BAIL: LAW AND PRACTICE IN INDIA (2019). By Manoj Kumar Sinha and Anurag Deep. Indian Law Institute, New Delhi, India. Pp 300. Price Rs. 400/.

OF ALL the natural freedoms, there is none so important or dear to any living being in the world as personal liberty. Same is the case with humans. Right from the period of *Magna Carta*, which is hailed as the first human rights instrument in history, the protection of personal liberty has been the cornerstone of the legal system of every civilized society which cherishes human liberties and freedoms. One of the most important facets of the right to personal liberty is a right to just bail in criminal cases. As has often been said, the history of protection of human rights is the history of protection of procedural rights. Hence, ensuring a right to reasonable bail is the first step in the protection of the liberties of countless persons who stand accused of various offences and await the judgment of the criminal justice system. The right to bail has assumed even more importance in view of the recent events which have raised questions as to the right to bail for various people accused of serious offences such as rape and other sexual offences. In this background, the attempt of the Indian Law Institute and specifically Manoj Kumar Sinha and Anurag Deep to come up with the work titled "Bail: Law and Practice in India" is very commendable.

The first chapter of the book titled "Individual Freedoms and Criminal Justice Administration: Constitutional Perspectives with Special Reference to Right to bail", contributed by P. Puneeth[1], highlights a very important facet that is often left out by both the teachers who impart knowledge of criminal procedure and at times even on the judges and lawyers who deal with the cases of bail; that the criminal justice system of a country, like every other institution of governance of a country, functions within the constitutional structure and therefore, is to function within the constraints imposed by it. In this background, the chapter examines the regime of part iii, which guarantees certain fundamental liberties. He has further highlighted the approach of the Supreme Court, in various cases, through which the Court has developed and strengthened the often laid out doctrine in bail jurisprudence namely, "Bail is the rule while Jail is an exception". The chapter further outlines the approach of the Supreme Court in *Hussainara Khatoon* judgments,[2] where the Supreme Court dealt with the sad state of affairs in the State of Bihar where the under-trial prisoners were forced, due to denial of bail, to

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[2] *Hussainara Khatoon (1)* v. *State of Bihar* (1980) 1 SCC 81 and *Hussainara Khatoon (4)* v. *State of Bihar* (1980) 1 SCC 98.

languish in incarceration, awaiting their trials and which later was codified in the Code itself in the form of section 436A. The chapter then deals with the further trend of the Supreme Court decisions, which have buttressed the rights of under-trail prisoners to bail where the investigating authorities fail to file the final report within the stipulated time,[3] the inherent power of criminal courts to grant interim bail and the right to bail even in view of the provisions of other local or special laws which are contradictory to the Code. The chapter ends noting the sad reality of the country today, which is visible from the National Crime Records Bureau statistics, which indicate that a large number of prisoners incarcerated in jails currently being under-trials. An essential question that is raised by the chapter is, who must accept the responsibility of deprivation of the right to personal liberty of these large numbers of people, who according to the statistics are incarcerated due to denial of the right to bail. Whether the courts can abdicate their constitutional duty hiding behind the decisions of the Supreme Court which has laid down the law that the judiciary is not part of the State as defined under article 12 of Part III. This is specifically in view of the article 9(3) of the International Covenant for Civil and Political Rights, 1966 which guarantees the right to bail.

The second chapter titled "Law Relating to Bail", contributed by G. Kameswari Goda[4], and Dipa Dube[5], is an illuminating discussion on the provisions of the Code dealing with Bail. It deals with the evolution of the Bail provisions from the Code of 1898 to the present Code and includes the recommendations made by the Law Commission in its latest report.[6]

The third chapter titled "Bail by Police", contributed by Anurag Deep[7], attempts to examine the provisions of the Code enabling the Police Authorities to grant bail to people accused of offences. It makes a very insightful study of the provisions of other nations. A study has been made of the provisions of station bail and street bail in the United Kingdom, the provisions for citation release in some states of the United States and other similar provisions in Australia and New Zealand. It thereafter makes an examination of the powers of an officer in charge of a police station under the Code to grant bail to an accused person in both bailable and non-bailable offences. Thus, while in case of bailable offences, the officer in charge is bound to

[3] Stipulated under s.167(2), proviso (a).
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[6] Law Commission of India, Report on Amendments to Criminal Procedure Code, 1973 (May 2017).
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release the accused on bail if he is prepared to give bail and where he is unable to do so within a week's time, without any surety, on execution of a bond. In this case the police authorities have very little discretion, in view of the nature of the offence, which makes bail a right of the accused person. However, in case of non-bailable offences, the chapter properly captures the wide controversy regarding the question as to whether an officer in charge of a police station has a similar power of releasing an accused on bail. The chapter also includes an enlightening discussion as to the difference between the concepts of bail and recognizance, whose misuse in the Code has led to a lot of confusion. While concluding that a competent police officer does have authority under section 437[8] to grant bail even in case of a non-bailable offence, the chapter appears to not properly address the problem as to exercise of the discretion which is vested with the officers in such cases. Not only is the competent police officer vested with the discretion as to grant or refusal of bail but also competent to indicate the conditions of bail both in respect of restrictions that are to be imposed upon the accused as also the quantum of security, if any, that is to be required of an accused person. Furthermore, while such a discretion may still be expected to be exercised more fairly by a competent police officer in some cases, in other cases where the offence is punishable by death or life imprisonment, the accused may not be released if there are reasonable grounds to believe that he is guilty of such an offence.[9] There exist no directions nor guidelines nor any regulations, which govern the exercise of this wide jurisdiction. In absence of any guidelines, it is a rather problematic affair for any competent officer to actually exercise the power. It is here that the notorious question of general corruption raises its ugly head. While over-cautious officers will not at all be interested to exercise such discretion, in fear of being branded for favouritism or corruption, for more unscrupulous ones, it may prove to be a fountain of corruption. While examining the provisions of bail by a police officer, the chapter seems to have ignored the provision of the Code which enables a police officer, in cases of cognizable offence, to issue a notice in *lieu* of arrest, directing the person to appear before himself or at such other place as may be specified in the notice.[10] The mechanism so envisaged by the 2009 Amendment certainly has the capacity to act in the same manner as the street bail in vogue in the United Kingdom or citation release that is in vogue in some states of the United States.

[8] The Code of Criminal Procedure, 1973 (Act 2 of 1974).
[9] *Id.*, 437(1)(i).
[10] *Id*., s. 41A

The fourth chapter titled "Judicial Discretion" contributed by Jyoti Dogra Sood[11], deals with the discretionary power vested with the Judges in the case of non-bailable offences. Every judge while deciding a bail application is torn between the considerations of upholding the right of personal liberty and the presumption of innocence till the guilt is proven and the expectation of the public and its demand for justice for a crime. This in India at least is not made any better by the wordings of the provisions of bail in the Code, which vest a lot of discretion with the Judges. This has led to the Supreme Court embarking on a quest to lay down the factors which are to be considered by a Judge of the Subordinate Judiciary while deciding a bail application. However, the various factors so laid down namely, nature and seriousness of offence, character of the evidence, circumstances peculiar to the accused, possibility of his absconding and larger interest of the public and the state are so wide as to still leave an untrammelled discretion in the hands of judges. This problem is made further complicated by the fact that the power to grant bail is not only shared by each tier of the complex hierarchy of courts, but it also may occur at times, where successive applications are filed by accused person, that two different Judges may give different decisions on the same application, greatly hampering the aspects of certainty and uniformity in judicial process concerning grant of bail. Then comes the question of interference by the high courts and the Supreme Court in grant of bail at the appellate state. The absolute lack of any legislative guidelines concerning the exercise of the judicial discretion as also the divergent and at times apparently conflicting rulings of the apex court have made the entire area, as rightly expressed by the contributor, an "intellectual author". The chapter is a very illuminating read on the divergent manners of exercise of the discretion to grant bail.

The fifth chapter contributed by Shyam D. Nandan[12], deals with the topic of anticipatory bail. Explaining the statutory provision in this regard in the Code, it also illuminates the judicial discourse on the subject from *Gurbaksh Singh Sibbia* v. *State of Punjab*,[13] till the more recent times. It further deals with the cases where anticipatory bail is excluded by statutory provisions.

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[13] (1980) 2 SCC 565.

The sixth chapter contributed by Shyam D. Nandan, and Deepa Kansra [14], deals with provisions contained in special laws such as the Terrorism and Disruptive Activities Act, 1985 (Act 31 of 1985), the Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985), the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Act 33 of 1989), the Prevention of Money Laundering Act, 2002 (Act 15 of 2003) and local laws such as the Maharashtra Control of Organised Crime Act, 1999 (Maharashtra Act XXX of 1999)concerning bail. Being special laws, they override the general provisions of the Code and provide for much more stringent application of the Bail provisions. The chapter deals with the attempt of the judiciary to deal with these special provisions and their attempt to balance the public considerations underlying these special provisions and individual liberties.

The seventh chapter contributed by Neeraj Tiwari[15], deals with default bail under section 167 of the Code, which has become a beacon of hope for the under-trials who languish in jails for long periods due to lengthy investigations of the police. The chapter elaborately deals with the concept and is a very useful guide for both teachers and students on the subject. The eighth chapter contributed again by Shyam D. Nandan and Deepa Kansra deals with the power of the courts under the Code to cancel bail granted to an accused and the grounds on which the same may be exercised and the judicial guidelines in respect of the same.

The ninth chapter titled "Restructure 'Bail': A Roadmap of 'Justice' to Under-trials" contributed by Upma Gautam[16], who makes concluding remarks. The prison statistics examined under the chapter raises a lot of questions and the chapter makes a lot of reform proposals and areas of bail jurisprudence which need reform. One important reform suggested is the revision of the categories of bailable and non-bailable offences, to put more offences under the former. The rationale given is to enable the police authorities to give bail. This however, ignores the position of law, as pointed out even before, that even under non-bailable offences, section 437[17] does enable the police authorities to give bail. What is therefore required is for a comprehensive set of guidelines to channel and govern the discretion so vested with the police authorities. The contributor does make a very good suggestion for the reform

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[17] *Supra* note 4.

of the financial securities demanded as a security for the grant of bail since excessive bail is a denial of the liberty of a person.[18] Another important reform suggested is the conditional bail. Grant of bail subject to conditions would be very helpful for the purposes of balancing the conflicting interests of the criminal justice system and individual liberties. Thus, a reform of the conditions which may be imposed as part of bail and the discretionary procedure involved in such a decision is certainly the need of the hour. Another important suggestion made by the contributor is the development of the system of police bail in India. But as noted earlier, the Code in itself grants enough powers to the police authorities to intervene in appropriate matters. However, the problem essentially is the question of manners and guidelines for the exercise of this discretion, which is not provided for in law. The problem further is also complicated because of the corruption in the lower levels of the society and system, which makes any such discretionary provision very dangerous since it would enable a new source of harassment of the already disadvantaged accused.

The book comes at a very opportune moment since there is a very real need for reform of criminal procedure, as part of larger reform of the criminal justice system. As highlighted by the first chapter, any criminal justice system may either adopt the *due process model* or the *crime control model*. The Constitution of India, by decreeing certain fundamental inalienable rights to every citizen and some of them to even non-citizens, has already made that option for this jurisdiction. That being so, right to bail is certainly very important since every case of rejection thereof entails the deprivation of right to liberty. Thus, the bail jurisprudence is always required to balance the conflicting interests, to be strict but at the same time also be equitable and just. The book therefore is a very useful read for any lawyer or academic or law student.

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[18] As such, it is worth noting that the US Constitution grants an express protection against excessive bail. So is also the case with the Bill of Rights of the Canadian Constitution.

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