

# Bail Bond

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## What is a bail bond?

A written promise, signed by the offender or a person who gives surety of the offender presence in the court when called upon, to pay a certain amount fixed by a court or police officer. Such amount paid on execution of bond can be given back once the case ends with some administrative cost deductions.

Surety on the other hand is the indemnifies who ensures the presence of the offender when called upon by the court. It is he who pays on behalf of the offender for the bail bond when the offender is incapable of furnishing his personal bond.

But can accused after getting bail offer a bank guarantee in place of surety bonds? Bank guarantee is an instrument issued by a Bank in which the Bank agrees to stand guarantee against the non-performance of some action/performance of a party. Thus, it is a third-party guarantee which means if neither the surety not the accused himself could pay for the bond, the bank will.

The court in **Afsar Khan v. State by Girinagar Police, Bangalore**[1] held that a reading of the entire chapter which deals with the provisions relating to bail, does not say that when a person is released on bail, the Court can also insist upon him to give cash security. Further, court cannot demand cash deposit as a condition of bail.[2] Thus, bank guarantee can be permitted by the court to pay for the bail.

Provisions as to bail bond are provided in chapter 33 of the Criminal Procedure Code, 1973 (hereinafter referred to as Cr.P.C.). Section 440 of the Code clearly states that the amount so fixed by the court should take due regard to the circumstances of the case and should not be excessive. Sessions court and high courts are empowered under this section that they may direct the magistrate or the police officer to reduce the amount of the bail bond.

Section 441 of the Code provides that the offender so released on bail or on his own bond, needs to sign a bond of such money as the police officer or the court deems necessary for ensuring his presence when at the time mentioned in the bond or until any time as directed by the court. Thus, bond provides for a surety of the presence of the offender to the court when called upon either to answer the charge or otherwise. In case where a minor is required to execute a bond, the police officer or the court in lieu may execute it only by surety or sureties only.[3] Bond can contain conditions. Such conditions need to be mentioned in the bond itself while executing it.

The court is empowered to commit the person released on bail to jail in two cases: if the surety or sureties are found to be insufficient or afterwards become insufficient[4]; or of the surety or sureties apply before the court for the direction of discharge of either whole bond or any part as related to the applicants[5]. The court, before committing such person to jail may ask him to find sufficient surety to grant him bail again.

When any person is required by any Court or officer to execute a bond with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes to such amount as the Court of officer may if in lieu of executing such bond.[6]

The courts have to limit their power where there is only delay in payment to the bail or just because the indemnitor decides not to be responsible for the bail anymore. However, under Section 466 of the Code, the court can forfeit the bail bond on the ground that the condition of production of any property is not fulfilled or if the penalty is not paid without

a sufficient cause. Forfeiture here means the retainment of the bond money even after the case is over. In the latter case, if even the surety does not come up for the offender rescue then, the offender may be imprisonment which may extend to 6 months.

It also in the discretion of the court to remit any amount of penalty after recording the reasons for doing so and allow the part performance. Further, if the offence for which the offender has furnished security under Sections 106 or 117 or 360 of Cr.P.C. result into conviction of the offender which resultantly breach any condition (such as tampering evidence, commission of any offence, hamper investigation, runs away, commits any act of violence against police) of his bond, the judgement of conviction shall be used against him and his sureties unless the contrary to this proved. Such forfeiture of bond is appealable against as mentioned in Section 449 of the Code. On appellate court has the power to levy such amount due on a bond for appearance before such court.[7]

But what happens after the bond is forfeited? On the event of death of the surety or his becoming insolvent or when any forfeiture is carried out in the above cases, the court shall order such person from whose security was demanded to furnish a fresh security bond failure of which the magistrate of first class may proceed as if there been a default in complying with the original order of bond.[8]

Following any forfeiture of bond in case of any breach of the conditions mentioned in it, result into cancellation of such bond where the alleged offender thereafter cannot seek release on bail on his own bond except when the police officer or the court is of the view that no sufficient cause of failure can arise of the person bound by the bond to comply with its condition.[9]

Above were the provisions of bail bond but what actually happens after an order is passed in this regard? How to execute a bail bond after the passing of such order?

**When practically seen the execution requires certain documents such as:**

1. Bail application
2. Id proof of the person executing it
3. Id proof of the surety giving guarantee for the person
4. Demand draft or cheque for the sum to be paid for the bond
5. Property papers in case a property is being charged for the purpose of furnishing the bail bond and tax return receipts.
6. Declaration by the surety or sureties
7. Letter of undertaking

The surety has to provide for an application of undertaking of the bail bond for the offender. He is also having to be certified that he is not insolvent and posses enough property to enable and stand surety. Besides he also has to declare as an indemnitor he has the knowledge of the conditions on which the bail bond is executed and that he provides for the surety of fulfilment of the conditions on behalf the offender. Thus, at police station, after signing the requisite documents and paying the bond money, the execution of bail is completed.

**End-Notes:**

1. 1992 Cr.LJ 1676 (7).
2. Rajballam Singh v. Emperor, AIR 1943 Patna 375,
3. Section 448 of Cr.P.C.
4. Section 443 of Cr.P.C.
5. Section 444 of Cr.P.C.
6. Section 445 of Cr.P.C.
7. Section 450 of Cr.P.C.
8. Section 447 of Cr.P.C.
9. Section 446A of Cr.P.C.