

Provided per section
436(2) of the code,



Provided such officer or Court, if he or it thinks fit, may, and shall, if such person is indigent and is unable to furnish surety, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided.

Explanation: Where a person is unable to give bail within a week of the date of his arrest, it shall be a sufficient ground for the officer or the Court to presume that he is an indigent person for the purpose of this proviso.

Further, nothing in this Section shall be deemed to affect the provisions of Section 116(3) or Section 446-A. The above rule covers all cases of persons accused of bailable offences, cases of persons though not accused of any offence but against whom security proceedings have been initiated under Chapter VIII of the Code, and all other cases of arrest and detention which are not in respect of any non-bailable offence. As per Section 436(2) of the Code, notwithstanding anything contained in Section 436(1) of the Code, where a person has failed to comply with the conditions of the bail bond as regards the time and place of attendance, the Court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the Court or is brought in custody and any such refusal shall be without prejudice to the powers of the Court to call upon any person bound by such bond to pay the penalty thereof under Section 446. So even for a bailable offence under Section 436(2) of the Code, powers of the Court to refuse to release a person on bail would be there. A person who has been released on bail by the police should seek fresh bail from the Court. Section 436 of the Code authorizes the Magistrate conducting an inquiry under

Section 116 of the Code to release the person concerned in the inquiry on bail with or without surety to ensure his attendance in Court.

A person who is re-arrested after having been discharged on executing a surety bond under Section 116(3) of the Code is entitled to be released on bail if he is not accused of a non-bailable offence. The special provision for bail applies to a person accused in a trial before a special court as bail is a matter of procedural privilege. The object of bail is not to penalize the accused but to ensure his presence in Court and the amount of security must be fixed with due regard to the means of accused and the nature of offence. As per Section 440(1) of the Code, the amount should not be too high to nullify the right to be released on bail under Section 436(1) of the Code.

Further, Section 440(2) of the Code empowers the High Court and the Court of Session to direct that the bail required by the police officer or Magistrate be reduced. Though there is no specific provision for appeal against refusal to grant bail under Section 436(1), the High Court or Court of Session can be moved for bail under Section 439 of the Code. However serious an offence may be, if it is bailable and there is no reason, such as the likelihood of the applicant absconding, if released on bail, the seriousness of the offence would not alone justify a Court in refusing bail to which a convicted person is entitled. While grant of bail to a person accused of non-bailable offence is discretionary, a person accused of bailable offence at any time while under detention without a warrant at any stage of proceeding has the right to be released on bail in view of Section 436 of the Code. Even a police officer on arrest has no discretion to refuse bail when the offence is bailable and the accused is prepared to furnish bail and the police officer causing such

detention may be held guilty of wrongful confinement under Section 342 of the Indian Penal Code.

In regard to a bailable offence, Magistrate is not competent to impose condition in bail such as accused shall appear before the investigating officer once in three days, etc. as they are unsustainable. Maximum period for which an under-trial prisoner can be detained: According to Section 436-A of the Code of Criminal Procedure, where a person has, during the period of investigation, inquiry or trial under this Code of an officer under any law (not being an offence for which the punishment of death has been specified as one of the punishments under this law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties: Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties: Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law. Explanation: In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.