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BAIL AND PERSONAL LIBERTY UNDER THE BNSS, 2023: CONTINUITY, CHANGE AND EMERGING CHALLENGES

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Abstract

Bail is an essential safeguard within the criminal justice system because it mediates between the State's interest in investigation and prosecution and an individual's right to personal liberty. The presumption of innocence requires that pre-trial detention should not become a form of punishment before conviction. The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which replaced the Code of Criminal Procedure, 1973 (CrPC) with effect from 1 July 2024, retains much of the earlier statutory framework governing bail while introducing certain changes. Chapter XXXV of the BNSS, comprising Sections 478 to 496, deals with bail and bonds. Among the most significant changes is Section 479, which provides for release of eligible first-time offenders after detention for one-third of the maximum period of imprisonment prescribed for the offence, subject to the statutory conditions and exclusions. Section 478 also expressly addresses the position of indigent persons who are unable to furnish sureties. This article examines the principal bail provisions under the BNSS, compares them with the corresponding provisions of the CrPC, and considers the constitutional and practical challenges associated with their implementation. It argues that the effectiveness of these reforms depends not only on statutory design but also on judicial interpretation, timely legal assistance, prison-level monitoring, responsible policing and the capacity of courts to decide bail applications without avoidable delay

Keywords – Bail, Bharatiya Nagarik Suraksha Sanhita, BNSS, Code of Criminal Procedure, CrPC, Anticipatory Bail, Undertrial Prisoners, Personal Liberty, Article 21, First-time Offenders.

I. INTRODUCTION

Bail occupies a central position in the criminal justice system because it seeks to maintain a balance between the liberty of an individual and the legitimate requirements of investigation, trial and the administration of justice. Arrest and detention before conviction can have consequences extending beyond the criminal proceedings themselves. An accused person may lose employment, face disruption of education, experience financial hardship and suffer the breakdown of family and social relationships. These consequences may arise even where the person is ultimately acquitted. Pre-trial detention must therefore be justified by lawful and relevant considerations; it cannot be treated as an advance form of punishment.

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The constitutional foundation of this principle is Article 21 of the Constitution of India, which provides that no person shall be deprived of life or personal liberty except according to procedure established by law. The Supreme Court has repeatedly emphasised that the power to arrest and the decision to authorise detention must be exercised in accordance with legal safeguards and not mechanically. In *Arnesh Kumar v. State of Bihar*, the Court cautioned against automatic arrests in offences punishable with imprisonment up to seven years and required police officers and Magistrates to examine the necessity for arrest and detention.[1]

The BNSS came into force on 1 July 2024 and replaced the CrPC as the principal procedural legislation governing criminal investigations, inquiries and trials. The provisions relating to bail and bonds are contained in Chapter XXXV, Sections 478 to 496. Section 478 governs bail in bailable offences; Section 479 prescribes the maximum period for which an undertrial prisoner may be detained; Section 480 concerns bail in non-bailable offences; Section 482 provides for anticipatory bail; and Section 483 confers special powers concerning bail upon the High Court and Court of Session.[2]

The most prominent reform relevant to undertrial detention is the one-third threshold for eligible first-time offenders under Section 479. The provision seeks to reduce the period for which persons remain incarcerated while their trials are pending. Its operation, however, is subject to statutory exclusions and restrictions, including the position of persons accused in multiple offences or cases. The central question is therefore not simply whether the BNSS has introduced new language, but whether the changes are capable of improving access to liberty in practice.

Bail generally refers to the release of an accused person from custody subject to conditions intended to secure appearance before the investigating agency or court and to protect the integrity of the proceedings. The recognised statutory forms include bail in bailable and non-bailable offences, anticipatory bail and release under the undertrial-detention provision. Courts may also grant interim protection or consider release on medical grounds in appropriate cases. The Supreme Court's decision in Gurbaksh Singh Sibbia v. State of Punjab remains a leading authority on anticipatory bail, emphasising that the discretion must be exercised judicially and in a manner that balances personal liberty with legitimate investigative requirements.[3]

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[1] Constitution of India, art. 21; Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273. The Supreme Court cautioned against routine arrest and required the necessity for arrest to be assessed in accordance with the statutory safeguards.

[2] Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), ch. XXXV, ss. 478–496. The BNSS came into force on 1 July 2024.

[3] *Gurbaksh Singh Sibbia v. State of Punjab,* (1980) 2 SCC 565. The decision explains the principles governing the exercise of discretion in anticipatory-bail matters.

II. BAIL PROVISIONS UNDER THE BNSS, 2023

Section 478 – Bail in Bailable Offences

Section 478 of the BNSS corresponds substantially to Section 436 of the CrPC. Where a person accused of a bailable offence is arrested or detained, or appears or is brought before a court, and is prepared to furnish bail, release on bail is ordinarily a statutory entitlement. The provision reflects the distinction between bailable and non-bailable offences: in a bailable offence, the authority does not exercise the same broad discretion that arises in relation to a non-bailable offence.[4]

An important feature of Section 478 is its express protection for an indigent person who is unable to furnish surety. In such a case, the police officer or court is required, subject to the statutory language, to release the person on execution of a bond for appearance rather than insist upon a bail bond supported by sureties. The explanation further provides that inability to furnish a bail bond within one week of arrest is sufficient ground to presume indigence for the purpose of the proviso. This clarification is significant because an accused person's poverty should not, by itself, convert a legal entitlement to bail into continued incarceration.[5]

The practical value of this safeguard depends on whether police officers and courts identify indigence at the earliest stage and avoid imposing conditions that are beyond the accused person's financial capacity. The provision should be applied consistently with the principle that bail conditions must be reasonable and should not be fixed at an amount that makes release illusory.

Section 479 – Maximum Period of Undertrial Detention

Section 479 corresponds to Section 436A of the CrPC, but introduces an important change for eligible first-time offenders. As a general rule, where an undertrial prisoner has undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for the offence, the court shall release the person on bail. The provision does not apply to an offence for which death or imprisonment for life is specified as one of the punishments.[6]

The proviso creates a more favourable threshold for a first-time offender, defined as a person who has never previously been convicted of any offence. Such a person is to be released on bond after undergoing detention for a period extending up to one-third of the maximum period of imprisonment prescribed for the offence. The one-third threshold is therefore not a reduction of the prescribed punishment; it is a statutory mechanism governing the duration of pre-trial detention. It is also not

[4] Bharatiya Nagarik Suraksha Sanhita, 2023, s. 478; Code of Criminal Procedure, 1973, s. 436.
[5] Bharatiya Nagarik Suraksha Sanhita, 2023, s. 478.
[6] Bharatiya Nagarik Suraksha Sanhita, 2023, s. 479; Code of Criminal Procedure, 1973, s. 436A.

an unconditional entitlement in every case. Section 479 contains further qualifications, including the court's power, after hearing the Public Prosecutor and recording reasons in writing, to direct continued detention beyond the ordinary threshold in the circumstances specified by the provision.[7] Section 479 also addresses cases in which a person is accused of more than one offence or is facing multiple cases. The statutory restriction may prevent release under this section unless the person is also on bail in all other cases in which they are accused. In addition, the Superintendent of the jail is required, upon completion of the relevant one-half or one-third period, to make an application in writing to the court so that the question of release can be considered. This institutional duty is important because an undertrial prisoner may not know when the statutory threshold has been reached or may lack the resources to approach the court independently.[8]

The provision is a significant attempt to address prolonged undertrial detention. Nevertheless, the exclusions and multiple-case restriction may limit its reach. A person who has completed the requisite period in one case may remain in custody because another case is pending. The operation of the provision must therefore be examined in light of the constitutional commitment to personal liberty, the presumption of innocence and the requirement that detention remain justified throughout the proceedings.

Section 480 – Bail in Non-Bailable Offences

Section 480 corresponds to Section 437 of the CrPC and governs the grant of bail in non-bailable offences by a court other than the High Court or Court of Session. Unlike bail in a bailable offence, release in a non-bailable offence is not an automatic statutory entitlement. The court must exercise judicial discretion after considering the nature and gravity of the accusation, the available material, the possibility of the accused absconding, the likelihood of interference with witnesses or evidence, and other circumstances relevant to the administration of justice.[9]

The section places restrictions on the grant of bail where there appear reasonable grounds for believing that the accused has committed an offence punishable with death or imprisonment for life. The statutory framework also recognises specified considerations relating to children, women and persons who are sick or infirm, subject to the terms of the provision. The existence of such considerations does not mean that bail must automatically follow; rather, they are relevant factors

[7] Bharatiya Nagarik Suraksha Sanhita, 2023, s. 479, first proviso. The one-third threshold applies to an eligible first-time offender, subject to the terms of the section.
[8] Bharatiya Nagarik Suraksha Sanhita, 2023, s. 479. See also the provision requiring the Superintendent of the jail to make an application when the relevant period of detention is completed
[9] Bharatiya Nagarik Suraksha Sanhita, 2023, s. 480; Code of Criminal Procedure, 1973, s. 437.

that the court must assess in the circumstances of the case. A reasoned decision is necessary to ensure that discretion is exercised fairly and consistently with constitutional principles.[10]

Section 482 – Anticipatory Bail

Section 482 corresponds to Section 438 of the CrPC and provides for a direction for grant of bail to a person who apprehends arrest on an accusation of having committed a non-bailable offence. Anticipatory bail is a form of pre-arrest judicial protection. It is intended to protect personal liberty where the circumstances justify apprehension of arrest, while preserving the ability of the investigating agency to conduct a lawful investigation.[11]

In Gurbaksh Singh Sibbia, the Supreme Court rejected an unduly restrictive approach to anticipatory bail and emphasised that the power must be exercised on the facts of each case. The decision does not establish an unlimited right to anticipatory bail. Rather, it requires courts to balance the individual's liberty against the needs of investigation and the interests of justice. The BNSS retains this remedy, thereby continuing an important safeguard within the new procedural framework.[12]

Section 483 – Special Powers of High Court and Court of Session

Section 483 corresponds to Section 439 of the CrPC and confers special powers concerning bail upon the High Court and the Court of Session. These courts may direct that a person in custody be released on bail and may modify or set aside conditions imposed by a Magistrate, subject to the statutory framework. The provision also contains procedural safeguards for specified serious offences. In particular, it requires notice to the Public Prosecutor in the circumstances specified by the section and provides for the presence of the informant or a person authorised by the informant at the hearing of bail applications in specified offences under the Bharatiya Nyaya Sanhita, 2023.[13] These safeguards recognise the legitimate interest of victims and informants in proceedings involving serious offences. At the same time, participation must not transform a bail hearing into a full trial or displace the court's obligation to assess the legal grounds for release. The accused must receive a fair opportunity to respond, and the decision must remain focused on the principles governing bail.[14]

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[10] Bharatiya Nagarik Suraksha Sanhita, 2023, s. 480. The restrictions and exceptions must be applied in accordance with the text of the provision.

[11] Bharatiya Nagarik Suraksha Sanhita, 2023, s. 482; Code of Criminal Procedure, 1973, s. 438.

[12] Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565.

[13] Bharatiya Nagarik Suraksha Sanhita, 2023, s. 483; Code of Criminal Procedure, 1973, s. 439; Bharatiya Nyaya Sanhita, 2023, ss. 65 and 70(2).

[14] Bharatiya Nagarik Suraksha Sanhita, 2023, s. 483. The notice and informant-participation requirements apply in the circumstances specified by the section.

III. MAJOR CHANGES INTRODUCED BY THE BNSS

Special Benefit for First-time Offenders

The one-third threshold under Section 479 is one of the most important changes in the BNSS bail framework. It recognises that a person with no previous conviction should not ordinarily remain in pre-trial custody for one-half of the maximum possible term where the statutory conditions for the more favourable threshold are satisfied. The reform is directed towards reducing unnecessary detention, although its scope is limited by the exclusions and other conditions contained in the section.

Greater Attention to Indigent Accused Persons

Section 478 expressly recognises that an indigent accused may be unable to furnish surety. Its provision for release on a personal bond, together with the presumption arising from inability to furnish a bail bond within one week of arrest, is intended to prevent poverty from becoming a barrier to release in bailable cases. Its effectiveness will depend upon consistent implementation by police officers and courts.

Institutional Responsibility of Jail Authorities

Section 479 places an affirmative responsibility on the Superintendent of the jail to make a written application to the court when the relevant detention threshold is completed. This mechanism is intended to reduce dependence on individual prisoners initiating proceedings and to make prison authorities active participants in identifying persons who may qualify for release. It will require accurate custody records, timely communication with courts and effective monitoring.

Victim and Informant Participation

Section 483 contains specified procedural requirements concerning notice to the Public Prosecutor and the presence of the informant or an authorised person in certain bail hearings. These requirements recognise the interests of victims and informants in serious cases. Their implementation must nevertheless be balanced with the accused's right to a fair hearing and the need to decide bail applications without unnecessary delay.

Continued Recognition of Anticipatory Bail

The retention of anticipatory bail under Section 482 preserves a significant remedy against unjustified arrest. The provision maintains continuity with the earlier CrPC framework and allows courts to grant pre-arrest protection where the facts and applicable legal principles warrant such relief.

IV. REVIEW OF LITERATURE

The existing scholarship and judicial materials identified in the submitted manuscript address bail from several connected perspectives, including the constitutional protection of personal liberty, the prevention of unnecessary arrest, judicial discretion, default bail, anticipatory bail and the statutory changes introduced by the BNSS. Read together, these materials indicate that bail reform cannot be assessed solely by comparing statutory provisions; it must also be evaluated by examining how courts, police authorities and prison officials implement them.

The Supreme Court's decision in Satender Kumar Antil v. Central Bureau of Investigation is particularly important to contemporary bail jurisprudence. The Court addressed unnecessary arrests, prolonged detention and the need for consistency in the application of bail principles. The decision reinforces the proposition that arrest should not be treated as an automatic consequence of registration of a criminal case and that procedural safeguards must be meaningfully applied. The Court's formulation that bail is the rule and jail is the exception must be understood alongside the facts of the case and the established principles governing the exercise of judicial discretion.[15]

Gurbaksh Singh Sibbia v. State of Punjab remains a foundational authority on anticipatory bail. Its significance lies in the Court's insistence that the power under the anticipatory-bail provision should not be confined by rigid formulas that disregard the circumstances of individual cases. The decision recognises the need to protect individuals against unjustified arrest while preserving the legitimate requirements of investigation.[16]

In Arnesh Kumar v. State of Bihar, the Supreme Court addressed the problem of routine and unnecessary arrests, particularly in offences punishable with imprisonment up to seven years. The Court required police officers to consider whether arrest was necessary and directed Magistrates to scrutinise the reasons placed before them rather than authorise detention mechanically. The principles in Arnesh Kumar remain relevant to the BNSS because Section 35 now governs arrest without warrant and carries forward safeguards concerning the necessity of arrest.[17]

The continuing proceedings in Satender Kumar Antil also demonstrate that implementation is central to the effectiveness of bail reform. In its order dated 15 January 2026, reported as 2026 INSC 115, the Supreme Court considered the operation of Section 35 of the BNSS and clarified the statutory approach to notice and arrest in offences punishable with imprisonment up to seven years. The Court

[15] Satender Kumar Antil v. Central Bureau of Investigation, (2022) 10 SCC 51.
[16] Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565.
[17] Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273.

emphasised that the power of arrest must be assessed by reference to statutory necessity and cannot be exercised as a matter of routine or convenience. This development is relevant to bail because unnecessary arrest at the investigation stage contributes directly to avoidable applications for release and prolonged pre-trial custody.[18]

The literature identified in the original submission also refers to the work of Dipa Dube on judicial discretion in bail matters; Siddharth Luthra and Ayushi Sharma Khanzachi on consistency in bail jurisprudence; Monica Chaudhary on default bail; Yogesh Pratap Singh on anticipatory bail; and Shriya Maini on transit bail and remand. These themes are relevant to the present study because they demonstrate that access to bail is affected by the quality of judicial reasoning, statutory time limits and jurisdictional complications. The original manuscript, however, did not provide complete publication details for these works. Their bibliographic particulars should therefore be confirmed against the materials consulted before the article is published.

The submission further identifies analyses by Lokendra Malik and Shailendra Kumar concerning the relationship between personal liberty and societal interest, Project 39A's discussion of bail and bonds under the BNSS, and commentary published by LiveLaw on whether the BNSS represents a missed opportunity for bail reform. It also refers to writings attributed to Sanjay Sarraf and S. P. Mishra, Ashima Jain, Ragini Soni and Nidhi S. Torgalmath. These materials are relevant to the comparative and critical dimensions of the article. However, as the raw manuscript does not supply full titles, publication details or stable source information for several of them, the author should verify and complete those references rather than relying on incomplete attributions.

The Supreme Court's decision in S. Kasi v. State is relevant to the constitutional dimension of statutory bail rights and the relationship between procedural delay and personal liberty. The case underscores that statutory safeguards against prolonged detention must be interpreted in a manner that gives practical effect to Article 21. The broader literature on bail therefore supports an approach that combines statutory interpretation with attention to the lived consequences of pre-trial detention.[19]

V. COMPARISON BETWEEN BNSS AND CRPC

The following table identifies the principal corresponding provisions governing bail and bonds under the two enactments. The comparison is confined to the provisions discussed in this article.

[18] Satender Kumar Antil v. Central Bureau of Investigation, 2026 INSC 115 (Supreme Court of India, 15 January 2026).
[19] S. Kasi v. State, (2020) 5 SCC 343.

Basis of comparison	**CrPC, 1973**	**BNSS, 2023**
Bail in bailable offences	Section 436	Section 478
Maximum period of undertrial detention	Section 436A	Section 479
Bail in non-bailable offences before Magistrates	Section 437	Section 480
Anticipatory bail	Section 438	Section 482
Special powers of High Court and Court of Session	Section 439	Section 483
Amount of bond and reduction thereof	Section 440	Section 484
Bond of accused and sureties	Section 441	Section 485
Undertrial detention threshold	One-half of the maximum period, subject to statutory conditions	One-half generally; one-third for eligible first-time offenders, subject to statutory conditions
Indigent persons unable to furnish surety	Section 436 recognised release on personal bond in appropriate cases	Section 478 expressly provides for release on bond where the person is indigent and unable to furnish surety, with a one-week presumption
Role of jail authorities in undertrial release	Section 436A provided for an application by the jail superintendent	Section 479 expressly requires the Superintendent of the jail to apply on completion of the relevant period

The comparison shows that the BNSS largely preserves the structure of the CrPC while renumbering and, in certain respects, modifying the relevant provisions. The most notable substantive change for the present study is the one-third detention threshold for eligible first-time offenders under Section 479. The provisions concerning indigent persons and the responsibility of jail authorities also seek to improve the practical accessibility of release. The table should not, however, be read as suggesting that every provision is wholly new: several provisions substantially continue the earlier statutory position.

VI. ANALYSIS OF THE CHANGES

The BNSS represents a combination of continuity and targeted reform. Retaining much of the earlier statutory structure may assist courts, advocates, police officers and prison authorities who have experience with the CrPC. At the same time, the changes introduced by Section 479 indicate legislative recognition that prolonged undertrial detention is a serious concern and that first-time offenders may require a more protective threshold.[20]

The one-third threshold is a meaningful reform, but its practical effect may be reduced by the restrictions contained in Section 479. The provision excludes offences for which death or life imprisonment is specified as a punishment and addresses the position of persons facing multiple offences or cases. These limitations require careful application so that the statutory protection is not defeated by avoidable procedural delay or an unduly mechanical approach to the existence of another pending case.[21]

A further concern is the difference between a statutory entitlement and its actual accessibility. An accused person may be unaware that the relevant period of detention has been completed, may lack legal representation, or may be unable to communicate effectively with prison authorities. The duty imposed on the Superintendent of the jail is therefore important, but it must be supported by reliable custody data, periodic review and effective coordination between prisons and courts.[22]

Judicial discretion remains central to the bail framework. Excessively high bail amounts, unnecessary conditions and repeated adjournments may make release ineffective even where bail has formally been granted. The Supreme Court has repeatedly stressed that bail decisions must be guided by relevant considerations and that conditions should not be excessive. In Moti Ram v. State of Madhya Pradesh, the Court cautioned against imposing onerous financial conditions that defeat the purpose of bail. The BNSS must be implemented consistently with this principle.[23]

The 2026 decision in Satender Kumar Antil further illustrates the relationship between arrest safeguards and bail. Where arrest is not necessary under the statutory criteria, the issue should not be postponed until the accused seeks bail after being taken into custody. The effective enforcement

[20] Bharatiya Nagarik Suraksha Sanhita, 2023, ch. XXXV; Satender Kumar Antil v. Central Bureau of Investigation, (2022) 10 SCC 51.
[21] Bharatiya Nagarik Suraksha Sanhita, 2023, s. 479.
[22] Bharatiya Nagarik Suraksha Sanhita, 2023, s. 479; S. Kasi v. State, (2020) 5 SCC 343.
[23] Moti Ram v. State of Madhya Pradesh, (1978) 4 SCC 47. The Court cautioned that bail conditions should not be so onerous as to make release ineffective.

of Section 35 can reduce unnecessary detention at its source and thereby reinforce the objectives of the bail provisions.[24]

VII. CHALLENGES IN IMPLEMENTATION

The first challenge concerns awareness and access to legal assistance. The protections under Sections 478 and 479 can be meaningful only if accused persons, their lawyers and prison authorities understand the conditions under which release may be considered. Persons from economically weaker backgrounds are particularly vulnerable to remaining in custody because they cannot arrange sureties or obtain timely legal advice. Legal services authorities and prison legal-aid clinics should therefore play an active role in identifying eligible undertrial prisoners.

The second challenge relates to administrative capacity. Section 479 places responsibility on the Superintendent of the jail to make an application when the relevant detention threshold is completed. This duty requires accurate records of the period of detention, the maximum punishment applicable to each charge, the accused person's previous conviction status and the existence of other pending cases. Inaccurate or incomplete records may delay the process or lead to incorrect eligibility assessments.

The third challenge concerns consistency in judicial decision-making. Bail applications involve judicial discretion, but that discretion must be exercised through reasoned orders and relevant criteria. Inconsistent approaches may result in similarly situated accused persons receiving different treatment. Courts should explain the factors that justify grant or refusal of bail, while avoiding a mini-trial at the stage of bail.

The fourth challenge is the need to balance victim and informant participation with the accused's right to a fair hearing. The procedural safeguards under Section 483 recognise the interests of victims in specified serious offences. Their implementation should not, however, result in unnecessary adjournments or a presumption against release. The court must maintain the distinction between the limited inquiry appropriate to a bail application and the determination of guilt at trial.

VIII. CONSTITUTIONAL PERSPECTIVE

The bail provisions of the BNSS must be interpreted within the framework of Articles 14 and 21 of the Constitution. Article 14 requires non-arbitrariness and equal protection of the laws, while Article 21 protects life and personal liberty. A decision affecting pre-trial liberty must therefore be based on

[24] Satender Kumar Antil v. Central Bureau of Investigation, 2026 INSC 115 (Supreme Court of India, 15 January 2026); Bharatiya Nagarik Suraksha Sanhita, 2023, s. 35

lawful, relevant and proportionate considerations. The fact that an offence is alleged does not displace the presumption of innocence or remove the obligation to justify continued detention.[25]

The Supreme Court's bail jurisprudence reflects the principle that the criminal process must not become punitive before conviction. In State of Rajasthan v. Balchand, the Court articulated the well-known formulation that bail, rather than jail, is the ordinary rule, subject to the circumstances and requirements of the case. This principle does not eliminate judicial discretion or the need to protect the investigation and trial; it requires that detention be justified rather than imposed as a matter of routine.[26]

Article 21 also has implications for the duration of proceedings. Prolonged detention caused by delay may undermine the fairness of the criminal process, particularly where the accused has limited means to seek release. In Hussain v. Union of India, the Supreme Court emphasised the importance of speedy investigation and trial as an aspect of the administration of criminal justice. The statutory safeguards under Section 479 should consequently be read in a manner that advances, rather than frustrates, the constitutional protection of personal liberty.[27]

The BNSS should therefore be understood not merely as a procedural statute but as legislation operating within constitutional commitments to liberty, fairness and non-arbitrariness. A rights-consistent interpretation requires courts and authorities to consider both the statutory text and the practical consequences of detention.

IX. SUGGESTIONS

Courts and prison authorities should maintain a reliable digital system for monitoring the period of undertrial detention and identifying prisoners who are approaching the one-half or one-third threshold under Section 479. Such a system should generate timely alerts and facilitate communication between the prison administration, the relevant court and the legal services authority. The system must also permit human verification of the underlying records so that errors concerning charges, previous convictions or other pending cases do not result in wrongful exclusion.

Legal aid should be strengthened at the police station, remand and prison levels. Every undertrial prisoner should be informed, in a language that they understand, of the relevant bail provisions and the availability of legal assistance. Particular attention should be given to persons who are indigent, unrepresented or otherwise unable to initiate proceedings independently.

[25] Constitution of India, arts. 14 and 21.
[26] State of Rajasthan v. Balchand, (1977) 4 SCC 308.
[27] Hussain v. Union of India, (2017) 5 SCC 702.

Courts should pass reasoned orders while granting or refusing bail. The reasons should identify the relevant considerations without entering into a detailed assessment of evidence that properly belongs to the trial. Bail conditions should be proportionate to the risks they are intended to address and should not be fixed at levels that make release practically impossible.

Police authorities should strictly comply with the requirements governing arrest under Section 35 of the BNSS. In offences punishable with imprisonment up to seven years, the statutory requirements concerning notice and the necessity of arrest must be applied in accordance with the Supreme Court's decision in Satender Kumar Antil. Arrest should not be treated as a routine investigative step where the statutory conditions for its exercise are absent.[28]

Bail applications involving personal liberty should be heard without avoidable delay. Prison-level monitoring should be made an active and continuing responsibility rather than a one-time exercise. Magistrates, Sessions Courts, prosecutors, police officers and prison officials should receive periodic training on the changes introduced by the BNSS and the constitutional principles governing bail.

Finally, the operation of Section 479 should be periodically reviewed to assess whether its exclusions and multiple-case restriction are producing unintended consequences. Such a review should be based on reliable data concerning undertrial populations, duration of detention, applications made by jail authorities and the outcomes of those applications. Victim and informant participation in specified bail hearings should be facilitated in a manner that preserves procedural fairness and does not convert bail proceedings into a trial on the merits.

X. FINDINGS OF THE STUDY

The study finds that the BNSS retains the basic structure of the CrPC while introducing targeted changes to the law governing bail and undertrial detention. The most significant of these changes is the one-third detention threshold for eligible first-time offenders under Section 479. This provision has the potential to reduce unnecessary pre-trial incarceration, although its operation remains subject to statutory exclusions and restrictions.[29]

The study also finds that Section 478 gives express recognition to the position of indigent persons who cannot furnish sureties, while Section 479 places a proactive responsibility on the Superintendent of the jail to approach the court when the relevant period of detention is completed. The continued availability of anticipatory bail under Section 482 preserves an important safeguard

[28] Bharatiya Nagarik Suraksha Sanhita, 2023, s. 35; Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273; Satender Kumar Antil v. Central Bureau of Investigation, 2026 INSC 115 (15 January 2026).
[29] Bharatiya Nagarik Suraksha Sanhita, 2023, s. 479.

against unjustified arrest, and Section 483 retains the special bail powers of the High Court and Court of Session while incorporating specified procedural safeguards.[30]

At the same time, the effectiveness of these provisions is constrained by lack of awareness, inadequate legal assistance, administrative shortcomings, delays in court proceedings, inconsistent exercise of discretion and the restrictions applicable to multiple cases. The success of the statutory reforms will therefore depend on institutional implementation as much as on the wording of the legislation.

XI. CONCLUSION

The bail provisions of the Bharatiya Nagarik Suraksha Sanhita, 2023 mark an important stage in the development of India's criminal procedural law. Although the BNSS preserves much of the framework previously contained in the CrPC, it introduces changes intended to address the vulnerability of undertrial prisoners and to improve access to release. Section 479 is particularly significant because it provides a one-third detention threshold for eligible first-time offenders and requires the Superintendent of the jail to approach the court when the relevant period is completed.

These changes should be understood as safeguards against unnecessary pre-trial detention, not as a reduction of the punishment prescribed for an offence. Their practical impact will depend upon accurate prison records, effective legal aid, timely judicial consideration and a consistent understanding of the statutory exclusions. The restrictions relating to multiple cases and the exclusions for offences punishable with death or life imprisonment also require careful application.

The continuing intervention of the Supreme Court in Satender Kumar Antil demonstrates that legislative reform must be accompanied by effective implementation of arrest safeguards. Unnecessary arrest at the investigation stage contributes to avoidable detention and increases the burden on courts. The principles governing arrest under Section 35 and the protections governing bail under Chapter XXXV must therefore operate together.[31]

Ultimately, the purpose of bail is neither to favour an accused person nor to weaken the criminal justice system. It is to ensure that punishment does not precede conviction and that personal liberty is restricted only where such restriction is legally justified. The BNSS provides an opportunity to strengthen this balance. Its success will be measured not merely by the introduction of new statutory provisions, but by whether an ordinary undertrial prisoner can obtain timely, fair and meaningful access to liberty.

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[30] Bharatiya Nagarik Suraksha Sanhita, 2023, ss. 478, 479 and 483.

[31] Satender Kumar Antil v. Central Bureau of Investigation, 2026 INSC 115 (Supreme Court of India, 15 January 2026).