.P.C.)

Normally bail is not granted when the accused person appears, on reasonable grounds, to be guilty of an offence punishable with death or imprisonment for life. But women, children under 16, and sick people can be released on bail by a Magistrate even if charged with offences punishable with death or life-imprisonment. An accused person is entitled to be released on bail as soon as reasonable grounds for guilt cease to appear, between the close of the case and the delivery of judgement. A person released on bail may be taken into custody by an order of the Court, if his

conduct subsequent to release is found to be prejudicial to a fair trial Sec.48 Cr.P.C. or if he does not observe the conditions of the bail.

Power of the Court to grant bail

The discretionary power of the Court to grant bail is judicial power and is given by established principles. Before granting bail the Court must consider the seriousness of the charge, the nature of the evidence, the severity of the punishment prescribed for the offences and in some cases the character, means and the status of the accused.

If you are arrested, how to get released immediately from police custody?

In warrant cases, find out the directions endorsed in the warrant and execute a bond with sureties (Sec.71):

- If the offence charges is bailable and the arrest is made without warrant, ask the police officer in charge of the police station to grant you bail after executing a bond.
- The police officer has the discretion to release a person on his executing a bond without sureties. (Sec. 436 of Cr.P.C.)
- If you are not granted bail immediately you have the right to telephone your advocate, a friend or a relative. Give your advocate the names and addresses of the possible sureties. If you don't have an advocate inform your friend or relative:
- The name of the Court where you will appear;
- The time the Court starts; and request him:
- To take to the Court anyone else who is prepared to stand surety;
- To contact an advocate if possible.

If you can deal with these matters before you go to the Court, you may be saved an unnecessary remand in custody.

Granting of Bail by the Magistrate

If a person is arrested for a non-bailable offence, and there exists a reasonable ground to believe the guilt of the person, he may not be granted bail by the police officer. In such cases the accused person must give a written application to the court to grant bail. The court must grant bail unless he is charged with a crime punishable with death or life-imprisonment. In such cases only the sessions or the High Court can grant bail.

Common police objections to bail

- The accused will not appear at his trial;
- He will interfere with witnesses or material evidence;
- He will commit further offences while on bail;
- Police enquiries are not complete;
- Further charges might follow;
- Stolen properties have not been recovered;
- The co-accused are absconding;
- The weapons with which the crime was committed has not been recovered.

Normally the police make an application for the remand of the accused.

In such an application they give their reasons for further detention of the accused in custody. The reasons given by the police must be refuted to the extent possible.

Application for Bail

- If the accused can afford an advocate he can make an application and represent the accused before the judge;
- If the accused cannot afford an advocate he may make a written application to the judge. For this he must get an application form from the prison staff and complete it as fully as possible giving sufficient reasons to convince the judge of the need of granting bail.

The following special grounds for release must be mentioned in the application:

- Condition and state of accommodation; whether there is a possibility of eviction in case bail is not granted;
- Whether he is likely to lose his job;
- How refusal of bail would create hardship to the dependent members of the family;
- How keeping in custody would affect the poor state of health and treatment.

Refusal of Bail by the Magistrate

If bail is refused, the Magistrate must record the reasons for the same. Such a record is necessary to make a proper appeal for bail in higher Courts.

Appeal

If application for bail is rejected by the Magistrate, the accused person can appeal to a Sessions Court or High Court. Disagreement with the objections raised by the police in granting bail or the fact of no objection raised in the Court must be incorporated in the application for bail. If one's application is rejected, one may try again in one's next Court appearance.

Conditions for Bail

The Magistrate may grant a bail:

- Without any condition
- Subject to special conditions;
- Subject to bond with or without sureties.

Special conditions usually state that the accused person must report to the police station at specified times or surrender his passport. One can challenge in a Court any unreasonable condition imposed by the Magistrate. If the Court refuses to change the conditions, the accused person can reject them. But in that case he will not be released until his appeal is heard and disposed of in his favour.

Bond and Sureties

- An accused person may be released on personal bond with or without sureties;
- Sureties are people who guarantee a sum of money for appearance of the accused in the Court on the appointed day and time.
- Those who stand as sureties must be present in the Court and if asked must guarantee the Court under oath that they are prepared to act and have sufficient funds;
- They can file affidavits before the Court stating the fact to show that they have sufficient funds to pay the surety and that they are even otherwise fit to be sureties;
- The Magistrate has the power to reject the surety without giving any reason. If the sureties are not in the Court, the arrested person will be kept in custody until the police have interviewed them and found them to be satisfactory;
- Sureties must be over 18, have a permanent address and have sufficient money to cover the amount of surety after payment of all their debts. The sureties may carry to the Court documents such as ration cards, rent receipts, provident fund slips, salary slips and income tax challans;

- The police and the Magistrate have no right to reject sureties on ground of their personal character, political opinions, criminal records or sex, unless they are professional sureties.

Bail after Conviction

If an accused person is found guilty, the Magistrate will pass the sentence after considering his past record. If the convicted person wants to appeal against his sentence in a higher court, the Court which passed the sentence must release him on bail.

- When the sentence is for imprisonment for a term not exceeding 3 years, or;
- When the offence for which the person is convicted is a bailable one and the person is already on bail. The release will be for a period that will enable the convict to present the appeal and get the orders of the appellate Court. Once a person files an appeal against his conviction, the appellate Court may suspend the sentence and release him on bail or on personal bond.

Anticipatory Bail

When a person has reason to believe that he may be arrested for a non-bailable offence, he may apply to the High Court or to the Court of Session for a direction that in the event of such an arrest he may be released on bail. If such a person is arrested without a warrant by a police officer and if he is prepared to give bail, he must be released on bail. In case a warrant is issued against the accused by a Magistrate, it. The purpose of the provision is to relieve a person from disgrace by being detained in jail for some days before he can apply for bail when he is implicated in a false case by a rival.

Recent Observations and Recommendations of the Supreme Court on Bail

- The Bail system prevalent in our country is oppressive and discriminatory against the poor, since the poor would not be able to furnish bail on account of their poverty. The court, by ignoring the differential capacity of the rich and the poor to furnish bail and treating them equally, produces inequality between the rich and the poor.
- The bail system should be thoroughly reformed so that it should be possible for the poor to obtain pre-trial release as easily as the rich without jeopardising the interests of justice.
- The Court and the police must abandon the antiquated practice of release only against bond with sureties, and if the accused has ties in the community and there is no substantial risk of non-appearance, he may be released on his personal bond without monetary obligation, subject to penalty in case of breach.
- The amount of bond the Court fixes to release the accused on personal bond should not be based merely on the nature of the charge but on the financial capacity of the accused and the probability of the absconding.
- When the accused is released on personal bond, the Court or the police should not insist upon inquiring into his solvency as a condition of acceptance of his personal bond.