

Receiving Bail



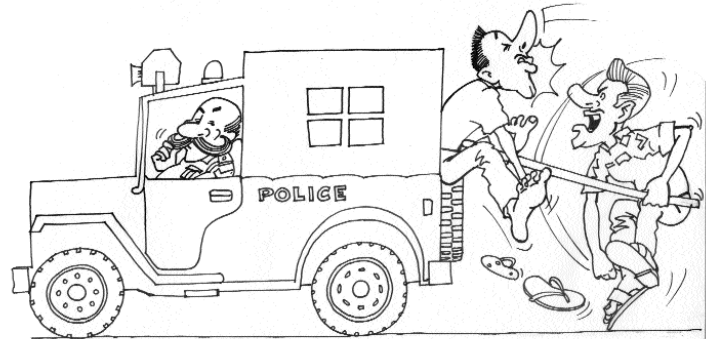
**Police reforms too important to neglect,
too urgent to delay...**

This booklet has been developed by the **Commonwealth Human Rights Initiative (CHRI)** for the **Ministry of Home Affairs** as a part of a series called Police & You: Know Your Rights.

CHRI is an international, independent, non-profit, non-governmental organization headquartered in New Delhi. Its objectives are to promote the practical realization of human rights in the countries of the Commonwealth. CHRI educates on human rights issues and advocates for greater adherence to human rights standards. For more details please visit <http://www.humanrightsinitiative.org>.

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One day Inspector Khan's jeep drove into Kamla Nagar and entered Ramu Kaka's shop. They called him out and told him that he was adulterating some of the foodstuffs in his shop and so they were going to arrest him. Ramu kaka argued and resisted but finally



USE OF EXCESS FORCE

Havildar Bhan bundled Ramu Kaka into the jeep and took him to the police station. Within a few hours of the arrest, the police

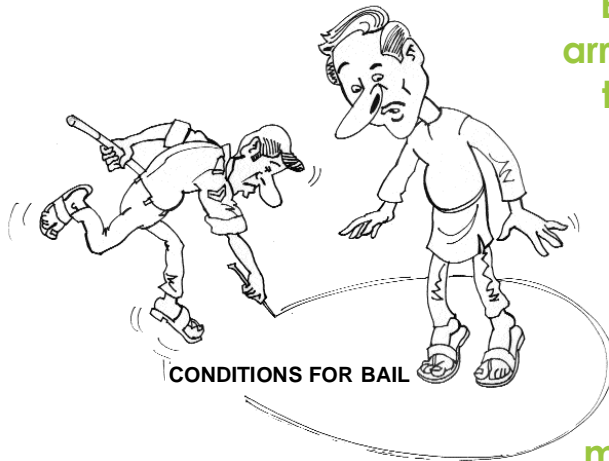
allowed Ramu Kaka to meet Dadaji. Ramu Kaka wept and said to Dadaji "I can't stay in prison - who will look after my family while I am here? Please, please help me".



A PERSON IN POLICE CUSTODY HAS A RIGHT TO INFORM HIS FRIENDS AND RELATIVES

"Well," said Dadaji, "Have you thought of taking bail?"

"I haven't heard of this. **What is this bail?**" asked Ramu Kaka.



"**Bail is the release of an arrested person on a promise that the person will appear before the court or police when asked to and that the person will follow the conditions set by them.**" Dadaji answered. "This promise is usually backed by a certain amount of money that will have to be paid if the accused doesn't do what he/she is supposed to, like not appearing in the police station when he has to and so on."

"How do I know that I will get bail? Is it a right?" asked Ramu Kaka.

"**One has the right to be released on bail depending on whether the offence that one has been arrested for is listed as bailable or non-bailable in the CrPC or the Criminal Procedure Code.**" replied Dadaji.

"What are bailable offences?" Ramu Kaka asked.

"Offences that are of less serious nature fall under **bailable offences. A person who is arrested for a bailable offence has a right to be released on bail after the arrest.** Suppose you have been arrested for quarreling Ramu, that is a bailable offence and you have the right to receive bail. The police are supposed to inform those arrested whether an offence is bailable or non-bailable." did the infrom you said Dadaji?

"No- they only told me why I was arrested. Were they supposed to tell me about the bail as well?" asked Ramu Kaka.

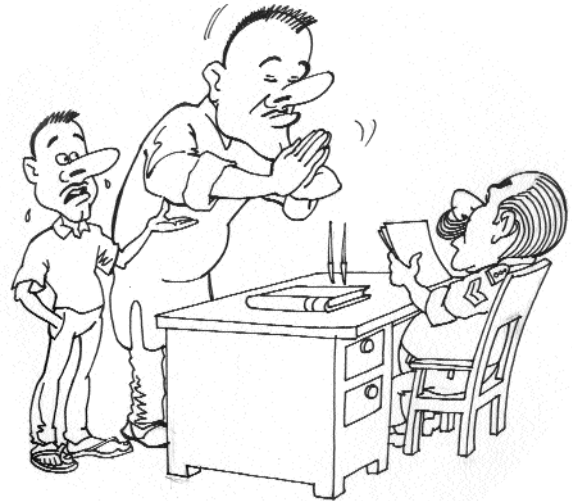
"Yes, they were. It is the duty of the police to inform the arrested person about the right to be released on bail" replied Dadaji.

"How is bail given?" asked Ramu Kaka.

"Bail is given by the police or the court when a bail bond is made. A bond is a promise, which has legal backing. A bail bond may be a Personal Bond or a Surety Bond." explained Dadaji.

"This is all too complicated, now what is a surety bond?" asked Ramu Kaka.

"A surety bond is a bond that requires the arrested or detained person to produce another person - usually someone who is considered responsible in the community - to stand as 'surety' for them." Dadaji continued, "The person standing as surety promises that the arrested or detained person will follow the bail conditions and if the person does not do so, then the person who is standing as surety will have to pay a certain amount of money. In your case your brother can be your surety for you." Said Dadaji.



A SECURITY BOND

"But there must be some requirements for a surety bond? What are they?" enquired Ramu Kaka.

"There are a few requirements for a person to be your surety." said Dadaji, "An official document or an affidavit has to be given with the surety bond. In the affidavit the surety must impress the fact that the relationship with the accused is such that the surety can have some influence over the person who

is involved in the crime. The document will involve details of the person standing surety:

- **present or permanent address**
- **Proof of identity** - this can be done by attaching a copy of the passport, ration card, voter card or official identity card.
- **Proof of financial soundness** - this can be done by attaching a copy of the income tax returns, a salary certificate from the employer, a fixed deposit receipt, the title deeds of moveable or immovable properties or a bank statement or any other such document.

"But, there is one problem. My brother lives in Orissa. Couldn't they reject a surety if he stays so far from here?" asked Ramu Kaka.

"Well, one thing to keep in mind is that **a surety cannot be rejected because someone is from a different district or state**" added Dadaji.

"You know, I was thinking," said Ramu Kaka, scratching his head, "I wouldn't like my brother to get involved in this kind of thing. He never liked any involvement with the Police and I can't think of anyone else who would stand as a surety for me."

"If you can't get a surety, then you should ask the police or court for a release on a personal bond." Dadaji answered, "A personal bond is a promise given by an arrested or detained person that they will appear before the court or the police when they are supposed to and will follow the conditions laid down in the bond." He added.

"But will the police just let me take out a personal bond?" Ramu Kaka asked.

"If you can't find a surety and decide to take out a personal bond, then **you must convince the police that you have roots in the community, that you will not run away and that you will follow the conditions of bail.**" Dadaji went on, "The Supreme Court has said that **while deciding whether to let you take a personal bond, the police must consider:**

- How long you have lived in the community
- Your current employment and past history of employment
- Your family ties and relationships
- Your general reputation and character
- Your earlier criminal record including record of release on bail
- whether responsible persons in the community can vouch for your reliability
- the nature of the offence you have been charged with

- **how likely it is that you will be convicted**
- **how long your sentence will be if you are convicted**

"Humm,I have another question, this is really worrying me, Dadaji, you said that there are certain conditions that need to be followed? Suppose I am unable to meet any particular requirement, then what will happen to me?" Dadaji rubbed his chin and said "Beta, don't worry, in that case you will have to produce the bail amount". Ramu Kaka got agitated, "what if this bail amount is too high?" Ramu Kaka asked, thinking of ways to arrange for the money if the need would arise.

"I don't think that this should be a very large concern of yours, Ramu." Dadaji replied, **"The law says that the bail amount cannot be very high. The Supreme Court has said that the bail amount should not be based only on the offence the person is accused of, but should be fixed keeping in mind the financial position of the accused."**

"But what if the police don't listen to all these directions and keep my bail very high? What should I do then?" asked Ramu Kaka, still a little concerned.

"In a situation where the bail is too high for the accused, you could approach the High Court or the Sessions Court to

reduce the bail amount. Now, do you have any more questions?" Dadaji asked.

"Does any money have to be deposited with the police or the court for release on bail?" Ramu Kaka asked.

"No, money does not have to be deposited at the time of giving bail. However, the police or the court may ask for proof that bail can be paid, by asking for a bank statement, salary slip or fixed deposit receipt showing a sum equal to the bail amount or for copies of title deeds of property equal to the bail amount." answered Dadaji.

"Thank you for helping me understand" said Ramu Kaka, appearing much more relaxed.

"That's alright - its important that you understand every step of what is happening to you." Ramu Kaka nodded and Dadaji went on, "I'll come back in a few hours so that we can discuss what to do next."

When Dadaji returned to his house, he found Vineet waiting there. Vineet had closed his PCO booth for the day to meet Dadaji.

"Dadaji, you must be knowing that my brother Krishna has been arrested for burning down Mr. Sharma's shop. I fear now that the police will come and get me next, because I was the last person who saw Krishna before the fire took place. What should I do?" asked Vineet.

"Have you thought of applying for anticipatory bail, Vineet?" Dadaji asked. "What is anticipatory bail?" asked Vineet.



**KRISHNA RUNNING AWAY AFTER
COMMITTING A COGNIZABLE OFFENCE**

"If a person is apprehensive that the police might come and arrest because of some crime which is a non bailable offence, the person can apply for a anticipatory bail" explained Dadaji, adding, **"However, you must have a proper reason to believe that you will be arrested."**

"When can I apply for anticipatory bail?" said Vineet.

"You can apply for anticipatory bail at any time before your arrest. Even if the Magistrate has issued an arrest warrant

and if you haven't been arrested, you can apply for it." Dadaji explained.

"Will I have to go to the Court to apply for anticipatory bail?" Vineet asked.

"No, you need not personally appear in court for taking anticipatory bail. Anticipatory bail may be taken either at the place where the offence has been registered or at the place where the person thinks that the arrest will take place." Dadaji continued, **another thing you should remember is that only the Sessions Court or the High Court can grant anticipatory bail."**

"Alright. What about after the bail is granted? Is there any way that the court can cancel it, Dadaji?" enquired Vineet.

"Yes, bail can be cancelled if the person who has been released on bail:

- **commits or tries to commit the same offence that he is accused of**
- **influences or tries to influence witnesses, for example by bribing them**
- **interferes or tries to interfere with evidence, for example by washing blood off of his/her clothes**
- **commits acts of violence against or threatens the police, the person who filed the complaint or any other person**

- **hides or runs away**
- **creates problems in the investigation**
- **doesn't appear before the court when asked**
- **violates any bail conditions"** Dadaji replied.

"What if some people refuse to speak in court because of their own reasons? Will my bail get cancelled because the prosecution thinks that I threatened those people? Are there any conditions in this case where my bail may be cancelled?" asked Vineet.

"Bail cannot be cancelled just because witnesses refuse to talk - it has to be proved that the accused threatened, bribed or influenced the witnesses in some way. Only then can bail be cancelled." Dadaji said, continuing, "Also, bail cannot be cancelled because of vague statements that the accused has violated a bail condition or that the police have filed a challan/chargesheet in court after release on bail, or that the accused is required for the recovery of evidence and articles by the police."

"Thank you for helping me understand, Dadaji." said Vineet. "You're welcome Vineet." Dadaji replied, "If you want any further help for your bail, you can always come and ask me." I'll do that, said Vineet as he left the room.

Dadaji went to the jail later to meet Vineet's brother Krishna. "Krishna, you've been arrested for arson, which is a non-bailable offence." Dadaji began. "What is a non-bailable offence? Does this mean that I can't apply for bail?" asked Krishna.



"Non-bailable offences are the more serious offences listed in the CrPC. The term "non-bailable" does not mean that the accused can't be released on bail. It just means that you don't have the right to be released on bail." Dadaji explained.

WHAT IS A NON-BAILABLE OFFENCE?

"How is bail granted then?" Krishna enquired.

"Granting bail is upto the officer-in-charge of the police station or the court. However, the power of the police to grant bail ends the moment an accused is produced before a court."* answered Dadaji.

(*) Usually magistrates can grant bail in non-bailable offences. But in certain cases, bail can only be given by the Sessions Court or the High Court. These cases are:

- (i) If there are reasonable grounds to believe that the person is guilty of an offence that is punishable by death or imprisonment for life
- (ii) If the offence is a cognizable offence like murder or theft and the person has been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more or has been previously convicted on two or more occasions of a non-bailable and cognizable offence like murder or rape.

However, a person falling in the above categories may be released on bail by the magistrate if he/she is under the age of sixteen or is a woman or is sick/infir or in the case of (ii) the magistrate feels that granting bail is the right thing to do for certain reasons.

"Dadaji, how will the police or the court decide whether to grant me bail or not?" Krishna asked.

"While deciding whether to release you on bail if you are accused of a non-bailable offence, the police or the court consider:

- whether you will run away on being released on bail
- or that you will destroy evidence on being released on bail
- whether there is any possibility for you to commit more offences on being released on bail
- and how serious the crime was and the maximum punishment for it
- the nature of the offence
- the circumstances under which the offence was committed
- the nature of evidence against you
- your health, age, sex and in case of a woman if she is pregnant, and
- your social status and previous record." Dadaji replied.



DECIDING WHETHER TO GRANT BAIL

"Alright. Dadaji, you said something about bail conditions...what would these include?" Krishna asked.

"A person who is released on bail, could be asked to follow any of the following conditions:

- reporting to the police station at fixed times
- appearing before the police for questioning
- appearing before the court on fixed dates
- not leaving a particular area or the country without permission
- not entering a particular locality or house where the offence may have been committed or where the victim/witnesses live
- not destroying evidence or trying to influence witnesses
- not committing any offence and
- informing the police or the court of any change in address" explained Dadaji.

"But Dadaji, what if the police don't allow me to leave my own neighbourhood - how will I go to the fields where I work?" said Krishna.

"Don't worry, **bail conditions are not too harsh or unreasonable. The conditions can not include:**

- very large bail amounts

- **or directions that the accused has to confess to the crime or give evidence against oneself**
- **unreasonable restrictions on movement, like not letting the accused attend to his/her daily work and duties."**

Dadaji replied.

"I understand now, Dadaji. Thank you for telling me about all this." Said Krishna.

"That's alright," Dadaji said, "Now, why don't you tell me what happened and how you got here." With that Krishna began to tell Dadaji about the fire at Mr. Sharma's shop.

One evening in Kamla Nagar, Neeta was buying vegetables when she saw Imran's brother Abdul at the nearby juice shop. She decided to go and ask about Imran, who had been arrested for an alleged involvement in a theft. "Hello Abdul, how are you doing?" asked Neeta with a smile. Abdul on the other hand was not in the best of spirits, and spoke as his head stooped low, " Well, Neeta didi, you know, since Imran's arrest, things just haven't been the same at home. We are all anxiously waiting for the results of the investigation."

"Results of the investigation?" repeated a shocked Neeta, "You mean it hasn't been completed yet?" she enquired. "No, it hasn't and each time we go and ask the Police, they say

that it would be completed any day. I don't know how Imran would be managing. Even his bail plea was rejected. He's been in there for over seven months now!" replied a tearful Abdul.

"But they can't do that, that's illegal. Don't you know? **Detained persons must be released on bail if the police do not complete the investigation of the case within 90 days for offences punishable with death, life imprisonment or a minimum of 10 years imprisonment.** And Imran has been accused of just a theft. **Detained persons must be released on bail if the police do not complete the investigation of the case within 60 days for all other offences.**" She explained. "It has been over 60 days now, we should go right away to the court." Said an agitated Neeta.

More points to remember:

- Detained persons must be released on bail if the police do not complete the investigation of the case within 90 days for offences punishable with death, life imprisonment or a minimum of 10 years imprisonment.
- Detained persons must be released on bail if the police do not complete the investigation of the case within 60 days for all other offences.
- If the above conditions are fulfilled and the detained person asks for bail, he/she must be released.

The Series “**Police & You: Know Your Rights**” includes:

- First Information
- Arrest and Detention
- Police Interrogation
- Legal Aid Services
- SC/ST Atrocities Act
- Bail
- Fundamental Rights

MINISTRY OF HOME AFFAIRS
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