

**“Bail, not jail”**, is the general rule in Indian criminal jurisprudence. This is based on the cardinal principle that a person is presumed to be innocent till his conviction. “Presumption of innocence” is well recognised in Article 11 of the Universal Declaration of Human Rights (1948). Therefore a person whose personal liberty is curtailed by arrest is entitled to bail.

Arrests in Central Excise and Customs have always brought butterflies (sting bees) in one’s stomach, as getting a bail had always been a long drawn and a very difficult process.

In a significant judgement, the Larger bench of the Supreme Court, in the case of **Om Prakash Choith Nanikram Harchandani Vs UOI (2011-TIOL-95-SC-CX-LB)**, had held that the offences under the Customs and Central Excise laws are **Non – cognizable and bailable**.

For ready reference, the legal terms are reproduced, as under:

Though the expressions “cognizable” or “non-cognizable” or even “bailable offences” had not been defined in either the 1944 Act or the Customs Act, 1962, one would have to refer to the provisions of the Code of Criminal Procedure, 1973 (Cr.P.C.) to understand the meaning of the said expressions in relation to criminal offences.

Section 2(a) Cr.P.C. defines **“bailable offence”** as follows :-

*“2(a). “bailable offence” means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and “non-bailable offence” means any other offence;”*

Section 2(c) defines **“cognizable offence”** as follows:-

*“2(c). “cognizable offence” means an offence for which, and “cognizable case” means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;”*

Section 2(l) defines “non-cognizable offence” as follows:-

*“2(l). “non-cognizable offence” means an offence for which, and “non-cognizable case” means a case in which, a police officer has no authority to arrest without warrant;”*

Coming back to the issue, the Hon’ble Supreme Court, in the above judgement, by holding that all the offences under the Customs and the Central Excise Act

are “ **non – cognizable and bailable**”, has held that **an excise/customs officer, will have no authority to make an arrest without obtaining a warrant and if the person arrested offers bail, he shall be released on bail.**

To overcome this, the Revenue has amended Section 9 & 9A of the Central Excise Act and Section 104 & 135 of the Customs Act, whereby, they have made certain offences wherein the duty evasion/cenvat misuse/fraudulent drawback is 50 lakhs or above, **as cognizable and non- bailable.**

**In other words, in such cases, the excise/customs officer can arrest without a warrant from a magistrate and such officer cannot also grant bail if offered.**