



Bail Granted, Liberty Denied: Examining The Gap Between Judicial Relief And Personal Freedom

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Abstract- Article 21 of the Constitution of India declares, with the terseness of the absolute, that no person shall be deprived of his life or personal liberty except according to procedure established by law. The Supreme Court, in a long and luminous line of decisions, has progressively transformed this laconic guarantee into a rich jurisprudence of substantive liberty. Yet, a stark paradox persists within the criminal justice system: the grant of bail by courts does not always translate into actual liberty for the accused. This paper examines the disjunction between judicial relief and lived freedom, arguing that onerous bail conditions, inability to furnish sureties, socio-economic vulnerabilities, and procedural delays render bail an illusory remedy for many undertrials. Drawing on constitutional jurisprudence, case law analysis, and empirical insights, the study interrogates how “procedure established by law” under Article 21 is often reduced to procedural formality rather than substantive fairness. It further evaluates recent judicial and legislative attempts at bail reform and contends that unless structural barriers to availing bail are dismantled, the constitutional promise of personal liberty remains deferred. The paper concludes that a rights-based approach to bail must prioritize de-custodialization, reasonable conditions, and access to justice to give full meaning to Article 21.

Keywords: Article 21, Bail, Personal Liberty, Pre-trial Detention, Criminal Justice, Supreme Court of India, Procedure Established by Law

On the 31st day of January 2023, a Bench of the Supreme Court of India comprising the Hon'ble Mr. Justice Sanjay Kishan Kaul and the Hon'ble Mr. Justice Abhay S. Oka, seized of the suo motu proceedings in SMWP (Criminal) No. 4/2021 captioned In Re: Policy Strategy for Grant of Bail,¹ passed an order of enduring jurisprudential significance. The court, deeply troubled by the spectacle of thousands of undertrial prisoners languishing within prison walls even after the grant of bail, issued a series of seven precise and binding directions aimed at bridging the chasm between the judicial grant of liberty and its actual realisation.

At the heart of those directions lay a compassionate recognition: that poverty, and not guilt, was the operative reason why bail-granted prisoners remained incarcerated. The National Legal Services Authority (NALSA) had placed before the Court a report disclosing that of approximately 5,000 undertrial prisoners who remained in custody despite the grant of bail, as many as 2,357 had been provided legal assistance, resulting in the release of 1,417 persons. The remaining thousands, and the countless others who would follow, awaited the machinery of the State to be set in motion on their behalf.

Direction No. 4 of the Court's order is the centrepiece of the present inquiry. The Court directed:

“The Secretary, DLSA with a view to find out the economic condition of the accused, may take help of the Probation Officers or the Para Legal Volunteers to prepare a report on the socio-economic conditions of the inmate which may be placed before the concerned Court with a request to relax the condition(s) of bail/surety.”

This direction was not a suggestion; it was a constitutional command, issued by the highest court of the land in the exercise of its plenary powers under Article 142 of the Constitution. To this day, three years hence, the District Legal Services Authorities (DLSAs) and the State Legal Services Authority (SLSA) of Uttar Pradesh have treated it as little more than decorative parchment.

Article 21 of the Constitution of India declares, with the terseness of the absolute, that no person shall be deprived of his life or personal liberty except according to procedure established by law. The Supreme Court, in a long and luminous line of decisions, has progressively transformed this laconic guarantee into a rich jurisprudence of substantive liberty.

In *Maneka Gandhi v. Union of India*,² the Court held that the procedure prescribed by law must be fair, just and reasonable. In *Hussainara Khatoon v. Home Secretary, State of Bihar*,³ the Court, confronted with the harrowing phenomenon of undertrial imprisonment, declared that speedy trial is a fundamental right implicit in Article 21, and that prolonged detention of undertrial prisoners without trial is a blatant violation of that right.

¹ In Re: Policy Strategy for Grant of Bail, SMWP (Criminal) No. 4/2021

² (1978) 1 SCC 248

³ (1979) 3 SCC 532

In *Arnesh Kumar v. State of Bihar*,⁴ the Court observed with pained candour that a significant number of accused in India are in jail awaiting trial on accusations pertaining to offences where the maximum punishment is imprisonment for seven years or less. The Court issued elaborate guidelines to arrest the casual and cavalier exercise of the power of arrest. Yet, the malady persists.

More recently, in *Satender Kumar Antil v. Central Bureau of Investigation*,⁵ the Supreme Court comprehensively catalogued the systemic failures that prevent bail-granted persons from securing their release, and issued further directions for amelioration. It is against this constitutional and jurisprudential backdrop that the present research must be assessed.

A bail order is not a mere procedural formality. It is a judicial determination that the liberty of the accused may be safely restored pending trial. When, despite such a determination, the accused continues to languish in custody because the legal services machinery has abdicated its statutory and constitutional obligation, the State becomes complicit in a continuing violation of Article 21. The incarceration, post the grant of bail, is, in a very real sense, unlawful imprisonment.

Exploration into the Mystique of RTI responses and the Somber Anatomy of Administrative

Inaction: With a view to ascertaining ground-level compliance with the Supreme Court's mandate of January 2023, the author filed Right to Information applications under Section 6(1) of the Right to Information Act, 2005 before the Public Information Officers of District Jails across Uttar Pradesh in March 2026 a full three years after the Court's directions. The responses received paint a picture of systemic dereliction that is as alarming as it is contemptuous.

The RTI applications sought information on two principal points: first, the particulars of undertrial prisoners who, despite having been granted bail by competent courts, continued to be held in custody solely for want of surety; and second, the particulars of letters sent by the jail authorities to the DLSA in pursuance of Direction No. 2 of the Supreme Court's order, requiring the DLSA to depute para-legal volunteers or jail-visiting advocates within seven days of non-release.

The responses received from the following districts are examined seriatim:

(a) Ambedkarnagar

The Superintendent of District Jail, Ambedkarnagar, vide letter dated 12.04.2026 (Ref. No. 439/mu.ka./jan.su./2026), furnished a response confirming the incarceration of five bail-granted undertrial prisoners who could not be released on account of the absence of sureties (□□□□□□□□ □□ □□□□). The cases disclose bail orders granted as far back as 04.02.2026 by the High Court (Lucknow Bench) in the case of Ranvijay Singh, and others granted by District Courts as early as July 2025. The response crucially acknowledges that copies of bail orders were communicated to the DLSA seeking release orders, yet it transpires that no socio-economic report was prepared, no Probation Officer was

⁴ (2014) 8 SCC 273

⁵ (2022) 10 SCC 51

deployed, and no application was moved before the concerned court for relaxation of bail conditions. The DLSA's silence in these cases is complete and inexplicable.

(b) Balrampur

The District Jail, Balrampur, vide response dated 11.04.2026 (Ref. No. 245/ya.ti./2026), disclosed the presence of seven bail-granted undertrials still in custody, with bail orders dating back to as early as 13.12.2022, over three years prior. Prisoner No. 1 in the Balrampur list has been in custody since 2020 in connection with a case dating to 2020, and was granted bail on 13.12.2025 by the District and Sessions Court, yet remains unreleased. The DLSA was informed on multiple occasions- on 27.01.2026, 01.01.2026, and 12.01.2026 yet no tangible intervention by way of a socio-economic survey or court application for bail modification is on record. This is a case of notification without action, a bureaucratic simulacrum of compliance.

(c) Ghaziabad

The District Jail, Ghaziabad, vide response dated 13.04.2026 (Ref. No. 5099/jan-suchna/ISO-11/2026), disclosed a list of ten bail-granted undertrial prisoners continuing in custody. The oldest case in this list is that the entry at Serial No.7: Gobinda son of Late Kalu, in custody since 13.12.2021 over four years with a bail order dated 13.12.2021 from the District Judge, Ghaziabad. Another prisoner, Raju Son of Sukhram is in custody since 08.08.2023, though with a bail order by the District Judge dated 08.08.2023. The response notes all cases as 'Support to Poor Prisoner scheme' referrals, yet no socio-economic report under Direction No. 4 of the 2023 Order is in evidence. The Ghaziabad DLSA appears to have received information and done nothing of legal consequence with it.

(d) Lakhimpur Kheri

The District Jail, Lakhimpur Kheri, vide RTI response dated 15.03.2026 (Ref. No. 312/jan suchna/2026), disclosed three undertrial prisoners in custody despite bail grants, with bail orders dating to December 2025 from the High Court (Lucknow Bench) and the District Courts. In the case of Vivek Balmiki son of Pardeep Kumar, bail was granted by the High Court on 01.12.2025 and 05.12.2025 in two separate cases, yet he remains in custody because no family member or friend is available to stand surety and no bond has been presented. The DLSA Kheri, when separately approached by the author by way of a representation to the District and Sessions Judge, Lakhimpur Kheri, was reminded of the Supreme Court's mandate in unambiguous terms. The matter was placed on record by letter dated 18th March 2026, yet a satisfactory response from the DLSA remains awaited.

(e) Sitapur

The District Jail, Sitapur, vide response dated 11.03.2026 (Ref. No. 1189/jan suchna/2025-26), disclosed the names and particulars of multiple bail-granted undertrials in custody, including one Minni alias Devendra Kumar son of Hardwari Lal, against whom bail was granted by the Court of A.C.J.M.-I on 29.01.2026. Despite requests to the DLSA Sitapur on 13.02.2026, no release had been effected as of the date of response. The same pattern repeats with Ravishankar alias Hawda son of

Jhabban, with bail granted on 04.12.2025 and 04.12.2025 in two cases, and DLSA Sitapur informed on 05.01.2026, yet no release secured. The inescapable inference is that the DLSA received the communication and treated it as a closed file.

(f) Pilibhit

The District Jail, Pilibhit, vide response dated April 2026 (Ref. No. 657/jo.su.0adhi.0/2026), disclosed a total of 13 undertrial prisoners in custody despite bail grants, noting that the DLSA Pilibhit was being furnished lists periodically for the purpose of “agrim karyavahi” (advance action). However, the response conspicuously and tellingly makes no mention of any socio-economic survey having been conducted, any Probation Officer having been deployed, or any application having been moved before the court for modification of bail conditions. A list submitted without follow-up action is a bureaucratic gesture devoid of constitutional content.

(g) Barabanki

The District Jail, Barabanki, vide response dated 07.03.2026 (Ref. No. 1282/jo.su.0/2026), disclosed one undertrial prisoner in custody despite a bail grant, and acknowledged communication to the DLSA. This is the only district where the numbers appear small, yet the principle remains uncompromised: even a single person held beyond the date of bail grant, without a socio-economic report being placed before the court, represents a violation of Article 21.

(h) Denials and Evasions: Bahraich, Prayagraj, Shahjahanpur

Three districts – Bahraich, Prayagraj, and Shahjahanpur denied the RTI applications outright or declined to furnish substantive information, invoking procedural grounds. While the District Jail, Prayagraj, simply refused to provide the requested information, Shahjahanpur merely forwarded a one-page response devoid of the substantive data sought. Bahraich PIO tried playing smart by calling the author and seeking copy of the RTI Application on his Whatsapp citing his inability to access the online portal and then, on the same day, he denied the dispensation, citing inapplicable legal propositions. The impropriety is being challenged.

The refusal to disclose the names and particulars of bail-granted prisoners still in custody is itself a matter of grave concern. Information regarding the incarceration of individuals, their continued detention after bail, is quintessentially public information touching upon the fundamental rights of citizens. No legitimate exemption under Sections 8 or 9 of the RTI Act covers such information. These denials are not merely procedurally improper; they are symptomatic of an institutional culture of opacity that renders the very purpose of NALSA, UPSLSA and the legal services machinery nugatory.

The cumulative effect of the RTI findings is that across at least ten districts of Uttar Pradesh, the mandate of Direction No. 4 of the Supreme Court’s order dated 31.01.2023 in SMWP (Criminal) No. 4/2021 is being honoured entirely in the breach. No socio-economic report is being prepared by the DLSA Secretaries with the assistance of Probation Officers or Para-Legal Volunteers; no such report

is being placed before the concerned courts; and no application for relaxation of bail conditions is being moved.

This omission has three distinct legal dimensions:

First, Contempt of the Supreme Court. The order of 31.01.2023 is a binding judicial direction under Articles 141 and 142 of the Constitution. Non-compliance with such directions by State instrumentalities and SLSA/DLSAs are, for these purposes, arms of the State, constitutes civil contempt within the meaning of Section 2(b) of the Contempt of Courts Act, 1971, which defines civil contempt as willful disobedience of a judgment or order of a court. In *State of U.P. v. Satish Kumar*, the Court has consistently held that statutory and constitutional bodies cannot shelter behind inaction when judicially directed to act.

Second, Violation of Article 21. As held in *Francis Coralie Mullin v. Union Territory of Delhi*,⁶ the right to life encompasses within it the right to live with basic human dignity. The continued detention of a person after a judicial determination that he is entitled to bail, solely because the DLSA failed to discharge its statutory duty, is deprivation of personal liberty without a procedure that is fair, just and reasonable. The causative link between the DLSA's omission and the prisoner's continued incarceration is direct and legally significant.

Third, Statutory Default. Section 12 of the Legal Services Authorities Act, 1987, and the Regulations framed thereunder, cast a positive obligation upon the DLSA to extend legal services to persons in custody. The preparation of a socio-economic report and the consequent application for bail modification is precisely the kind of legal service that the Act contemplates. Failure to render this service to bail-granted prisoners who remain in custody is a dereliction of statutory duty, cognisable under the writ jurisdiction of the High Court under Article 226 of the Constitution.

It bears emphasis that Direction No. 4 places the burden squarely on the Secretary, DLSA to take proactive initiative. The prisoner is not expected to approach the DLSA; the DLSA is expected to approach the prisoner through Probation Officers and Para-Legal Volunteers and prepare a report. This is a paradigm shift from passive availability of legal services to active outreach, and it is this active obligation that is being so comprehensively dishonoured.

The Probation of Offenders Act, 1958 and the U.P. Probation Rules vest significant powers and responsibilities in the office of the Probation Officer. The Probation Officer is trained to assess the social background, family circumstances, employment status and rehabilitative potential of offenders — precisely the kind of socio-economic investigation that Direction No. 4 contemplates. Yet, across every district surveyed, the Probation Officer is conspicuous by his or her absence from the bail-release machinery.

⁶ (1981) 1 SCC 608

In *Rama Murthy v. State of Karnataka*,⁷ the Supreme Court, in its comprehensive review of prison conditions across the country, had specifically noted the underutilisation of the probation machinery and directed that Probation Officers be meaningfully deployed in the bail and pre-trial release process. That direction, delivered more than a quarter century before the 2023 order, remains as unimplemented as ever in Uttar Pradesh.

The Raebareli Glimpse: Data Without Deliverance

The Raebareli response, furnished in a tabular format in Hindi and dated March 2026, discloses at least two cases of undertrial prisoners- one in a case from 2023 involving Section 370 IPC (trafficking) with bail granted on 28.11.2024, and another in a case from 2023 involving financial offences with bail granted on 23.05.2024. In both cases, the reason for non-release is stated to be the inability to furnish surety. Whether a socio-economic report was prepared and placed before the court is not addressed. The response, standing alone, illustrates a further dimension of the malaise: information is collected and tabulated, yet the follow-through mandated by the Supreme Court, the court application for modification of conditions is absent.

The DLSA failure is not the product of any singular administrative lapse. It is systemic, and its causes are identifiable:

Lack of accountability. No monitoring mechanism exists at the SLSA level to track whether DLSA Secretaries are actually preparing socio-economic reports and filing court applications. NALSA's e-prison software integration, envisaged by the 2023 directions, appears to be non-functional or ignored in Uttar Pradesh.

Inadequate Para-Legal Volunteer deployment. Para-Legal Volunteers are the foot-soldiers of the legal services machinery. Their regular and documented deployment in jails, specifically to interview bail-granted prisoners who remain in custody is mandated by the 2023 directions but is evidently not happening.

Absence of inter-departmental coordination. The Probation Department, the Prison Department, the DLSA and the courts function as silos. No inter-departmental protocol exists in Uttar Pradesh for the seamless transmission of bail information from the prison to the DLSA and from the DLSA to the court.

Cultural inertia. Perhaps most fundamentally, there persists within the legal services machinery a culture of passive service-delivery, in which the indigent litigant is expected to navigate the system rather than the system navigating to the litigant. Direction No. 4 of the 2023 order was precisely intended to dismantle this culture, and precisely this culture has survived it.

The remedial measures required are neither novel nor complex. They flow directly from the Supreme Court's 2023 directions, applied with institutional sincerity:

⁷ (1997) 2 SCC 642

First, the SLSA UP must issue a detailed circular to all DLSA Secretaries directing strict and time-bound compliance with Direction No. 4 specifically, the preparation of socio-economic reports within a fixed period from the date of intimation by the jail authorities, and the consequent filing of court applications for bail modification.

Second, a monthly monitoring mechanism must be established at the SLSA level, with each DLSA Secretary reporting the number of socio-economic surveys conducted, court applications filed, and releases secured, in respect of bail-granted undertrial prisoners.

Third, the Allahabad High Court, in the exercise of its supervisory jurisdiction under Article 227 of the Constitution, should direct all District and Sessions Judges to ensure that within their districts the DLSA machinery is activated in every case where a bail-granted undertrial prisoner has not been released within seven days.

Fourth, the Prison Department must ensure rigorous implementation of Direction No. 3, namely the creation of the requisite fields in the e-prison software and the generation of automatic alerts to the DLSA upon non-release within seven days.

Its an apt legal proposition that **“The doors of justice should always be open to those who are in need of it.”** For the bail-granted prisoners of Uttar Pradesh’s jails in Ambedkarnagar, Balrampur, Ghaziabad, Kheri, Sitapur, Pilibhit, Barabanki, and doubtless many districts beyond, those doors remain shut, not by the majesty of the law, but by the institutional lethargy of those entrusted to open them.

The Supreme Court’s order of 31.01.2023, born of compassion and constitutional fidelity, has been reduced in Uttar Pradesh to a dead letter. The socio-economic survey, the pivotal instrument through which the poverty of the accused was to be communicated to the court as grounds for bail modification, is not being conducted. The Probation Officer is not being deployed. The court application is not being filed. The prisoner remains in jail. And the DLSA, which holds the key, is absent.

This is not merely an administrative failure. It is contempt. It is a violation of Article 21. It is a breach of statutory duty under the Legal Services Authorities Act. And above all, it is a grievous injustice perpetrated in the name of a State that holds the Constitution as its supreme covenant.

The time for exhortation has passed. The time for accountability, constitutional, judicial and administrative is now.

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