Chapter 6

POLICE ATTITUDES ON PRE-TRIAL RELEASE : AN EMPIRICAL STUDY

A PARADOX prevails that the ardent votaries of liberty seldom spare an opportunity to accuse the police for not acting effectively when a horrendous crime takes place but at the same time the police zeal to deal with the problem of criminality, on their own strength and responsibility and with their time tested methods, has also not been liked. Numerous facts are available about the police brushing aside values of liberty and human dignity on persons suspected to have committed crimes. A contrasting police attitude can also be found in certain cases of known hardened criminals who are enlarged on bail by police even when charges of non-bailable offences are framed against them with full knowledge that the police do not have power to do so. With a view to ascertain police attitudes on issues arising out of pre-trial release of offenders, impressions from field studies can be useful. One such study has been conducted on the basis of interviews with field officers and police officers.

The sample study shows the current thinking of the supervisory field staff of the police on the system of release on bail. It also unfolds their attitude towards the concept of individual liberty. No attempt has been made to ascertain dominance and depth of a particular theme that may be more prevalent amongst police officers with regard to the above. Those differing ideas and experiences have been grouped separately, which were found shared by more than one police officer. As far as possible, efforts have been made to retain the spirit of the thought. At places even actual versions obtained from the interviewee/s are incorporated. These findings are as followes :

Police Views

(i) The concept of bail has been evolved keeping the democratic aspect of the society in view. A democratic society emphasizes much on the rights than on the obligations of an individual. Therefore, the law contemplates that persons indulging in criminal activities cannot be put under lock and key, unless charges preferred against them are upheld. Accordingly, a pre-trial release on bail has been introduced as a legal right.

(ii) The law contemplates that the accused is like any other common man, who may not be the real culprit. Thus, a police officer cannot deny bail.

(iii) We are to wage an effective war against this "enemy" (bail). There seems to be a suicidal social tendency on the part of many publicmen to excuse crime and sympathize with criminals because of the grievances that a criminal may have against the society.

(iv) The society is lenient and permissive for the criminals. This tendency does not make it either safe or secure for innocent men or

women. Our courts, which administer the law of bail, do take a lenient view of dastardly acts of the offenders who put their claims for freedom and dignity on the basis that the society holds these ideals high. The people in our country are somehow conscious of their rights alone. Justice dictates that innocent men should not be punished but it also means that guilty men are to pay for their misdeeds. To this aspect of justice the nation is yet to address itself in an earnest way.

(v) The new law on bails worked smoothly in the initial stages, but at later stages the system began to be misused both by law enforcing agencies and the habitual criminals. The process has gradually become lenient and easy. The effect is that evils have shown an increasing trend and the bail mechanism itself has been losing its utility.

(vi) In practice the police does not administer the law of 'bailable' and 'non-bailable' offences. It dispenses the law according to the status of the offender and not according to the nature and gravity of the offence.

(vii) If or where an arrested individual is involved in a serious offence or he happens to have a serious brush with the law, and if his release takes place at the police station it may be due to some factors, other than the exercise of will and authority on the part of the local police station. Such releases are largely due to pressures applied upon local police officers through their superiors. However, local officers too do not fail to encash upon the use of power simultaneously in similar other cases.

(viii) Even persons arrested under non-bailable offences are released on bail by police officers. This is a wrong practice.

(ix) The police officers are bound to release persons on bail, if they are prepared to produce a sound surety. Otherwise they are considered to be violating the law. It is here that the lacuna lies. Even knowing that the accused is a hardened criminal, police cannot keep him behind bars when he produces a sound 'professional' surety. If a restriction can be imposed at this level, things may become better. The loss of fear from police has resulted in enhanced crimes in our country.

(x) Offences which are bailable are committed more in number than non-bailable ones. Hence if more discretion to disallow bail in bailable cases is given to police, subject to strict disciplining by supervisory police authorities, the mechanism of bail as granted by the police will perhaps work better in the interest of society.

(xi) Misuse of provision of bail has come to notice on account of an accused jumping bail. But an observable fact is that those who jump bail are persons who generally get released on bail through the court. A police officer who releases a person on bail has to incur

responsibility of producing the person later in the court. Thus, there are less chances of jumping bail where the release has been obtained on police bail.

(xii) Police officers do not release a person on bail, unless he is able to produce sound sureties. Proper verifications minimize chances of bogus sureties being produced.

(xiii) The court process of bail is rather simpler than one granted by the police. The accused, if not released by police for a bailable offence for want of sound sureties moves the court and the court accepts the bail. The same is the experience when a person is arrested for a non-bailable offence. In both the cases, the accused has a ready surety who stands guarantee for him. It has been experienced that the court does not verify whether the sureties are genuine or not. A proper agency for verification of sureties is lacking in our court system. Their resources are also meagre for this purpose. Further, the attitude of the court is not to bother whether the surety is sound or bogus. Since the courts imply that in case of default in the appearance of the accused the police shall have to undertake the responsibility of bringing back the person.

(xiv) A lawyer is the medium through which bail application is moved. A prescribed proforma is the only document that has to be filled. On the reverse of the proforma an affidavit is written down. An oath is taken from the surety about his having the property (movable and the immovable), which are noted down by the lawyer. A routine and perfunctory verification is made by the court. The soundness of the surety can hardly be checked. Thus, sometime serious deception is practised on the court. This practice and procedure has resulted in the growth of a system of professional sureties who operate fearlessly in the system and are well entrenched.

(xv) Proper investigation of sureties, preferably be done through the police agency, will reduce the incidence of jumping bail. In most cases, where an accused jumps bail, the releases have been obtained through court bail.

(xvi) The release on bail is abused for seeking adjournments in a trial obviously to delay disposal of cases in courts. The general practice of getting a date of hearing adjourned and getting it extended further and further is a common practice. The accused has a main interest in such adjournments. After being released on bail, an accused tries to win over witnesses and tamper with evidence. Till then he manages to secure adjournments of hearing.

(xvii) Criminals are dangerous to the society. It is necessary to restrict the use of bail in cases of repeat offenders and hardened criminals, bail jumpers, etc., even if they might be charged with bailable offences.

(xviii) It has been experienced that sureties who come forward to rescue an

arrested offender are sometimes bad characters themselves. Sureties are in many cases either accomplices or patrons of crime or they are there to earn a profitable income from the public interest.

(xix) In heinous cases at least 2-3 sureties should be asked for. Fixation of higher quantum as a bail amount helps check bogus sureties to come forward. The documents produced by the sureties (lease-deeds or ration cards) must be stamped by the court so that these are not used again to stand sureties in other cases simultaneously.

Analysis of Police Attitudes

The various views and opinions of police, enumerated above, provide a critical expose of the system of bail and also corroborate the existence of such facts which are defiling the system. In the working of bail there is a collusion between the professional wrongdoer and the police authority. The bail is granted or is refused not in pursuance of the exercise of discretionary power but largely on the basis of the offender's status in the social strata. The perfunctory verifications of sureties as to their soundness and reliability; the growth of professional sureties with vested interest in criminality; the short-circuiting of judicial process by bail jumpers who utilise the liberal judicial discretion to secure release only to snub the judicial power by their delibrate disappearances from the court, are some of the disconcerting features of the bail system, of which the law enforcing men are aware.

Police officials are exposed to, and are also amenable to a thinking that the personal liberty and dignity of individual has a meaningful place in the administration but, their nature of duties and functioning make it incumbent upon them not to make bail process such a convenient mode of release as may merely serve the cause of liberty. The exercise of power to grant bail has to be used in a relaxing manner only if the problems for police agency do not get multiplied by those who secure release soon after they had once been netted in for their alleged wrongful behaviour. Since, a class of hard-core offenders is easily identifiable, it calls for stringent application of the law of bail. The law enforcement agency also demands further assurance that those who sponsor releases as sureties shall conduct themselves in a manner as may not adversely affect the administrative functioning of the police. The role of sureties also needs clarification in making the institution of bail workable and meaningful in order to secure releases in genuine cases.

The democratic social order demands that a policeman must possess due awareness and understanding of the issues underlying the laws of arrest and bail. He must appropriately respond to the norms set up by the society. One can hopefully expect that a respect for individual liberty and human dignity can effetively operate within the pale of his thought. Being the custodian of law and order, a policeman's commitment towards his

professional obligation for security of the social order is likely to overwhelm his judgement in relation to personal freedom. In course of discharging his duties the value of personal freedom gets subordinated to the needs of law enforcement. Accordingly, in furthering the interests of society, the police zeal often transcends other norms prescribed for good governance. This may not be because of a desire to do so, but as a professional policeman he finds himself placed in a situation where he has to act in such a way as to gain tactical superiority to wrest control over factors, that are otherwise to provide major constraints in his functioning as a law-enforcement personnel.

The non-appearance in the court by accused persons, and fleeing from justice by jumping of bail or by absconding altogether are found invariably as common experiences of the policemen. Hence there is an apprehension about the release of an accused. The presence of accused in the community, on his being released on bail, also keeps the policeman on guard. He has to remain watchful against clandestine attempts to tamper with the evidence which may be used against the accused and also against the use of influence over the witnesses. All these make a policeman feel exasperated. He entertains the idea that his efforts to get social disapprobation for misconduct of the accused, through the machinery of law and justice are being frustrated. Since the legal process has been making heavy demands upon the police, right from the stage of detection to that of conviction and even thereafter, it is logical for a policeman to feel most concerned about the safety and security aspect of the legal process instead of the question of only liberty of an alleged wrong-doer.

With these apprehensions in mind, the policeman is unable to take a detached view of things to enable him to think of rights and liberty of an accused person. The fault need not be traced to the police attitude in the above circumstances. Once the police is seized with the jurisdiction in a criminal case, it continues to be its responsibility to oversee the entire proceedings including the behaviour and conduct of the accused during the period of release. Unlike the court, police invovlement begins with the cognizance of the case and continues till conviction, if any. All these are actuated by professional considerations and public expectations. There is hardly any break in the sequence of police responsibility, which may give to it any reflective moments to think about the utility of rights and liberty of the accused.

The police attitude towards the accused is indivisible. If it were possible in the system that on completion of investigation in a case, the policing responsibilities in such matters (such as overseeing the conduct of trial, the progress of the case, the result of the case, etc.) could be passed to another sub-agency, it would then be possible for that body to take a somewhat more detached view. By cutting off the interest and involvement of the investigating agency at a point from where the matter is to be treated judicially, it is possible that the issues raised by an accused in relation to

his freedom, including the freedom to be on bail, would not meet unwarranted and severe resistance.

The creation of policing sub-agency under control of the court for purposes of ascertaining the antecedents of the accused or sureties, the verification of facts disclosed by them about their reputation, status or family, etc., may enable the courts to gather a better information which will be of immense use particularly in the exercise of the power to grant bail. The use of this agency can be of considerable value in securing the presence of an accused on trial. If the twin principles of security and liberty are to harnessed together in the mechanism of bail the catalysing role of such policing sub-agency may have to be developed.

A deeper sense of security for the community is to be found in the police attitude. This may affect to some extent the issue of pre-trial release of an accused. But it is not the sole reason. Other factors which may adversely affect the release of an accused on bail may arise out of the attitude of the court itself. An apprehension may arise in the mind of the court that the accused will get an upperhand once he secures his release. Once he is released he may abuse the process without causing problems to his sureties since law relating to sureties is unsatisfactory. The accountability of a surety is non-existent. In practice there is a remote possibility of forfeiture of the surety amount.

It is imperative that the law relating to sureties be streamlined or a better system to be evolved for ensuring that the release on bail does not impair the community interests as well as it does not keep the enforcement agencies in a wavering state of mind.

The system of sureties can well be supplemented if voluntary public cooperation is sought in implementation of the bail system. The Vera Foundation Bail Project in the United States has shown that it is possible to promote interests of the accused and the society simultaneously if public participation is forthcoming. Such participation has not yet been sought in our system. Moreover, organised avenues for securing public cooperation and public participation for implementing the value of personal freedom of the accused and with no risks incurred to security of the system are totally lacking in India. The presence of such practices can make the bail mechanism meaningful.

Unsatisfactory law on Sureties

The role and responsibility of a surety under the law of bails is not well defined. The fitness of a person to stand as a surety or his financial capacity to undertake the responsibility is to be determined by the court. There is a considerable difference in judicial approach towards the liability and responsibility of a surety. Indeed a surety is bound to produce the accused on a fixed date where an undertaking to that effect has been given

by him.[1] He is also bound when he is notified about producing the accused on the basis of his having agreed to do so "whenever called upon".[2] But where a bond by a surety was to produce the accused "whenever required and as often as required", it has been held that liability of the surety was limited only for appearance on the first day of the hearing.[3] A surety is also immune from liability if a court is unable to hold sitting on the day of the appearance of the accused.[4]

It is also interesting to note that the law does not empower a magistrate to demand cash security in lieu of a surety. It is *per se* illegal.[5] However, instances are found where a surety may furnish cash security to get the accused released. It is assumed that it binds the sureties for liability undertaken by them for producing the accused after he has been released on bail. But, the legal position is that if the surety fails to produce the person on the appointed day, he is not liable in any way except that the proceedings may be initiated against him for the forfeiture of the security amount. Thus, a surety stands discharged of his liability to produce the person released on his undertaking.[6] Contrary opinions in this regard are also to be found[7]. The conflict of views on the role and responsibility of a surety makes the working of the law of bail a difficult proposition.

The substituting of money guarantee with that of an undertaking by a person also frustrates the very purpose of bail to hold a sponsor liable in the event of default by an accused to present himself before the court. It renders the theme of public participation in criminal trial useless. By taking cognizance of surety in the system of bail process, the theme of public participation essentialy underlies the bail. The institution accepts a lay man, from amongst the public, to act, as a surety for holding custody of an accused on behalf of the court. Thus, the legal system accepts and gives recognition to sureties to allow them to coerce an accused to present himself

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1. *Mappillai Kadir Rowther v. Emperor*, AIR 1919 Mad. 945.
2. *State v. Hebtkhanji Meghrajji*, AIR 1951 Sau. 66; *Fatehchand v. Emperor*, AIR 1940 Sind 136; *Manindra Kumar Majumdar v. Emperor*, AIR Cal. 236.
3. *Soni Ganesh Karason v. The Public Prosecutor*, AIR 1949 Kutch 1.
4. *Kishan Lal & another v. Lal Chand & other*, AIR 1938 Lah. 20; *Kidar Nath & another v. Ibrahim & others*, AIR 1934 Lah. 394.
5. *R.R. Chari v. Emperor*, A.I.R. 1948 All, 238; *Rajballam Singh v. Emperor*, 45 Cr. LJ 340 (1945).
6. *Namdeo Chimnajo Patil Marathe and another v. Emperor*, A.I.R. Nag. 275, *Fatimunnisa and another v. Asghar Hussain*, A.I.R. 1928 Oudh 195 (F.B.) *Emperor v. Ignatio Reis*, 14 Cr. L.J. 430 (1912); *Emperor v. Naga Po Sin*, 13 Cr. L.J. 62 (1911); *Mehbunissa Begum v. Mehedunissa Begum*, A.I.R. 1925 Bom. 309 (F.B.).
7. *Kulur Annappa Naick v. Emperor*, (1909) 10 Cr. L.J. 294 (Mad.); *Saligram Singh v. Emperor*, 10 Cr. L.J. 89 (Cal.) (1909); *Jeomal and another v. Emperor*, A.I.R. 1926 Sind 180; *The Emperor v. Abdul Aziz and another*, A.I.R. 1924 Lah. 262; *Miram Shah v. Emperor*, A.I.R. 1936 Peshawar 141.

before a court to stand trial on a fixed date. A surety is, therefore, not merely one who sponsors the release on an accused person to secure his release, but is also a cog in the machine of the judical system, which enables the court to fulfil its obligations in discharging its duties by trying an offender for alleged omissions and commissions.

The use of a statutorily prescribed yardstick of "bailable" and "non-bailable" offences for purposes of granting bail may be useful. However, exercise of discretion by the police in granting bail in bailable cases may be conceded as a power to withhold bail and be distinguished from the refusal of bail. Presently, a refusal of bail in bailable cases by the police is achieved by way of granting a bail to a person, but by not releasing him on bail because of not getting satisfied with the soundness of the sureties furnished by an accused. Likewise, the grant of discretionary powers to allow conditional releases to persons in police custody for their alleged commission of non-bailable offences may also be given a serious thought and the power be made available for use in appropriate cases. In sum, the power to grant bail as well as the power to exercise discretion for releasing a person on bail by the police needs a somewhat flexible approach. The power to grant bail is one part of the bail process which is judicial in character, while the mode and method of release on bail is another part which is essentially administrative in character. The latter responsibility can well lie in the domain of police functioning. The key-note of bail machanism is the production of an accused before a court on an appointed day. Hence the administrative aspect of the bail system be given adequate importance.

The person who is to be bailed out thus becomes the focal point in the entire scheme of the law of bails. Accordingly, principles governing grant of bail which place an emphasis on the antecedents and character of a wrong-doer get tested and verified at the point of release. It has been pointed out that default in appearances before the court by persons who are bailed out by the court is larger in number as compared to those who were set free on police bail. It is likely that an answer may be found by assigning a wider role and larger responsibility to an enlighted police agency, who would implement a bail order of the court to secure the release of an accused after having proper verification of the sureties with a view to assuring the presence of the accused before the court on demand.

Assigning a wider role and responsibility to the police in the system of bail may be viewed as an antitheses to the prevailing concept that bail mechanism is to set a person free by the court till he is found guilty. It may also raise objections about the exceeding use of authority by police. The added objections may be that the police may thus find itself in a better position to harass an individual prisoner. Also that it would help an upward growth of corruption amongst policemen. However, the utility of bail in the scheme of administration of criminal justice can be retained only if an adjunct agency is deployed to achieve the desired goals of security and freedom. Since the police is an existing component of criminal judicial

administration, it may be considered to be used as an agency in this regard too. The apprehensions about misuse of authority by this agency will necessarily require activating the use of safety machanisms that are already provided under the existing law and are discussed in the pages to follow.

Manhattan Bail Project : An Alternate

Alternatively, a voluntary agency ought to be developed which may function as an auxiliary to the court and help it remove deficiencies in the working of bail. The basic defect of the working is the lack of *bonafides* of sureties as well as their soundness to undertake responsibility of producing an acused in the court later. In this connection, lessons can be drawn from experiences of a pilot project on bail conducted by the Vera Foundation of New York. The project is known as *Manhattan Bail Project.* It was launched in 1961 in cooperation with the New York University, Institute of Judicial Administration and the Vera Foundation. The project lasted for three years. The results confirmed the hypothesis that if a careful scrutiny is made which can establish proper identity and antecedents of a person the release of such person on bail is a safe bet. The project showed that non-appearances in such cases were as low as 1.6 per cent which was just the half of the absconding rate under the existing system of release.

The method used in the *Manhattan Bail Project* was to interview an accused sometime before his appearance in the court. The reliability of the accused was tested in terms of strength of his roots in the community. Details with regard to his past record, present employment, family, residence, etc. were gathered and checked. The information thus collected lay the basis for recommendation for release of the accused which was granted by the court on recognisance of the accused.

The experiment also dispelled the fear from the minds of the police that releases could endanger the public as the accused persons may commit fresh crimes when they are out. Records showed that only twenty three persons out of 3505 were rearrested on new charges while awaiting the trial. The experiment of *Manhattan Bail Project* has thus shown that ascertainment of antecedents of an accused with a view to determining his roots in the community can act as a safe insurance for making him reappear before a court. The need for such a verifying voluntary agency can be highly useful to the system of bail.