

Code of Criminal Procedure (CrPC), 1973

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1.1 Section 195 of the CrPC

The provisions of **Section 195 of the Cr.PC.** are mandatory.

1.1.1 Explanation: Nature of Section 195 of the CrPC

Section 195 of the Code of Criminal Procedure (CrPC) creates a statutory bar on the power of the court to take cognizance of certain offenses. It is not merely a procedural suggestion; it is a condition precedent that must be strictly followed.

1.1.2 Why it is Mandatory

The core purpose of Section 195 is to **prevent the reckless or malicious prosecution of individuals** by private parties in matters involving the administration of justice or public servants.

- **Jurisdictional Bar:** Unless a complaint is made in writing by the public servant concerned (or their superior) or by the concerned Court, a Magistrate has no jurisdiction to take cognizance of the offenses listed in this section (such as contempt of lawful authority, giving false evidence, or offenses against public justice).
- **No Private Complaints:** A private individual cannot directly file a complaint for these specific offenses. They must move the court or the public servant to file the complaint on their behalf.
- **Consequence of Non-compliance:** If a court takes cognizance without following the "written complaint" requirement of Section 195, the entire proceedings are considered void ab initio (illegal from the beginning) and liable to be quashed.

1.1.3 Key Offenses Covered

Section 195 generally applies to three categories:

1. Contempt of lawful authority of public servants (e.g., absconding to avoid service of summons).
2. Offenses against public justice (e.g., perjury or giving false evidence in court).
3. Offenses relating to documents given in evidence (e.g., forgery of a record of court).

1.1.4 Important Note (BNSS 2023)

Under the new **Bharatiya Nagarik Suraksha Sanhita (BNSS)**, which replaced the CrPC, this provision is maintained under **Section 215**, continuing the mandatory requirement for a formal complaint by the authority concerned.

The relationship between **Section 195** and **Section 340** of the CrPC (now **Sections 215 and 379** of the BNSS) is essentially a "**Lock and Key**" mechanism.

While **Section 195** tells the court **what it cannot do** (it cannot take cognizance without a formal complaint), **Section 340** provides the **procedure** for **how** that formal complaint is actually created.

1.1.5 The Workflow: From Offense to Trial

When an offense against public justice (like perjury or forgery) is committed in a court proceeding, the court doesn't just arrest the person immediately. It follows this mandatory chain:

1. **The Trigger:** An application is made to the court (or the court acts *suo motu*) regarding an offense mentioned in **Section 195**.
2. **Preliminary Inquiry (Section 340):** The court holds an inquiry to see if it is "expedient in the interests of justice" that an inquiry should be made.

3. **The Finding:** The court records a finding that an offense appears to have been committed.
4. **The Complaint:** The court makes a complaint in writing.
5. **The Dispatch:** This written complaint is sent to a Magistrate of the first class.
6. **Cognizance:** The Magistrate then takes cognizance based on that specific complaint (satisfying the requirement of Section 195).

1.1.6 Why is this "Expediency" Test Important?

Under **Section 340**, the court isn't required to prosecute *every* person who tells a small lie. The court must be satisfied that:

- There is a prima facie case of deliberate falsehood.
- The prosecution is necessary in the interest of justice (not just to settle a private score between litigants).

1.1.7 Key Differences at a Glance

Feature	Section 195	Section 340
Nature	Substantive/Prohibitory	Procedural/Enabling
Function	Acts as a "Bar" to jurisdiction.	Acts as the "Mechanism" to remove the bar.
Application	Defines which offenses need a special complaint.	Lays down the steps the court must take to file that complaint.

1.1.8 A Common Pitfall

Many people think they can file an FIR at a police station if someone gives false evidence in court. They cannot. Because of the mandatory nature of Section 195, the police cannot investigate such "non-cognizable" matters without following this judicial procedure.

1.2 Laying of trap

Laying of trap is a part of the investigation.

In criminal jurisprudence, "laying a trap" (often used in corruption or bribery cases) is a strategic procedure used by law enforcement to catch a person in the act of committing an offense.

1.2.1 Why it falls under Investigation

Under the **Code of Criminal Procedure (CrPC)** and the **Bharatiya Nagarik Suraksha Sanhita (BNSS)**, the legal stages are distinct:

- **Investigation:** This is the first stage, conducted by a **Police Officer** or any person authorized by a Magistrate. The primary objective is the **collection of evidence**. Since laying a trap is done to secure evidence (like marked currency notes or recordings) and apprehend the accused, it is a core investigative tool.
- **Inquiry:** This is conducted by a **Magistrate or Court**, not the police. It includes proceedings to determine if there are sufficient grounds to proceed to trial.

- **Trial:** This is the judicial process where the guilt or innocence of the accused is determined by a Judge.
- **Preliminary Inquiry:** This is a brief probe (often in matrimonial or corruption cases) to see if a cognizable offense is made out before registering an FIR. While a trap *could* happen early, it is legally classified as an act of evidence collection.

1.2.2 Key Elements of a "Trap"

1. **Preparation:** Organizing "panch" witnesses (independent witnesses) and marking currency with phenolphthalein powder.
2. **Execution:** Catching the accused while they accept the bribe.
3. **Documentation:** Preparing the recovery memo or "Post-Trap Memo," which later serves as crucial evidence during the trial.

1.3 Section 473 of the Cr.PC.- Condonation of the delay

Under the Code of Criminal Procedure, 1973, Section 473 grants the court the power to take cognizance of an offense even after the period of limitation has expired, provided certain conditions are met.

1.3.1 Understanding Section 473 Cr.PC

While **Chapter XXXVI of the Cr.PC sets strict time limits for taking cognizance of non-continuing offenses, Section 473 acts as an "extension" clause.** A court can condone the delay if it is satisfied that:

1. **Explanation of Delay:** The delay has been properly explained (the "sufficient cause" test).
2. **Interests of Justice:** It is necessary to do so in the interest of justice, regardless of whether the explanation is perfect.

1.3.2 Summary of Limitation Periods (Section 468)

To understand why Section 473 is needed, it helps to look at the standard limitation periods it overrides:

Offense Punishment	Limitation Period
Fine only	6 Months
Imprisonment up to 1 year	1 Year
Imprisonment 1 to 3 years	3 Years

1.3.3 Comparison of the Options

- **Section 470:** Deals with the exclusion of time in certain cases (e.g., time spent prosecuting another case in good faith).
- **Section 471:** Deals with the exclusion of the date on which the Court is closed.
- **Section 472:** Relates to continuing offenses, where a fresh period of limitation begins to run at every moment of the interval during which the offense continues.
- **Section 473:** The specific provision for condonation of delay.

1.3.4 Note: In the new **Bharatiya Nagarik Suraksha Sanhita (BNSS)**, which replaces the Cr.PC, this provision is found under **Section 525**.

1.4 Sec.50 of Cr.PC.

It is mandatory for **a police officer to inform the person arrested**, the grounds of arrest and right of bail if the offence is **not non-bailable** under Section 50 of Cr.PC.

(**Note:** Under the new Indian criminal code, the **Bharatiya Nagarik Suraksha Sanhita (BNSS)**, this provision is now located under **Section 47**.)

1.4.1 Breaking Down Section 50

Section 50 of the Code of Criminal Procedure (Cr.PC) is a fundamental safeguard for personal liberty. It imposes two specific duties on a police officer making an arrest without a warrant:

1. **Full Particulars:** The officer must communicate the full particulars of the offence or other grounds for the arrest.
2. **Right to Bail:** If the offence is bailable, the officer must inform the person that they are entitled to be released on bail and that they may arrange for sureties.

1.4.2 Other Sections:

Section	Purpose
Sec. 40	Duty of officers employed in connection with the affairs of a village to make certain reports (unrelated to arrest procedures).
Sec. 51	Search of arrested person (the power to search the individual and place their belongings in safe custody).
Sec. 54	Examination of arrested person by a medical practitioner (the right to a medical check-up).

1.4.3 Constitutional Connection

It is worth noting that **Section 50** is the statutory implementation of **Article 22(1) of the Constitution of India**, which mandates that no person shall be detained in custody without being informed "as soon as may be" of the grounds for such arrest.

In criminal law, the classification of an offence as **Bailable** or **Non-Bailable** determines how much "power" the police and the courts have over your immediate freedom.

1. Bailable Offences

In these cases, bail is a **matter of right**. The police officer is legally bound to release the person as soon as the bail amount or surety is provided.

- **Nature:** Usually less serious (e.g., simple hurt, bribery, public nuisance).
- **Police Power:** The station officer can grant bail directly at the police station.
- **The "Section 50" Connection:** This is why Section 50 of the Cr.PC is so critical—the officer *must* tell you that you have the right to give bail right then and there.

2. Non-Bailable Offences

In these cases, bail is a **matter of judicial discretion**. You do not have an absolute right to be released; a Magistrate or Judge decides based on the facts.

- **Nature:** More serious or heinous (e.g., murder, kidnapping, dowry death).
- **Police Power:** The police **cannot** grant bail. They must produce the arrested person before a Magistrate within 24 hours.
- **The Court's Role:** The court will look at factors like the severity of the crime, the risk of the accused fleeing, or the possibility of witness tampering before deciding on bail.

1.4.4 Comparison Summary

Feature	Bailable Offence	Non-Bailable Offence
Right to Bail	Absolute Right	Judicial Discretion (Not a right)
Who grants it?	Police Officer or Magistrate	Only the Court/Magistrate
Section 50 Duty	Officer must inform you of this right	Officer only informs of grounds of arrest
Standard	Bail is the rule	Jail is often the rule (depending on severity)

1.4.5 A Common Misconception

Many people think "**Non-Bailable**" means you **cannot** get bail at all. That is incorrect. It simply means you have to convince a **Judge** to let you out, rather than it being an automatic administrative process at the police station.

When a judge handles a **Non-Bailable** case, the decision shifts from a "checklist" to a "balancing act." Since the offense is serious, the court must balance your right to liberty against the safety of society and the integrity of the trial.

1.4.6 The "Triple Test"

The Supreme Court of India has established a "Triple Test" that most judges use as a primary filter. If you fail any of these, bail is usually denied:

1. **Flight Risk:** Is the accused likely to run away or go into hiding to avoid trial?
2. **Tampering with Evidence:** Is there a risk that the accused will destroy documents, delete digital footprints, or alter the crime scene?
3. **Influencing Witnesses:** Is the accused powerful or intimidating enough to threaten witnesses into changing their statements?

1.4.7 Other Key Factors Considered

Beyond the **Triple Test**, a judge will look at these specific details:

- **Prima Facie Case:** Does it look like the person *actually* committed the crime based on the initial evidence? (The court doesn't do a full trial here, just a "quick look").

- **Nature and Gravity:** How serious is the charge? A financial fraud case is treated differently than a violent assault.
- **Severity of Punishment:** If the crime carries a life sentence or the death penalty, the court is much more cautious about granting bail.
- **Health and Age:** Section 437 of the Cr.PC provides a "soft spot" for women, children (under 16), or the sick/infirm. They may be granted bail even in very serious cases.

1.4.8 Types of Bail You Can Seek

If you are worried about being arrested in a non-bailable case, you don't always have to wait until you are behind bars:

Type of Bail	When to Apply
Anticipatory Bail	Applied for <i>before</i> arrest (if you fear a false or motivated charge).
Regular Bail	Applied for <i>after</i> you are already in police or judicial custody.
Interim Bail	A temporary bail granted while your main bail application is still pending.
Default/Statutory Bail	Granted if the police fail to file the charge sheet within the legal time limit (usually 60 or 90 days).

1.4.9 Important Tip

In **non-bailable cases**, even if the judge grants bail, they often impose **strict conditions**, such as surrendering your passport, reporting to the police station every week, or staying away from certain geographical areas.

Anticipatory Bail is essentially a "legal shield" that you obtain before the police even touch you. Provided under **Section 438 of the Cr.PC (now Section 482 of the BNSS)**, it is a direction to release a person on bail *in the event* of their arrest.

Think of it as a **pre-emptive strike** against being humiliated or unjustly detained.

1. Who can apply and where?

You cannot just go to any court for this. You must approach:

- The **Court of Session**, or
- The **High Court**.

You must show that you have a "**reasonable apprehension**" (a genuine fear based on facts) that you are about to be arrested for a **non-bailable offence**. You can't get anticipatory bail for bailable offences because, as we discussed, you already have a right to bail at the police station for those.

2. What does the Judge look at?

The court doesn't hand these out like candy. A judge will weigh several factors:

- **The Nature of the Accusation:** Is it a serious crime (like murder) or a family/property dispute that smells like a "setup"?
- **The Applicant's Antecedents:** Do you have a clean record, or are you a repeat offender?
- **The Risk of Absconding:** If given this shield, will you flee the country?
- **Malafide Intent:** Is the person accusing you doing it just to humiliate or injure your reputation?

3. Common Conditions Imposed

If the court grants you anticipatory bail, it usually comes with "strings attached" to ensure you don't obstruct justice:

1. **Interrogation:** You must make yourself available for police questioning whenever called.
2. **No Inducement:** You must not threaten or bribe anyone connected to the case.
3. **No Travel:** You often cannot leave the country without the court's prior permission (and may have to surrender your passport).
4. **Residence:** You might be asked to stay at a specific address.

4. What happens during the actual "Arrest"?

This is the most misunderstood part. Anticipatory bail **does not stop the arrest** from happening. It simply means that the moment the police officer says "You are under arrest," you show them the court order, and they are **legally required to release you immediately** on the terms set by the court.

Note: If a Magistrate has already issued a warrant against you, getting anticipatory bail becomes much harder. It is always best to apply the moment you suspect a First Information Report (FIR) might be filed.

1.4.10 Quick Summary: The Life Cycle of Bail

Scenario	Action
Fear of Arrest	Apply for Anticipatory Bail (Sec. 438).
Already Arrested	Apply for Regular Bail (Sec. 437/439).
Police fail to charge in 90 days	Claim Default Bail (Sec. 167).

When you apply for **anticipatory bail**, the State (represented by the Public Prosecutor and the Police) often files a formal "**Bail Objection Report**." They don't just say "no"—they must provide specific legal grounds to convince the judge that you should remain available for arrest.

1.4.11 Most common grounds used to oppose your shield of protection:

1. The "Necessity of Custodial Interrogation"

This is the strongest argument the police have. They argue that to solve the crime, they need to question you in their own environment (the police station) rather than having you come in for an hour and leave.

- **The Logic:** They may claim you are not revealing the location of a weapon, hidden money, or the names of co-conspirators, and only "custodial interrogation" will break the deadlock.

2. Nature and Gravity of the Offence

The prosecution will emphasize how heinous the crime is.

- **The Argument:** "The accused is charged with a crime that shocked the collective conscience of society (e.g., a major scam, a violent assault, or a crime against a child). Granting bail at this stage would send a wrong message to the public."

3. Risk of Evidence Tampering

If the case relies on documents, digital records, or physical evidence that hasn't been seized yet, the police will oppose bail.

- **The Argument:** "If the applicant is free, they will use their influence to destroy files, delete hard drives, or clean up the crime scene before we can reach it."

4. Witness Intimidation

The police will highlight your social or financial standing compared to the victim or witnesses.

- **The Argument:** "The accused is a powerful individual. Witnesses are already terrified to come forward. If granted bail, the accused will threaten them into changing their statements or turning 'hostile'."

5. Flight Risk (Absconding)

The prosecution will try to show that you have no "deep roots" in the community.

- **The Argument:** "The accused has family abroad, significant foreign funds, or has already tried to hide from the police. If granted bail, they will disappear and never face trial."

1.4.12 Summary of the Conflict

Police Ground	Your Counter-Argument (Usually)
Need for Interrogation	"I am willing to join the investigation every day and cooperate fully."
Gravity of Offence	"The FIR is a result of political/personal vendetta and is factually incorrect."
Witness Tampering	"I have no contact with the witnesses and am willing to stay out of the city."
Flight Risk	"I have a family, a job, and property here; I am not going anywhere."

1.4.13 A Recent Legal Note (2026 Context)

In recent rulings (such as those from the Punjab & Haryana High Court in early 2026), courts have reiterated that **anticipatory bail is an exception, not the rule**, especially in cases involving national security, communal harmony, or massive financial frauds. If the police can prove that "exceptional circumstances" exist, the court is highly likely to deny the bail to protect the investigation.

If the **High Court rejects your application for anticipatory bail**, the situation becomes critical because the police are now legally "free" to arrest you. However, the legal road does not end there.

1.4.14 Primary options available in 2026:

1. Special Leave Petition (SLP) in the Supreme Court

The most common and powerful remedy is to approach the **Supreme Court of India** under **Article 136** of the Constitution.

- **The Process:** You file an SLP challenging the High Court's rejection.
- **Interim Protection:** Your lawyer can request an "urgent listing." If the Supreme Court feels the case has merit, it can grant **interim protection** (an order staying your arrest) while it hears the full petition.
- **Merit-Based:** The Supreme Court generally looks for a "substantial question of law" or a "gross miscarriage of justice"—it won't usually re-examine small facts unless the High Court's reasoning was totally flawed.

2. Filing a "Fresh" Application (Successive Bail)

You generally cannot simply file the same application again. However, you can file a **Successive Anticipatory Bail Application** if there is a **substantial change in circumstances**.

- **Examples of Change:** The police have filed a charge sheet (which changes the nature of the case), a key co-accused has been acquitted, or new evidence has surfaced that proves your innocence.
- **Note:** In late 2025, the Supreme Court clarified that High Courts cannot "restore" or "recall" a rejected bail order; you must file a completely fresh application based on these new grounds.

3. Application to Quash the FIR (Section 482 CrPC / Sec 528 BNSS)

If the entire case is clearly fake, malicious, or a civil dispute dressed up as a crime, you can ask the High Court to **quash (delete) the FIR** entirely.

- **The Shield:** While the court considers quashing the FIR, it has the power to order that **"no coercive steps"** (no arrest) be taken against you.

4. Moving for Interim or Transit Bail

If the rejection was due to a technicality (like filing in the wrong state or city), you can seek **Transit Anticipatory Bail** to give you enough time (usually a few days) to reach the correct court without being arrested on the way.

1.4.15 What to Avoid

Action	Consequence
Absconding	Running away makes you a "proclaimed offender." Once declared an offender, your right to anticipatory bail is almost entirely lost.
Switching Lawyers only	Simply changing your lawyer and filing the exact same papers in the same court will lead to an immediate dismissal and a possible fine for "forum shopping."

1.4.16 Summary of Next Steps

1. **Get the Order:** Immediately obtain a "Certified Copy" of the High Court's rejection order.
2. **Stay "Available":** Do not switch off your phone or disappear; keep your lawyer informed of your location.

3. **File SLP:** Have an **Advocate-on-Record (AOR)** file your petition in the Supreme Court within 24–48 hours for the best chance of preventing arrest.

If the police arrest you while your **Special Leave Petition (SLP)** is pending in the Supreme Court, it is a high-stakes moment. Here are the reality of the situation and the **legal steps that follow:**

1. The Power to Arrest (The "No Stay" Rule)

Simply filing an SLP in the Supreme Court **does not** automatically stop the police from arresting you.

- **The Rule:** Unless the Supreme Court has explicitly passed an **interim order** (a "stay") directing that "no coercive steps" be taken, the police retain the legal authority to arrest you based on the High Court's earlier rejection.
- **The Strategy:** This is why lawyers often push for a "Mentioning" in the Supreme Court—asking the Chief Justice's bench for an **urgent listing** to get that stay order before the police can act.

2. What Happens to the SLP After Arrest?

If you are arrested, the nature of your legal battle changes instantly:

- **The SLP becomes "Infructuous":** In many cases, since you have already been arrested, a petition for **anticipatory bail (pre-arrest)** is no longer valid. You can't be "protected from arrest" if you are already in handcuffs.
- **The Shift to Regular Bail:** The Supreme Court may dismiss the SLP but grant you the "liberty" to apply for **Regular Bail** (under Section 439 Cr.PC / Sec 483 BNSS) before the Trial Court or High Court.
- **Exception:** Sometimes, if the Supreme Court feels the arrest was malicious or done specifically to bypass their upcoming hearing, they can still hear the matter and order your immediate release.

3. Immediate Remedies After Arrest

If the arrest happens while the SLP is pending, your legal team will take these steps:

Step	Action	Why?
Urgent Mentioning	Your lawyer informs the Supreme Court <i>immediately</i> that you have been arrested while the matter was being heard.	To show the court the urgency or possible "over-zealousness" of the police.
Regular Bail Application	Move the Trial Court for bail within 24 hours of being produced before a Magistrate.	Since you are now in custody, this is your new primary route to freedom.
Challenge the Arrest	If the police didn't follow Section 50 (inform grounds) or Section 41A (notice) protocols.	To have the arrest itself declared illegal (under the <i>Armesh Kumar</i> or <i>Pankaj Bansal</i> guidelines).

4. Can the Supreme Court still help?

Yes. Even if arrested, the Supreme Court has the power to:

1. **Grant Interim Bail:** Release you temporarily until they decide on the merits of your case.

2. **Declare the Arrest Illegal:** If the police arrested you despite a verbal assurance in court or in violation of clear procedures, the Court can set you at liberty immediately.
3. **Expedite the Trial:** If they refuse bail, they may order the lower court to finish the trial or the bail hearing within a strict time frame (e.g., 2 weeks).

1.4.17 Summary for 2026

As of recent 2026 rulings, the courts have become very strict about the "**Grounds of Arrest**" (following the *Pankaj Bansal* and *Vihaan Kumar* precedents). If the police arrested you while your SLP was pending but failed to give you **written grounds** for that arrest at the time of the "pinch," your lawyer can argue that the arrest violates **Article 22(1)** of the Constitution, which could lead to your immediate release regardless of the bail merits.

1.5 Section 446- Maximum period of civil imprisonment for a surety in default of payment of penalty under the surety bond

Under the **Code of Criminal Procedure (CrPC)**—specifically **Section 446**—if a surety fails to pay the penalty amount specified in the bond and it cannot be recovered through the attachment and sale of property, the court may sentence the surety to imprisonment in a civil jail.

1.5.1 Legal Breakdown

Here is how the law structures this penalty:

- **Maximum Duration:** The law stipulates that the imprisonment cannot exceed **six months**.
- **Nature of Imprisonment:** It is specifically **civil imprisonment**, meaning the individual is kept in a civil jail rather than a criminal prison.
- **Trigger Condition:** This occurs only after the court has attempted to recover the penalty and the surety has failed to show "sufficient cause" for why the amount should not be paid.
- Sure! While they both serve the same goal—ensuring an accused person shows up for their court dates—the "who" and the "what" behind the financial guarantee are quite different.

1.5.2 Surety Bond vs. Personal Recognizance (PR) Bond

• Feature	• Personal Recognizance (PR) Bond	• Surety Bond
• Who Signs?	• Only the accused person.	• The accused and a third party (the surety).
• Financial Risk	• The accused is personally liable for the bond amount if they flee.	• The surety is legally responsible for paying the penalty if the accused flees.
• Trust Level	• High; the court trusts the person to return based on their community ties.	• Moderate to Low; the court requires a "guarantor" to ensure the accused behaves.
• Payment	• Usually no money is paid upfront; it's a written promise.	• The surety may have to prove they have the assets (property/cash) to cover the bond.

1.5.3 Key Takeaways

1. A Personal Recognizance Bond is essentially a "signature bond." If the person fails to appear, the court pursues them directly for the money.

2. A Surety Bond adds a layer of accountability. Because the **surety** (often a family member or a professional bondsman) faces **civil imprisonment** for up to six months (as mentioned in your original question) if the penalty isn't paid, they have a very strong incentive to make sure the accused shows up to court.

1.5.4 Note: In many jurisdictions, if a surety realizes the accused is planning to run away, they can apply to the court to be discharged from the bond, which usually results in the accused being taken back into custody.

When an accused person jumps bail, the court doesn't just immediately throw the surety in jail. There is a specific, multi-step legal procedure under **Section 446 of the CrPC** (now **Section 491 of the Bharatiya Nagarik Suraksha Sanhita, 2023**) to ensure fairness.

1.5.5 Step-by-step process:

1. Proof of Forfeiture

The process begins when the court is satisfied that the bond has been "forfeited" (usually because the accused failed to appear). The court must **record the grounds** of this proof in its proceedings.

2. Show Cause Notice

The court then issues a notice to the surety (and the accused) calling upon them to:

- **Pay the penalty** mentioned in the bond, **OR**
- **Show cause** (explain with evidence) why the penalty should not be paid (e.g., the accused was hospitalized or in a different jail).

3. Recovery as a "Fine"

- If the surety fails to show "sufficient cause" and does not pay, the court treats the penalty like a criminal fine. It can:
- Issue a warrant to **attach and sell** the surety's movable or immovable property to recover the money.
- The court also has the discretion to **remit (forgive)** a portion of the penalty and enforce only part of it if the surety's explanation is somewhat reasonable but not fully excusable.

4. Civil Imprisonment (The Last Resort)

- If the penalty still cannot be recovered through the sale of property, the court moves to the final stage:
- The surety can be sentenced to **civil imprisonment**.
- As you noted, this is for a maximum term of **six months**.

1.5.6 Can a surety back out *before* this happens?

Yes. Under **Section 444**, a surety has the right to apply for discharge **at any time**:

- The surety applies to the Magistrate to be released from the bond.
- The court then issues an arrest warrant for the accused.
- Once the accused is brought before the court or surrenders, the original surety is **discharged**.
- The accused must then find a *new* surety or go back to jail.

It's a common question—does the debt follow the surety to the grave? The short answer is **no**.

Under **Section 447 of the CrPC** (and its modern equivalent), the law is quite clear about the "death of a surety" to prevent unfair burdens on their grieving family.

1.5.7 The Legal Status of the Bond

When a surety dies **before** the bond is forfeited (i.e., while the accused is still attending court and behaving), the following happens:

Automatic Discharge: The estate of the deceased surety is **discharged from all liability** relating to the bond. The court cannot go after the surety's children or spouse to collect the bond amount if the accused flees *after* the death.

Replacement Required: Because the "guarantor" is gone, the court will require the accused person to provide a **fresh surety**.

Consequence of Failure: If the accused cannot find a new person to stand as surety within a reasonable time, the court can cancel the bail and send the accused back to custody.

2 What if the bond was *already* forfeited?

This is the "catch." The **timing** matters:

Scenario	Legal Outcome
Death occurs BEFORE forfeiture	The estate is not liable . The bond is cancelled.
Death occurs AFTER forfeiture	The penalty becomes a debt to the state . The court may potentially recover the amount from the deceased person's property (estate).

3 Summary of Liability Limits

- The law treats a surety bond as a **personal contract** of sorts. Because the court relied on the personal supervision of that specific individual, it doesn't make sense to hold their heirs responsible for the accused person's future behavior.

1.5.8 Pro Tip: In practice, if a surety dies, the accused (or their lawyer) should inform the court immediately to arrange for a substitute, otherwise a warrant might be issued for the accused's arrest due to the "lack of valid surety."

- Generally, **yes**, a certified copy of a bond is admissible in court, but there is a specific legal "hierarchy" for how it is treated under the law of evidence.
- In legal terms, this falls under the rules of **Secondary Evidence**. Here is how it works:

1. The "Best Evidence" Rule

Courts always prefer the **Original Bond** (Primary Evidence). However, since a surety bond is a part of the judicial record once it is filed, it becomes a **Public Document**.

2. Admissibility of Certified Copies

Under the **Indian Evidence Act** (and the new **Bharatiya Sakshya Adhiniyam, 2023**), certified copies of public documents are admissible as secondary evidence:

Public Record: Since the bond is held by the Court or the Police as part of a proceeding, you can apply for a "certified copy" from the court clerk.

Presumption of Genuineness: The court **shall presume** that a certified copy is genuine if it bears the official seal and signature of the authorized officer. You don't usually need to call a witness to prove the document is real if it is a certified copy.

3. When the Original is Lost

If the original bond is lost, destroyed, or in the possession of the opposing party, the court allows the certified copy to be used to prove the terms of the bond. To do this, the party must usually:

- **Inform the Court:** File an application stating the original is missing.
- **Submit the Copy:** Provide the certified version as a substitute.

1.5.9 A Vital Exception: The Signature

While a certified copy proves the *contents* of the bond, it may sometimes be challenged if the **identity of the signer** is in question.

Example: If a surety claims, "*I never signed that bond, it's a forgery!*" a certified copy might not be enough for a handwriting expert to analyze. In those rare cases, the court might require more proof than just the copy.

1.5.10 Summary Table: Evidence Types

Document Type	Status	Use in Court
Original Bond	Primary Evidence	Highest value; used for forensic/handwriting tests.
Certified Copy	Secondary Evidence	Fully admissible for public documents (like court records).
Photocopy (Uncertified)	Weak Evidence	Generally not admissible unless specific conditions are met.

Yes, a Magistrate has the authority to refuse a surety even if they have the money or assets. The law focuses not just on **solvency** (having money) but also on **fitness** (suitability).

1.5.11 Under **Section 441** and **Section 121** of the CrPC, a Magistrate has the discretion to determine whether a surety is "fit or sufficient" for the purpose of the bond.

1.5.12 Grounds for Refusing a Surety

Even if a person is wealthy, a Magistrate can reject them for several reasons:

- **Lack of Control:** The primary job of a surety is to ensure the accused appears in court. If the surety lives very far away or has no relationship with the accused, the Magistrate may reject them because they cannot exercise "vigilance" or control over the accused.
- **Professional Sureties:** Courts often reject "stock sureties"—people who hang around courtrooms and take money to sign bonds for strangers. This is because their motive is profit, not the legal obligation to produce the accused.
- **Previous History:** If the person has previously stood as a surety and that bond was forfeited because the accused fled, the Magistrate may deem them "unfit."

- **Criminal Antecedents:** If the surety themselves has a serious criminal record, the court may doubt their ability to ensure the accused follows the law.
 - **Over-extension:** Under **Section 441A**, a surety must declare how many other people they are currently standing surety for. If they are already "guaranteeing" 10 other people, the court may decide their financial and personal "guarantee" is spread too thin.
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1.15.13 The Procedure for Rejection

A Magistrate cannot reject a surety on a whim. The law requires a specific process:

1. **Inquiry:** The Magistrate may hold an inquiry (or order a subordinate Magistrate to do so) to test the fitness of the surety.
2. **Evidence on Oath:** They can take evidence on oath and examine witnesses to verify the surety's character and assets.
3. **Recording Reasons:** If the Magistrate decides to reject the surety, they **must record the reasons** in writing. This allows the decision to be challenged in a higher court if it is arbitrary.

1.15.16 Can the Magistrate insist on "Local" Sureties?

This is a controversial area. While many Magistrates prefer "local" sureties (people who live in the same district), the Supreme Court has often criticized this practice, noting that it makes it nearly impossible for migrants or people from other states to get bail. The current legal trend is that as long as the surety is reliable and the identity is verified, "local" residency should not be an absolute requirement.

1.15.17 If a **Magistrate rejects a surety**, the accused is not necessarily stuck in jail. The law provides **specific remedies** to challenge an arbitrary or unfair rejection.

1. Appeal to the Court of Session

Under **Section 373 of the CrPC** (now **Section 414 of the BNSS**), an appeal lies against an order refusing to accept or rejecting a surety.

- **Where to file:** If a Magistrate (First or Second Class) rejects the surety, the appeal is filed in the **Court of Session**.
- **Grounds:** You can argue that the Magistrate's inquiry was flawed, the reasons for rejection were not recorded, or the demand for "local" sureties was contrary to higher court guidelines.

2. Revision Petition

If the appeal is unsuccessful, or if there is a serious legal error in the Magistrate's process, the accused can file a **Criminal Revision** under **Section 397/401** in the High Court or Sessions Court. This is used to check the "legality, propriety, or correctness" of the Magistrate's order.

3. Application for Modification of Bail Conditions

Under **Section 439(1)(b)**, the High Court or the Court of Session has the power to **set aside or modify** any condition imposed by a Magistrate.

- If the Magistrate is demanding an impossibly high bond amount or a specific type of surety that the accused cannot provide, the higher court can lower the amount or allow the accused to be released on a **Personal Bond** without any sureties at all.

1.15.18 Judicial Safeguards against Arbitrary Rejection

The Supreme Court and various High Courts have laid down rules to prevent Magistrates from being overly "picky":

- **Socio-Economic Check:** In cases like *Moti Ram v. State of MP*, the court held that bail conditions must not be so "onerous" that they effectively deny bail to the poor.
- **Rejecting "Local" Requirements:** The courts have repeatedly ruled that insisting only on a "local district surety" is unconstitutional as it discriminates against migrants (e.g., a laborer from Bihar working in Delhi).
- **Mandatory Reasons:** A Magistrate **must** record written reasons for rejection. A simple "rejected" or "not satisfied" without explanation is a ground for the order to be set aside by a higher court.
- The timeline for filing an appeal or revision depends on which court you are approaching. Because these time limits are governed by the **Limitation Act, 1963**, they are strictly enforced unless you can show "sufficient cause" for a delay.

1. Appeal to the Court of Session

- If a Magistrate rejects your surety under **Section 373 CrPC** (or **Section 414 BNSS**), and you want to appeal to the Sessions Court:
- **Limitation Period: 30 days** from the date of the Magistrate's order.
- **Exclusions:** The day the order was pronounced and the time taken to obtain a **certified copy** of the order are excluded from this 30-day count.

2. Revision to the High Court or Sessions Court

If you are filing a **Criminal Revision** (challenging the legality or "correctness" of the order) under **Section 397 CrPC**:

- **Limitation Period: 90 days** from the date of the order.
- **Note:** While 90 days is the standard, it is always better to act quickly, as revisions against bail-related matters are often time-sensitive for the accused person's liberty.

3. Application for Modification of Bail Conditions

- If you are applying to the High Court or Sessions Court to **modify/lower** the bail conditions (rather than a formal appeal):
- **Limitation Period:** There is **no fixed limitation period** for an application under Section 439 (Special powers of High Court/Sessions Court regarding bail). You can move this application at any time while the restrictive condition is in force.

1.15.19 Summary of Timelines

• Action	• Legal Path	• Time Limit
• Appeal	• Magistrate \rightarrow Sessions Court	• 30 Days
• Revision	• Magistrate \rightarrow Sessions/High Court	• 90 Days
• Modification	• High Court / Sessions Court	• Anytime

1.15.20 Pro-Tip: Condonation of Delay

If you miss the deadline, you can file an application under **Section 5 of the Limitation Act** for "Condonation of Delay." You must provide a valid reason (like medical issues or lack of legal awareness) to convince the judge to hear the case anyway.

- A **Solvency Certificate** is essentially a "financial fitness report" issued by the government or a bank. When a court asks for one, they are looking for official proof that the person standing as your surety actually has the net worth to cover the bond amount if you were to flee.

1.15.21 Here is the breakdown of what the Magistrate looks for and how the certificate works in a bail context.

1. Who Issues It?

- In India, there are two main types of solvency certificates:
- **Revenue Authority (Most Common for Bail):** Issued by the **Tehsildar** or **District Magistrate**. This is based on immovable property (land, house) located within their jurisdiction.
- **Bankers Solvency Certificate:** Issued by a bank where the surety has a long-standing account. It is usually based on the person's cash balance, fixed deposits, or gold.

2. What Documents Are Required?

- To get this certificate, a surety usually needs to provide:
- **Property Papers:** Title deeds, recent tax receipts, and an **Encumbrance Certificate** (to prove the property isn't already mortgaged).
- **Valuation Report:** A report from a Government-approved valuer confirming the current market value of the property.
- **Income Proof:** Last 3 years of Income Tax Returns (ITR) or salary slips.
- **Affidavit:** A notarized statement declaring that the property is free from disputes and that they are willing to stand as surety.

3. Key Details Included in the Certificate

- The Magistrate will check the following on the document:
- **Net Worth:** The total value of assets minus any liabilities.
- **Validity:** Most solvency certificates are valid for **one year** (or sometimes just 6 months) from the date of issue.
- **Purpose:** It must often specify it is for "Court Surety" or "General Purposes."

Why is this "Stressful" for Sureties?

- The verification process can be intense because the Revenue Officer (Tehsildar) may send a local officer (Patwari) to physically verify that the property exists and belongs to the surety.
- **The "17,000 Rule":** In many lower courts, there is an informal practice where Magistrates may accept a simple affidavit and ID proof for small bond amounts (e.g., under ₹15,000–₹17,000). However, for higher amounts, a formal **Solvency Certificate** becomes mandatory.

1.15.22 Comparison of Proofs

Type of Proof	Level of Trust	Best For
Salary Slip	Moderate	Small to Medium bond amounts; Government employees.
Property Tax Receipt	Moderate	Proving residence and basic ownership.
Solvency Certificate	Highest	Large bond amounts; Serious criminal charges.

1.15.23 A Note on "Cash Bail"

In some cases, if you cannot find a surety with a solvency certificate, you can ask the Magistrate to allow **Cash Bail** (depositing the full amount in cash with the court). While the CrPC prefers sureties, the Supreme Court has ruled that if a person is too poor to find a surety, they should not be kept in jail indefinitely.

1.16 Sec. 190(1)(c) of the Cr.P.C.- Taking cognizance of an offence by a Magistrate

Based on **Section 190(1)(c) of the Code of Criminal Procedure (Cr.P.C.)**, a Magistrate can take cognizance of an offence on his own knowledge or suspicion.

1.16.1 Legal Context

Section 190 of the Cr.P.C. outlines the three distinct ways a Magistrate of the first class (or a specially empowered Magistrate of the second class) may take cognizance of any offence:

- **190(1)(a):** Upon receiving a **complaint** of facts which constitute such offence.
- **190(1)(b):** Upon a **police report** of such facts.
- **190(1)(c):** Upon information received from any person other than a police officer, or **upon his own knowledge**, that such offence has been committed.

While the Magistrate has the authority to take cognizance under all three methods, the **specific subsection 190(1)(c)** mentioned in your question refers exclusively to the Magistrate's independent knowledge or information received from non-police sources.

1.17 Sec. 378 of the Cr.P.C.- The right of appeal against acquittal

1.17.1 Why Section 378?

Under the Code of Criminal Procedure (Cr.P.C.), the general rule is that there is no inherent right of appeal unless specifically provided by law. **Section 378** is the specific provision that outlines how and when an appeal can be filed against an order of acquittal.

Here is a quick breakdown of the sections mentioned:

- **Section 378:** Deals specifically with **Appeals in case of acquittal**. It details the **powers of the State Government and the Central Government** to direct the Public Prosecutor to file an appeal in the High Court or Court of Session.
- **Section 379:** Involves appeals against a conviction by a High Court in certain cases (reversing an acquittal).

- **Section 377:** Deals with appeals by the State Government against the **sentence** on the grounds of inadequacy (not the acquittal itself).
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1.17.2 Key Points on Section 378

- **Permission Required:** In many cases, the state or the complainant must seek "leave" (permission) from the High Court to entertain the appeal.
- **Victim's Right:** Following an **amendment in 2009**, a **proviso to Section 372** also allows the victim a right to prefer an appeal against an order acquitting the accused.