

# The Shield of Liberty:

## A Guide to Anticipatory Bail in India

### 1. Understanding Anticipatory Bail

- A Pre-Emptive Shield Against Arrest**  
Legal direction to release a person on bail in the event they are arrested on suspicion of a non-bailable crime.
- Grounded in "Reason to Believe"**  
Applicant must show a tangible and credible apprehension of arrest, not just a vague fear (e.g., FIF filed, specific threats).

**Legal Basis: Section 482 BNSS, 2023**  
This new provision retains the power from the old Section 438 of the CrPC, 1973, giving concurrent jurisdiction to High Court and Court of Session.

**Only for Non-Bailable Offences**  
For bailable offences, bail is a matter of right and can be granted by police, making this special remedy unnecessary.



### 2. The Guiding Principles: Landmark Supreme Court Judgments

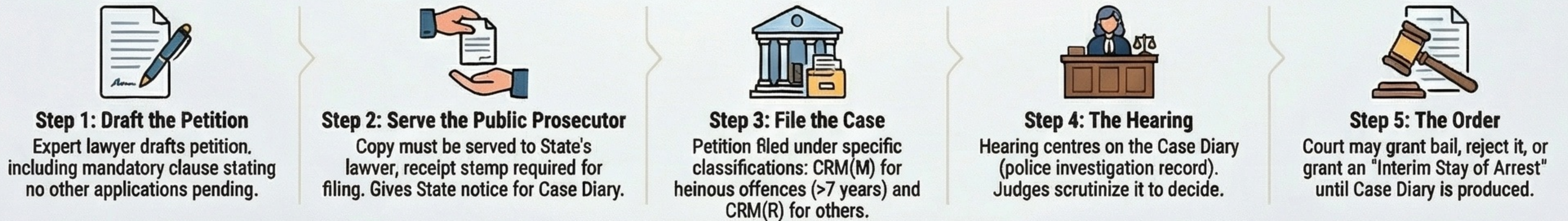
**Gurbaksh Singh Sibbia (1980): No 'Straitjacket Formula'**  
Court's discretion is wide, not restricted by rigid rules. Linked to fundamental right to liberty under Article 21.

**Sushila Aggarwal (2020): The 'Open' Bail Principle**  
Supreme Court ruled anticipatory bail should not normally be time-bound and should last until trial ends.

#### Sushila Aggarwal Judgment Rulings

Aspect	Supreme Court Ruling
Duration	Should ordinarily continue until trial concludes; not automatically time-bound.
Limitability	Courts can impose a time limit only if specific facts of the case warrant it.
Conditions	Courts can impose conditions like surrendering a passport or reporting to the IO.
Summons	Protection does not end when a charge sheet is filed or summons are issued.

### 4. The Calcutta High Court Procedure: A Step-by-Step Flow



### 6. Final Recourse: Appealing to the Supreme Court

- Special Leave Petition (SLP)**  
If High Court rejects bail, final option is to appeal to Supreme Court under Article 136.
- Critical 90-Day Deadline**  
SLP must be filed within 90 days of rejection order, but practically filed within 48-72 hours to prevent arrest.
- Surrender is Not a Pre-Condition**  
Unlike appeals against conviction, petitioner not required to surrender to custody before hearing.
- Requires a Specialist Lawyer**  
SLP can only be filed by an Advocate on Record (AOR), a lawyer with special SC examination.

### 3. No-Go Zones: When Anticipatory Bail is Barred

- Statutory Bars in Special Acts**
  - SC/ST (Atrocities) Act, 1989: Section 10**  
Certain laws contain clauses that override the general provision for anticipatory bail.
  - NDPS Act (Narcotics): Section 37**  
Imposes strict "nvin condition" test for commercial quantities, reversing burden of proof.
  - UAPA (Terrorism) & PMLA (Money Laundering)**  
Similar stringent conditions make anticipatory bail exceptionally difficult.
- Common Judicial Grounds for Rejection**
  - Declared a 'Proclaimed Offender':**  
Absconding person next, courts will deny bail on specific grounds.
  - Custodial Interrogation is Necessary:**  
If police need to recover weapon or uncover conspiracy, court prioritizes investigation.

### 5. A Modern Safeguard: The Power of Section 35 BNSS

- No Automatic Arrest for Minor Offences**  
For offences with punishment of less than 7 years, police cannot arrest mechanically. They must first issue a "Notice of Appearance."
- Compliance is Your Protection**  
If accused complies with notice, they shall not be arrested unless police record specific reasons.
- Non-Cooperation is a Trap**  
Ignoring a Section 33 notice provides police a valid reason to arrest, strong ground for High Court to reject bail.