
SURRENDERING PRIVACY RIGHTS IN EXCHANGE FOR BAIL: ANALYZING FRANK VITUS V. NCB THROUGH THE LENS OF ARTICLE 21

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ABSTRACT

The recent ruling in the case of Frank Vitus v. Narcotics Control Bureau (2024)¹ has ignited a critical dialogue regarding judicial discretion in the constitutional limits of bail proceedings. The Supreme Court of India invalidated the condition of bail that required a foreign national to submit his real-time Global Positioning System ("GPS") positions via Google Maps. This article considers whether guaranteeing bail in exchange for the surrender of privacy rights is a legally enforceable condition. It critically considers Frank Vitus using the proportionality test that was developed in Justice K.S. Puttaswamy (Retired) v. Union of India², outlines the framework of bail law and its constitutional boundaries, and discusses the evolution of the right to privacy in Indian law. In balancing the assurance of presence of the accused and maintaining the integrity of the investigative process, the article argues that surveillance-based conditions of bail are inconsistent with fundamental tenets of due process, liberty, and dignity, especially when the law has not delegated such authority to the courts without protections or authority under law.

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¹ Frank Vitus v. Narcotics Control Bureau, 2024 SCC OnLine SC 1663 (India).

² Justice KS Puttaswamy (Retd) v. Union of India, (2017) 10 SCC 1 (India).

INTRODUCTION

Bail embodies the constitutional morality, and also acts as a mechanism of procedural justice. It bridges the presumption of innocence with the ends of justice. But new technological development has altered the courts' views of "monitoring" an accused of a crime. The Supreme Court of India was confronted with the issue of whether a person accused of a crime could be ordered to "surrender" their privacy in the form of sharing live location, as a bail condition in the case of *Frank Vitus v. Narcotics Control Bureau* (hereinafter referred as "Frank Vitus").

The case addresses nuances of privacy, digital surveillance, and personal liberty under Article 21 of the Constitution. It also represents considerable progress in the developing jurisprudence relating to privacy and autonomy, when the Court invalidated the requirement of "Google Maps pin" and embassy-assurance.

After a long history of debate whether Right to Privacy is a part of Article 21 or not, the Supreme Court in *Justice K.S. Puttaswamy (Retd.) v. Union of India*, expressly identified the right to privacy as a part of life and personal liberty under Article 21 and developed a structured proportionality test for any invasion of privacy. The question that arises while applying this framework to bail conditions is whether freedom may be subject to continuous surveillance. To answer this question, this article will delve into the constitutional basis of privacy, explore bail jurisprudence and its connection to judicial discretion, then analyse the *Frank Vitus* case, and finally decide whether privacy-intrusive bail conditions meet constitutional standards.

ARTICLE 21 & RIGHT TO PRIVACY: CONSTITUTIONAL FRAMEWORK AND EVOLUTION

HISTORICAL BACKGROUND:

The concept of privacy emerged after judges began to interpret it as flowing from Article 21, even though it was not specifically mentioned in the Constitution. The journey began with *Kharak Singh v. State of Uttar Pradesh*³ where the majority, while ruling against a free-standing right to privacy, held that domiciliary visits would violate "personal liberty." Thus, privacy was accepted as a component of liberty by Justice Subba Rao's dissenting opinion.

³ *Kharak Singh v State of Uttar Pradesh*, AIR 1963 SC 1295 (India).

Eventually through *Gobind v. State of Madhya Pradesh*⁴, the Court agreed that privacy is inherent in Article 21, but all rights under this Article are subject to reasonable restrictions, establishing the beginning of this concept. Finally, the nine-judge bench in *Justice K.S. Puttaswamy (Retd.) v. Union of India* acknowledged privacy as a fundamental right that is inherent in life and liberty and overlapping with Articles 14 and 19⁵.

A three-fold test was developed in this case:

- **Legality:** A legislation that permits the intrusion must exist.
- **Legitimate Aim:** A legitimate state objective must be pursued by the measure.
- **Proportionality:** The intrusion must be suitable, necessary, and proportionate, i.e., it must weigh the interests of the State against the rights of individuals.

Under this approach, privacy was constitutionalised as a right that must be justified by law, purpose, and balance rather than as an absolute right. The Court stressed that the basis of privacy is autonomy and dignity, which makes it inseparable from the right to life under Article 21.

PRIVACY CONCERNS IN CRIMINAL LAW:

Privacy concerns arise in criminal law whenever surveillance, questioning, or searches are conducted. The Supreme Court determined in *Selvi v. State of Karnataka*⁶, that compelled polygraphs, brain-mapping, or narco-analysis tests are against mental privacy and individual liberty as long as such tests do not have consent and protection. The Court also observed that investigative efficiency cannot override informational privacy and bodily autonomy.

Therefore, there is a right to privacy for the accused as well. Those in custody are also covered by Article 21. If bail, or the conditions of bail are contingent on invasive technological intervention, this will impact this principle unless the intrusion validates Puttaswamy's proportionality test.

⁴ *Gobind v. State of Madhya Pradesh*, (1975) 2 S.C.C. 148 (India).

⁵ INDIA CONST. art. 14 & 19.

⁶ *Selvi v State of Karnataka*, (2010) 7 SCC 263 (India).

BAIL JURISPRUDENCE IN INDIA: LIBERTY, DISCRETION, AND LIMITS ON CONDITIONS

BAIL: AN EXPRESSION OF LIBERTY

Bail stems from the constitutional basis of an individual's right to personal liberty existing in Article 21. As the Supreme Court held in *Gurbaksh Singh Sibbia v. State of Punjab* that bail is the rule and jail is the exception.⁷ Bail is simply a assurance that the accused will show up for trial; there is no punitive or preventive rationale for bail. The Court stressed that while granting bail, discretion should be exercised judiciously, weighing the assumption of innocence against the interests of justice.

CONDITIONAL BAIL AND JUDICIAL DISCRETION

A court can impose conditions under Section 480 and 432 of *Bhartiya Nagarik Suraksha Sanhita, 2023* to ensure non-repetition of offences, prevent tampering of evidence, or ensure attendance. Common conditions include reporting to the police, providing sureties, or surrendering the passport. However, there are certain constitutional constraints on bail conditions. In the case of *Moti Ram v. State of Madhya Pradesh* Justice Krishna Iyer cautioned that bail conditions should not be "fancy fetters" that limit freedom⁸.

Article 21 requires that every restriction, be it condition of release or imprisonment, must satisfy the tests of **fairness, rationality, and proportionality**. Procedural discretion cannot justify conditions that amount to coercion or surveillance. In *Hussainara Khatoon v. State of Bihar*,⁹ the Court clearly connected pre-trial detention and fairness of bail to Article 21 and procedural justice as an aspect of liberty.

Accordingly, although courts may impose reasonable restrictions to protect against an abuse of liberty, those restrictions should be lawful, required, and minimally invasive.

⁷ *Gurbaksh Singh Sibbia v State of Punjab*, (1980) 2 SCC 565 (India).

⁸ *Moti Ram v State of Madhya Pradesh*, AIR 1978 SC 1594 (India).

⁹ *Hussainara Khatoon v Home Secretary, State of Bihar*, AIR 1979 SC 1369 (India).

CASE ANALYSIS: FRANK VITUS V. NARCOTICS CONTROL BUREAU

FACTS OF THE CASE:

Frank Vitus, a foreign national who was the petitioner, got arrested under the NDPS Act¹⁰. The trial court imposed two unprecedented conditions upon the accused while granting bail: (1) the accused was required to drop a "Google Maps pin" with the investigating officer so that the police could track his location in real-time; and (2) the embassy of his home country must provide a written assurance that he would be present during his trial. The accused contended before the Supreme Court that these two conditions violated his right to personal liberty and privacy under Article.

SUPREME COURT'S ANALYSIS:

The Court found both of the conditions unconstitutional. It held that continuous live tracking of an individual's location constituted a serious violation of an individual's privacy and could not be justified in the absence of statutory authority. Moreover, the Court found that a judicial function was improperly delegated to a foreign authority in obtaining an embassy's guarantee, thus violating due process of law.

As part of liberty, privacy cannot be bargained away or forfeited through judicial creativity, the Court reiterated. Bail should not transform freedom into a conditional surveillance obligation even if reasonable restrictions can be imposed. As articulated in the opinion, the State's interest was sufficiently met with existing processes such as the surrender of a passport or a duty of reporting as opposed to through an electronic monitoring device.

SIGNIFICANCE:

- Liberty cannot be traded for privacy, per the Unconstitutional Conditions Doctrine, nor can one be forced to "consent" to monitoring to secure release.
- Judicial Overreach in Technology-based Conditions: The courts cannot impose conditions of digital monitoring without legislative authorization.

¹⁰ Narcotic Drugs and Psychotropic Substances Act, 1985.

- Article 21 Prominence Reaffirmed: Surveillance bail is not consistent with the basic constitutional guarantee, which is even the liberty of the accused is provided dignity and individual autonomy.

PRIVACY V. INVASIVE BAIL CONDITIONS: APPLYING THE PUTTASWAMY TEST

The conditions of bail imposed on Frank Vitus failed the three-fold test laid in Puttaswamy in the following manner:

- **LEGALITY: LACK OF STATUTORY BASIS**

The first limb of Puttaswamy's test requires a legal basis for intrusion of privacy. Both the NDPS Act and the Code of Criminal Procedure do not offer a legal justification for real-time digital monitoring of an accused person on bail. A judicial innovation cannot supplant a statute. Restating the principle that legality is ultimately not a matter of judicial convenience, the Court found in Frank Vitus that the impugned conditions were ultra vires, since there was no statutory authority to impose such conditions.¹¹

- **LEGITIMATE AIM AND NECESSITY**

Deterring flight risk, as well as ensuring attendance at trial, are both legitimate state interests. However, the necessity test requires proof of irreparable harm by the alleged invasiveness of the GPS monitoring. Traditional methods, such as surrendering the passport, scheduled reporting, sureties, were sufficient to achieve the same goal. Additionally, the state provided no reasons to prove that continuous monitoring was justified. Accordingly, the necessity test failed to satisfy the state's claim.

- **PROPORTIONALITY**

Continuous tracking is intrusive, as it connects intimate details of a person's daily life—its point of origin, places visited, associates and habits—and limits one's freedom of movement. In the absence of safeguards, such as time limits, deletion of data, or judicial review, the Court found the action to be grossly disproportionate. The Court reaffirmed that

¹¹ Bar & Bench, 'Balancing Privacy and Liberty: Implications of Frank Vitus v NCB on Bail Conditions' (27 July 2024).

the state cannot justifiably infringe privacy of an individual always in the name of conditional liberty by unrestricted government surveillance.

The Court also regarded the embassy condition to be legally untenable and unreasonable. It transferred judicial authority to a foreign government and complicated the criminal process diplomatically. The Court concluded that, instead of notifying embassies the appropriate authority is the civil authority, or the Foreigner Regional Registration Office (FRRO).

JUDICIAL TRENDS IN MATTERS OF BAIL AND RIGHT TO PRIVACY

The Frank Vitus case highlights the trend among judges to use technology as a means for procedural enforcement. Also, some High Courts had already explored GPS condition of bail, especially with foreign defendants or repeat offenders. But there was no legislative control, and such conditions could take flight and facilitate normalising surveillance culture in the criminal justice system.

Prior to Frank Vitus case in a money laundering case (Shakti Bhog Foods Limited scandal), the Delhi High Court imposed a bail requirement where the accused had to "drop a Google pin location" with the investigating agency every eight hours, to ascertain whether the limitations were consistent with Article 21. The Supreme Court intervened and asked the state to clarify the practical implications of the criteria and the implications of the criteria intruding on privacy. This case demonstrates an increased judicial unease about the use of location-sharing schemes, even before Frank Vitus.

Further, the data protection regime in India is still in its nascent stages. The Digital Personal Data Protection Act, 2023 has come into force, there are still certain loopholes which need to be addressed. In matters of digital surveillance issues with access, storage, and purpose limitation would still be present if data collection is justified.¹² In the absence of systematic clarity, methods of due process are violated. This gap is acknowledged subtly by Frank Vitus, which supports legislative intervention over judicial improvisation.

In Contrast, the United States and the United Kingdom impose such bail conditions under specific statutes that provide privacy, temporal restraints, and judicial oversight in relation to electronic monitoring. India does not have any codification, which is comparable. According

¹² JURIST, 'Unconstitutional Movement Tracking? The Tension Between Recent Indian Jurisprudence and Data Protection' (5 September 2024).

to Frank Vitus, India aligns with constitutional democracies, which see privacy and criminal justice as a prerequisite and not a trade-off.

CONCLUSION

The tussle between privacy and personal liberty under Article 21 is articulated in perhaps one of the most difficult areas of bail jurisprudence. The legal dilemma of balancing the State's interest in ensuring compliance with bail conditions with the individual constitutional right to privacy is best illustrated in the Frank Vitus case. The aim of bail conditions is to potentially compel the individual to attend and protect against abuses of liberty, and it would be inappropriate for the law notwithstanding these purposes itself; violation of privacy and autonomy is significant here. The relationship between privacy, life, and personal liberty is firmly established with the development of the right to privacy, with cases from Kharak Singh to Puttaswamy.

Any restrictions must meet legality, necessity, and proportionality. Even if a court imposes these restrictions, requirements for electronic monitoring, sharing of personal information, or other intrusive monitoring infringe on this constitutional guarantee. In the absence of statutory provisions or court rulings establishing the legal bounds under legal protections against the depth of the Constitutional right to privacy, the effect could change the concept of bail being a form of freedom set by law to conceivably being a type of control.

The trial court's agreement to surveillance-based bail conditions on Frank Vitus is a disturbing trend toward liberty conditioned on the sacrifice of privacy even though these conditions were held as unconstitutional by the Supreme Court. This approach undermines the presumption of innocence, and thwarts the purposes of rehabilitation and reform that are principles and goals of the criminal justice system.

Courts must therefore adopt a privacy sensitive approach in granting bail consistent with the principles of proportionality and the minimal infringement. The State's legitimate interests can be upheld while avoiding the requirement for individuals to exchange privacy for liberty.

Liberty under Article 21 may not be conditioned on surveillance, the right to liberty must remain a right and not a negotiable luxury.

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