

# Code of Criminal Procedure, 1973 — Rules on Bail & Anticipatory Bail

Criminal Procedure Rules · Bail Provisions

## 1. Regular Bail (Sections 436–439 CrPC)

- **Section 436** — bail as of right in bailable offences.
- **Section 437** — bail in non-bailable offences, at the discretion of a Magistrate, subject to restrictions for offences punishable with death or life imprisonment.
- **Section 439** — special powers of the High Court and Court of Session regarding bail, including the power to grant bail even in serious offences.

## 2. Anticipatory Bail (Section 438 CrPC)

Section 438 allows a person who apprehends arrest on an accusation of a non-bailable offence to apply to the High Court or Court of Session for a direction that, in the event of arrest, they be released on bail. Factors considered include the nature of the accusation, the applicant's antecedents, the possibility of the applicant fleeing justice, and whether the accusation is made to injure or humiliate.

## 3. Key Case References

**Gurbaksh Singh Sibbia v. State of Punjab (1980)** — the Constitution Bench held that Section 438 should be interpreted liberally, and courts should not impose rigid, exhaustive conditions on the power to grant anticipatory bail.

**Siddharam Satlingappa Mhetre v. State of Maharashtra (2011)** — reaffirmed the liberal approach and laid down factors relevant to the exercise of discretion under Section 438.

## 4. Exam-Focused Summary

- Distinguish 'bail' from 'anticipatory bail' with the relevant sections.
- List the factors a court considers before granting anticipatory bail under Section 438.