



the improvement of criminal law and administration in this country by the author who has devoted a long time to a special study of it.

*Pramod Kumar\**

**A TREATISE ON THE LAW OF BAILS.** By R. K. Soonavala, B.A. (Hons.), LL.B., District and Sessions Judge, State of Gujarat. with a foreword by Hon'ble Mr. Justice P. N. Bhagwati, Chief Justice, High Court of Gujarat. Bombay: N. M. Tripathi Pvt. Ltd. 1968. Pp. 898. Rs. 45.00.

MR. SOONAVALA needs no introduction to the readers of legal literature. Already an author of half a dozen books on various branches of law; this book is undoubtedly yet another feather in his cap.

The author approaches this important branch of criminal jurisprudence with as objective a mind as any scientific investigation demands. He analyzes in clear and unambiguous terms as to when bail should or should not be granted in the interest of individual liberty as well as the demands of criminal justice. Thus while focusing attention on the well known concept of the rule of law that bail should not be denied as a measure of punishment, Mr. Soonavala devotes a full chapter on cancellation of bail wherein he equally emphasizes the duty of the court not to allow the accused either to misuse his liberty or to abscond and thereby to defeat the ends of justice. This balanced approach has enhanced the utility of the book not only to the lawyers appearing on behalf of the defence but also to the public prosecutors whose concern it is to see that the accused abides by the trial.

The chapters on principles governing grant of bail, bail by magistrates and courts other than sessions courts, bails pending appeals, reference and revision, bail by the court of sessions and High Court, powers of the Supreme Court to grant bail, bail under other Acts, remedies other than bail as also appendices A and B which respectively deal with chart of leading cases and forms of applications for bail would be of considerable use to a busy lawyer. The chapter on bail by the police will similarly prove useful to police officers as it gives within a reasonable compass powers and limitations of the police in regard to the subject of arrest and bail of accused under different circumstances.

The book would have been more useful to busy public prosecutors if a few specimen application forms for opposing and cancellation of bails had also been incorporated in appendix C side by side with specimen forms of applications for bails. This would have imparted grater objectivity to the book which the author undoubtedly sought to attend in the earlier part of the work. The discussion on anticipatory

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bail has been summed up to say that no bail can be granted to a free man who has not been placed under any form of restraint. The words "bail" and "restraint" have been the subject-matter of judicial interpretation in a number of cases. Broadly speaking, courts have held that a person for whose arrest, a warrant of arrest has already been issued or any order under section 56 of the Criminal Procedure Code, 1898,<sup>1</sup> has already been passed can no doubt be released on bail if he personally appears and surrenders himself to the court.<sup>2</sup> These decisions<sup>3</sup> tend to give the impression that if a person surrenders himself in a court, he can be granted bail only if a warrant of arrest or an order under section 56 of the Code has already been issued against him. It would thus have been better if the author had more clearly discussed the possibility of the magistrate *suo motu* exercising his powers of arrest under section 65 of the Criminal Procedure Code, 1898,<sup>4</sup> and then granting bail to a surrendering accused even though no order under section 56 of the Code or a warrant of arrest had been issued against him earlier. Similarly conceding that a conditional bail is legal in a non-bailable offence, it is still not free from doubt if the court is justified in forfeiting the bail bond, for the breach of a condition not contemplated either by section 499 of the Criminal Procedure Code<sup>5</sup> or form XLII of schedule V of the same Code even

1. The Criminal Procedure Code, 1898, § 56 :

When any officer in charge of a police-station or any police-officer making an investigation under Chapter XIV requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested and the offence or other cause for which the arrest is to be made. The officer so required shall, before making the arrest, notify to the person to be arrested the substance of the order and, if so required by such person, shall show him the order.

This section applies also to the police in the town of Calcutta.

2. *Juhar Mal v. State*, A.I.R. 1954 Raj. 279; *State of M.P. v. Narayan Prasad*, A.I.R. 1963 M.P. 276; *State of Gujarat v. Govindlal*, A.I.R. 1966 Guj. 146.

3. *Supra* note 2.

4. The Criminal Procedure Code, 1898, § 65 :

Any Magistrate may at any time arrest or direct the arrest, in his presence, within the local limits of his jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

5. The Criminal Procedure Code, 1898, § 499 :

Before any person is released on bail or released on his own bond, a bond for such sum of money as the police-officer or Court, as the case may be, thinks sufficient, shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police-officer or Court, as the case may be.

If the case so requires, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

For the purpose of determining whether the sureties are sufficient, the Court may, if it so thinks fit, accept affidavits in proof of the facts contained therein relating to the sufficiency of the sureties or may make such further inquiry as deems necessary.



though the court has unquestioned powers to cancel bail in such a case. Here again, a clear expression of opinion on this score would have been more helpful.

All in all the author's views are well represented and his comments are invariably supported by the latest case law. This comprehensive treatise would be a welcome addition to legal knowledge and prove useful to lawyers and judicial officers alike.

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