

**FILING OF BAIL APPLICATION
DIRECTLY IN COURT OF SESSION
IN OFFENCES PUNISHABLE WITH DEATH OR
IMPRISONMENT FOR LIFE**

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Section 436 Cr.P.C. provides for bail in bailable offences, Section 437 envisages provisions for bail in non-bailable offences and Section 439 deals with the special powers of the High Court and Court of Sessions regarding bail.

A perusal of Sections 436, 437 and 439 Cr. P.C. shows that in offences punishable with death or imprisonment for life, the Magistrate has no Jurisdiction to enlarge the accused on bail. Whenever the Magistrate has granted bail to the accused in such cases the superior courts have expressed unhappiness over the same. In working, it has been found that when an accused moves application in such offences, before the Magistrate, the Magistrate rejects the bail application with mere observation that he has no Jurisdiction to grant bail in such cases. The accused moves bail application in such cases, thereafter before the Sessions Judge and In quite a large number of cases, the Sessions Judges enlarge the accused on bail In such offences. The provisions of the Code of Criminal Procedure do not provide that bail application in such offences should be moved in the first instance before the concerned Magistrate. It is, however, usual practice that a person desiring bail should first approach the lower court, but this practice is not inflexible as Section 439 Cr.P.C. bestows unlimited Jurisdiction on the Hon'ble High Court and the Court of Sessions in the matter of granting bail. Under section 439 Cr.P.C. the Hon'ble High Court and the court of Sessions have concurrent Jurisdiction to grant bail. In particular circumstances, the Hon'ble High Court can entertain a bail application direct (Vide Abdul Karim Khan v. State of M.P., AIR 1960 MP 5, P.Mohi-ud-Din v. Emperor, AIR 1938 Lahore, P.762, Inder Das v. State AIR 1951 HP 31 and Rama Dass and others v. State 1992 (3) Crimes 915 (Madras) .There is no statutory bar in moving an application for bail directly before the court of Sessions for offences punishable with death or imprisonment for life.

A lot of time of the Magistrate is consumed in disposal of bail applications of aforesaid nature. Apart from it, there is also unnecessary detention of the accused. It appears expedient and In the Interest of Justice that in offences punishable with death or imprisonment for life the accused should be given liberty to file bail application directly before the Sessions Judge. It

* Elevated to Hon'ble High Court subsequent to publication of this Article.

may be canvassed that under first proviso to Section 437, Cr.P.C. the concerned Magistrate may release a person on bail, in such offences if such a person is under the age of 16 years or is a woman or is sick or Infirm, the accused may press for bail before the concerned Magistrate under the aforesaid proviso To bestow this opportunity, the accused may be given option to file ball application either before the concerned Magistrate or directly before the Sessions Judge in cases of aforesaid nature.

The requirement of appearance of the accused before the court may be satisfied by surrender of the accused before the concerned Magistrate and annexing a copy of the certificate to that effect obtained from the concerned Magistrate, with the ball application which may be moved before the Sessions Judge. In writ petition Number 919 (M.B.) of 1992, Noor Mohammad v. State of U.P. and others, decided by a Division Bench of Hon'ble Allahabad High Court on May, 14, 1992, the following observations have also been made:

"By an administrative direction every person is required to move an application for ball before a Magistrate before he moves the Sessions Judge. In cases where a bail can possibly be granted by a Magistrate under Section 437 Cr.P.C., such a direction is good and valid. However, there does not appear to be any justification for requiring a person to move application before the Magistrate which application the Magistrate has no jurisdiction to allow. It is a futile step being administratively added which unnecessarily results in lengthening of the proceedings. This court acting administratively can consider doing away with moving of a ball application before a Magistrate when a person seeks ball in a situation where the bail cannot be granted by the Magistrate."

In view of the enunciation made above, the accused may be given option to file ball application in offences punishable with death or imprisonment for life before the concerned Magistrate or directly in the court of Sessions. Suitable amendments if necessary may be made in Criminal Procedure Code.

[J.T.R.I. JOURNAL – Second Year, Issue – 4 & 5 - Year – March, 1996]