

# 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., Fift 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 Sibia (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



### Step 1: Draft the Petition

Expert lawyer drafts petition, including mandatory clause stating no other applications pending.



### Step 2: Serve the Public Prosecutor

Copy must be served to State's lawyer, receipt stamp required for filing. Gives State notice for Case Diary.



### Step 3: File the Case

Petition filed under specific classifications: CRM(M) for heinous offences (>7 years) and CRM(R) for others.



### Step 4: The Hearing

Hearing centres on the Case Diary (police investigation record). Judges scrutinize it to decide.

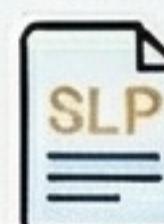


### Step 5: The Order

Court may grant bail, reject it, or grant an "Interim Stay of Arrest" until Case Diary is produced.



## 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 (AGR), 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 "ninth 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 nexus, 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, setting ground for High Court to reject bail.