



BAIL UNDER TAX REGIME

The offence under the various tax statutes like income tax, customs, goods and services tax, Foreign Exchange and Management Act (FEMA)¹, Prevention of Money Laundering Act (PMLA) and other allied legislations empowers the respective tax authorities to arrest the accused person for commission of the offence as mentioned under the legislation.

Generally, the offences of grave or serious nature are cognizable² and non-bailable offences³. The nature of the offences are classified as cognizable/non-bailable or non-cognizable/bailable as per the respective legislation.

Further, the pre-prosecution sanction is mandatorily required from the senior officials who shall examine the evidences and pursuant to such examination shall provide consent to initiate prosecution against the offender, as per the respective legislation.

Bail Procedure

1. Section 436 of Code of Criminal Procedure, 1973 (hereinafter referred as **CrPC**), provides mechanism regarding bail for bailable offence. Additionally, as per the respective Act, appropriate authority has power of granting bail for bailable offences.

¹ Preceding legislation – Foreign Exchange Regulation Act.

² Section 2(c), Code of Criminal Procedure, 1973.

³ Section 2(a), Code of Criminal Procedure, 1973.



2. Under Section 437 of CrPC, prescribes the procedure for bail application filed by an arrestee for alleged commission of the offence before the learned subordinate courts i.e. other than Hon'ble High Court or Court of Session.
3. In Section 438 of CrPC, provides procedure to obtain an anticipatory bail before the appropriate High Court or the Court of Session for restraining any coercive actions against a person who is apprehending an arrest for a non-bailable offence.
4. A bail application may be preferred by the arrestee before the appropriate High Court or the Court of Session under Section 439.

However, it is important to note that the tax statutes as mentioned hereinabove, prescribe constitution of Special Courts for adjudication, thereby, the bail applications for the offences are preferred before these Special Courts constituted under the respective legislations.

Arrest must be on reasonable grounds

In ***Arnesh Kumar v State of Bihar***⁴, the Hon'ble Supreme Court has held that automatic arrest for a non-bailable offence should not be done by the authorities and the arrest should be done after following the due process prescribed under Section 41 of CrPC.

Default bail when the Investigating Agency is Delaying Investigation

In ***Hussainara Khaton v State of Bihar***⁵, the Hon'ble Supreme Court held that under Section 167(2) of CrPC the investigation is required to be completed within time bound manner and such actions has caused in increasing number of undertrial prisoners which is infringing their fundamental right. The Hon'ble Supreme Court in ***Fakhrey Alam v State of UP***⁶, has held that default bail under the conditions specified in first proviso of Section 167(2) is a fundamental

⁴ (2014) 8 SCC 273.

⁵ (1980) 1 SCC 93.

⁶ Criminal Appeal No. 319/2021.



right established under Article 21 of the Constitution and delay in completion of investigation shall be ground for grant of bail.

Bail after Charge-sheet

In ***Laxman Irappa Hatti v State of Maharashtra***⁷, the Hon'ble Court held that the filing of a charge sheet is a change in circumstance vis-à-vis the earlier bail application. Further in ***Babu Singh v State of UP***⁸, the Hon'ble Court laid down that the principle of *res judicata* is not applicable in bail matters. Additionally, in ***Sanjay Chandra v CBI***⁹, the Hon'ble Court held that after filing of charge-sheet, the arrestee is ought to be released on bail.

In ***Jitender Kumar v Government of NCT of Delhi***¹⁰, the Hon'ble Court held that the economic offences are not heinous offences in the nature. Therefore, an arrestee can be enlarged on bail.

General Conditions for bail

The general conditions while granting bail by the learned Courts includes:

- Personal security and bond money
- Surrender of passport to restrict the travelling of the arrestee
- Presence before the learned Court or the authority for cooperation in investigation
- Not to create hindrance in the investigation or tamper with evidence or coerce or influence the witnesses.

The arrest is a violation and infringement of the fundamental right of life enshrined under Article 21 of the Constitution and restricting such right by the authority of law by the appropriate authorities is to be as per the procedure established by law. The learned Courts have the duty

⁷ 2004 Cri. L.J. 3802.

⁸ (1978) 1 SCC 579. Similar ratio in *Usmanbhai Dawoodbhai Memon v State of Gujarat* [(1988) 2 SCC 271]; *Sulakhan Singhayar v. Smt. Kuldeep Kaur* [1996 JCC 107]; *Rajender Singh Sethia v State* [1988 Cri. L. J. 749]

⁹ (2012) 1 SCC 40.

¹⁰ 2016 (1) JCC 652.



to balance between the rights of an individual and governmental agencies.

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¹¹ Majesty legal is law firm and aim of the present article is to provide insights regarding procedure of bail under various tax legislations. The opinions presented in the article are personal in nature and not to be deemed as legal advice.