

# Bail is the rule for privileged

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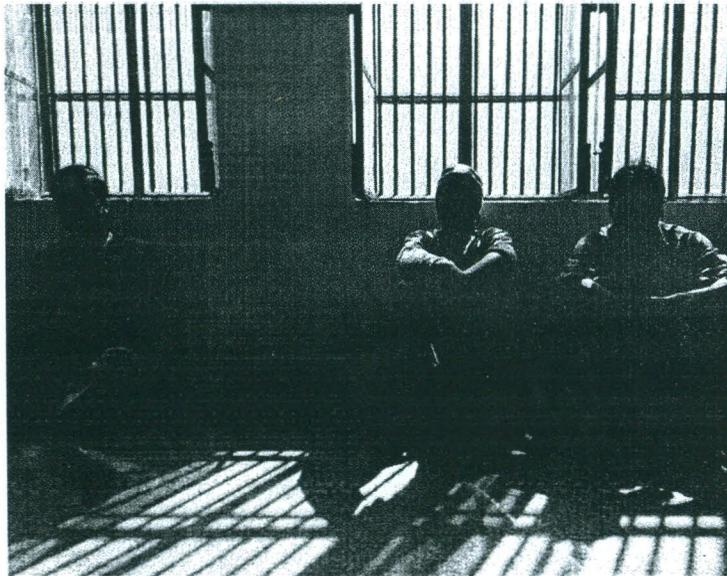
**T**he quick grant of bail to actor Salman Khan by the Bombay High Court had raised many eyebrows. It also caused serious misgivings about the functioning of the criminal justice system of the country.

Salman Khan's case dragged on for 13 long years and at the end, without spending an hour in prison, he went home. His able lawyers must have marshalled powerful arguments. But the fact remains that only a rich man like him, who can engage the best legal brains, can overawe the courts. The episode strengthens the public perception that the scales of justice in our country favour the rich.

Salman Khan's case can be juxtaposed with the thousands of undertrials who are languishing in the jails without bail. According to prison statistics, India's total number of jail inmates is about 3.8 lakhs, of which 2.54 lakhs are undertrials who constitute about 66.84 per cent of the prison population. A majority of the undertrials are the poor with rural and agricultural backgrounds. They are languishing in prison because nobody is there to bail them out.

In prisons, they live cheek by jowl with the convicted prisoners, in violation of the provisions of the Prisons Act and jail manuals. In some prisons, there are separate wards for the undertrial prisoners but essential facilities like hospitals and kitchens are common. So, it is not possible to maintain segregation between an undertrial and convicted prisoners.

Lodging undertrial prisoners with the convicted prisoners leads to 'contamination of crime'. Many callow and inexperienced young men coming in contact with hard-boiled criminals get coarsened and criminalised. It is known that many of the gangsters recruit members of the criminal gangs out



of these borderline yet redeemable offenders admitted in jails.

Further, constant movements of prisoners in and out of prisons facilitate smuggling of narcotics and other contraband articles. Again, most of the undertrials go without any work or training and spend time in depressing idleness.

The All India Jail Committee, better known as the Mullah Committee, had strongly recommended that there should be separate institutions for accommodating undertrial prisoners and they should be located near the court premises to reduce the problems and hazards of transporting the prisoners.

An overwhelming preponderance of undertrial prisoners causes overcrowding in jails. While working in the National Human

Rights Commission, this writer visited a number of prisons where more than 90 per cent of the prisoners were undertrials. In the United Kingdom, reports on prison disturbances by Lord Woolf highlighted the knock-on effect of overcrowding on prison administration and their baneful impact on the minds of the prisoners. According to the report, very often, a substantial number of prisoners leave prisons more embittered and hostile to society than when they have arrived.

There are a number of reasons for the gross and inordinate delay in the release of undertrial prisoners. The most important of them is of course, judicial apathy. The prisoners are in judicial custody and they continue to languish in jails because cases against them

drag on interminably in the court of law.

According to the Supreme Court's dictum, bail and not jail is the right of an individual. In Hussainara Khatoon's case (1979), the apex court had interpreted that the right to life and personal liberty under Article 21 of the Constitution of India includes the right to speedy justice, which includes the right to free legal aid.

Unfortunately, ground realities have been different. The district legal aid bodies, headed by district and sessions judges, have singularly failed to provide legal aid to the undertrials. Research shows that the quality of legal aid is poor and lawyers in some cases were reported to be demanding money from the poor inmates. On an average, an under-

trial takes five to six months to get bail, and there are cases where it took one to four years for the prisoners to be bailed out. It is also a fact that it is the poor prisoners who suffer and the rich ones are able to get quick relief.

The NHRC has drawn the attention of the Chief Justices of the High Courts to the delays in the grant of bails to undertrial prisoners and has suggested a number of remedial measures. One of them is that, as the prisoners are in judicial custody, the district judges should regularly visit the prisons within their jurisdiction and identify cases of long-staying undertrials that need special attention.

It also recommended holding special courts in jails and its monitoring by the Chief Justice/senior judge of the High Courts. The commission further recommended monthly reviews of the cases of the undertrials in the light of the Supreme Court's judgement in the case of Common Cause vs Union of India (1996).

In this judgement, the Supreme Court had given a clear directive for the release on bail and discharge of certain categories of prisoners specified in the judgement. However, these recommendations and exhortations have made a marginal difference in the situation.

Even the amendment of The Code of Criminal Procedure in term of Section 436A which provides that when a prisoner has undergone detention for a period extending up to one half of the maximum period of imprisonment specified for that offence, he shall be released on his personal bond with or without sureties. Jail and not bail continues to be the norm in respect of the poor.

*(The writer is former Director General of National Human Rights Commission and former Director of National Police Academy)*