

DEFAULT BAIL: A MATTER OF RIGHT

DEFINITION

According to Black's Law Dictionary bail is "A security such as cash or bond especially security required by a court for the release of a prisoner who must appear at a future date." In simple terms, when an accused is temporarily released from the police custody by the grant of release by court after signing a document and assuring his presence at the required time to legal authority, then he is said to be released on bail. The term "bail" has been derived from a French word "bailera" which means "to deliver" or "to give". The law lexicon¹ defines bail as the security for the appearance of the accused person on which he is released pending trial or investigation. The term bail has not been defined anywhere in any law book. The provisions relating to bail are mentioned in section 436 to section 450 of the Criminal Procedure Code.

HISTORY OF BAIL

The concept of bail first came into being back in 399 BC, when Plato tried to create a bond for the release of Socrates. Earlier during medieval times in Britain, there used to be circuit courts where judges used to deal with the cases in intervals. In the meanwhile, the under trial prisoners were barred with the other accused in very unhygienic and inhumane conditions which in turn caused the spread of lots of diseases. This led to their release on their securing a surety, so that as and when required that person appears before the court. And thus, this way the concept of monetary bail came into existence. The modern concept of bail has been originated from medieval period.

EVOLUTION OF BAIL IN ENGLAND AND AMERICA

In 1215, The Magna Carta took first step to grant rights to the citizens. It said that no man could be confined to jail without being judged by his peers or the law of land. Then in 1275, the Statute of Westminster was enacted which classified crimes as bailable and non bailable. It also determined which judges and officials could make decisions on bail. Further in 1677, the Habeas Corpus Act was added to the Right Of Petition of 1628, which provided the right to the defendant the right to be told of the charges against him, also the right to know if the charges against him were bailable or not.

¹ Law lexicon by Ramanth Iyer,(3rd edition).

Moreover, the Habeas Corpus Act, 1679 states, “ A magistrate shall discharge prisoners from their imprisonment taking their recognizance, with one or more surety or sureties, in any sum according to the magistrate’s discretion, unless it shall appear that the party is committed for such offences for which by law the prisoner is not bailable.”

Later in 1689, The English Bill of Right came into existence, which provided safeguard against judges setting bail too high. It stated that “excessive bail hath been required of persons committed in criminal cases, to elude the benefit of the laws made for the liberty of the subjects. Excessive bail ought not to be required.”

On the other hand, the concept of bail in America was established by Peter P. Mc Donough in San Francisco. In 1791, Bill of Rights was entrenched in the constitution of United States through the 5th, 6th and 8th Amendments. The bill ensured the citizen of United States for basic rights of due process of law, speedy trial and protection against enormous bail amounts.

It is believed that the concept of bail in India has been adopted by the English and American bail systems. Kautilya’s Arthashastra also mentioned that avoiding pre-trial detention was ideal therefore the concept of bail was prevailing in ancient India too. Even during the Mughal period bail was practised in the form of ‘zamanat’. In current times, the bail system is governed by provisions of Criminal Procedure Code, 1973.

TYPES OF BAIL

As per Criminal Procedure Code, 1973, bail is categorised into five types namely Regular bail, Interim bail, Anticipatory bail, Transit anticipatory Bail and Default bail.

- i. **Regular Bail:** When an accused is arrested in any non bailable offence and non cognizable offence without warrant and if that person is ready to furnish bail and bail bond. Further, if the magistrate after examining the merits and parameters of the offence committed by such accused, grants bail, then that person is said to be released on regular bail. The person will be required to be present before the legal authorities whenever he is required to.

Any person may be released on bail by the grant of magistrate or; High Court or Court of Session provided that the magistrate is not dealing with the offences punishable with death or life imprisonment or the accused had not been previously convicted of an offence

punishable with death, imprisonment for life or imprisonment for seven years or more or he had not been previously convicted for two or more occasions of cognizable offence. The provisions pertaining to regular bail are provided in Section 437 and 439 of Cr.P.C.

- ii. **Interim Bail:** When the under trial person is released for short period of time on bail before hearing for the grant of regular or anticipatory bail, then that person is said to be released on interim bail. Section 437 and 439 of Cr. P. C. gives the accused the power to be released on such bail.

In Sukhwant Singh & Ors vs. State of Punjab, interim bail has been defined by court as a tool for protection of the accused.² The case of Lal Kamendra Pratap Singh v. State of U.P. and Ors dealt with the scope of interim bail in which the court stated that “In appropriate cases interim bail should be granted pending disposal of the final bail application, since arrest and detention of a person can cause irreparable loss to a person’s reputation....”³

- iii. **Anticipatory Bail:** Where any person has reason to believe that he may be arrested on accusation of having committed non bailable offence, he may apply to High Court or Court of Session for bail and such bail if granted will be termed as anticipatory bail as according to section 438 of Cr.P.C.

The concept of Anticipatory Bail was recommended by the 41st report of Law Commission of India. It is based on legal principle of “Presumption of Innocence”. Moreover, the objective of arrest is to deliver justice, if the same can be done without making any arrest, then there is no need to violate any person’s liberty.

- iv. **Transit Anticipatory Bail:** A bail granted by court not having jurisdiction over the place where offence was committed is Transit Bail. Black law dictionary defines the word “in Transitu” as on the way or while passing from one person or place to another. Therefore, A Transit Anticipatory bail is when a person apprehending arrest by police of the state other than the state where he/she is presently situated.

² Sukhwant Singh & Ors v. State of Punjab, (2009) 7 SCC 559

³ Lal Kamendra Pratap Singh vs. State of U.P. and Ors (2009)4 SCC 437

Say, Mr. R is a resident of Gujarat and has an apprehension that a case might get registered against him in Rajasthan. As Rajasthan court have power to grant bail to Mr. R therefore, in order to get bail Mr. R will have to travel from Gujarat to Rajasthan. If Mr. R is apprehending arrest by Rajasthan police within Gujarat jurisdiction, he can move to a Court in Gujarat seeking transit anticipatory bail. The local court will grant transit bail as a limited protection till the accused approaches the jurisdictional court for bail.

Further, this article intensively discusses about **default bail**.

INTRODUCTION

An indefeasible right accrued under Section 167(2); on the event of failure of investigating officer to complete the investigation within a stipulated time period prescribed by law, is a statutory mandated right and the same can be availed by any accused in form of default bail. This type of right is not subject to the discretion of the court because of it being a legislative command. The said right can be claimed by the accused as a matter of right since it is a fundamental right and not merely a statutory right.⁴

According to section 167(2), if accused is charged with offences punishable with death or imprisonment for life or offence punishable with the imprisonment for term not less than 10 years then the stipulated period of detention will be for 90 days while such detention is for 60 days in other offences. If not already released on bail on merit, and the investigation is not completed in 90 days or 60 days, as case may be, from the date of first remand and detention, then the accused is entitled to be released on default bail.

OBJECT OF DEFAULT BAIL

The provision of section 167 (2) has been enacted for the objectives mentioned hereinafter:

- To have control over the lethargic and delayed investigation, especially keeping a person in custody.
- To safeguard the liberty of the citizens as well as to safeguard the interest of the state or in other words the public.

⁴ Bikramjit Singh v. State of Punjab 2020 SCC Online SC 824

- To obligate the investigating agency to complete investigation within a reasonable time period prescribed by law and to collect material regarding the investigation without any delay. The ideal period to complete investigation would be of 24 hours but it in some cases it may not be possible to do so. When the charge sheet is not filed within that stipulated time period, the benefit of section 167 (2) will be available however if the same is not filed, the said right ceases.
- Another objective is that the state authority should not take any malafide belated action against accused persons.
- To speed up investigation so that the person does not have to languish in the prison unnecessarily facing a trial.
- In short, to expedite the investigation, to further personal liberty of the accused and lastly to do societal justice in the long run.

DEFAULT BAIL UNDER SECTION 167(2)

The right to default bail accrued under Section 167(2) of Criminal Procedure Code is an absolute and indefeasible right⁵ of a person accused, under which bail is to granted to the accused on meeting the bail conditions mentioned in section 167(2), and the magistrate is mandatorily required to release that person. Any detention beyond the prescribed period is considered illegal.⁶

Provided that the accused is prepared to furnish bail and has applied for the same before the court. The fact that the application for bail is written or oral is of no consequence.⁷ Moreover, the court is obliged to inform the accused of his right of being released on bail and enable him to make an application in that behalf.

Thereafter the court, once the application is made, should issue a notice to the public prosecutor who may either show that the prosecution has obtained the order for extension for completion of investigation from court under relevant provision or that the challan has been filed in the designated court before the expiry of the prescribed period or even that the prescribed period has actually not expired and thus resist the grant of bail on the alleged

⁵ *Bikramjit Singh vs. State of Punjab* 2020 SCC Online SC 824 [*Bikramjit*]

⁶ *Suresh Jain vs. State of Maharashtra*, (2013) 3 SCC 77

⁷ *Brikramjit*, supra note 5 at para 33.

ground of “default”. If the Public Prosecutor fails to furnish aforementioned documents, there remains no discretion in the Magistrate⁸ and the only thing he is required to find out is whether the specified time period under the statute has elapsed or not, and whether the challan has been filed or not.

While granting the bail under section 167(2), the court only requires to consider the fact that the challan has been filed or not and the specified period has expired or not; and no other grounds or merits of the case are to be taken into consideration. Besides that, if the bail application is filed after the filing of charge sheet, then in that case the merits of the case will be taken into consideration.

Filing of charge sheet after the accused has offered to furnish bail (after the stipulated time period prescribed by the law), will not defeat the indefeasible right of the accused. Furthermore, the question that whether or not the court disposes of such application before the charge sheet is filed; or whether the court disposes of such application erroneously before the charge sheet is filed, would be of no value.

However, if the court refuses the application of the accused erroneously, then the accused can choose to move to the higher forum. In the meanwhile, if charge sheet is filed by the investigating agency, then also the indefeasible right of default bail would not get defeated.⁹

DEFAULT BAIL, NOT MERELY A STATUTORY RIGHT, BUT A FUNDAMENTAL ONE

Right to default bail is not a mere statutory right under the first proviso to Section 167(2) CrPC, but is part of the procedure established by law under Article 21 of the Constitution of India, which is, therefore, a fundamental right granted to an accused person to be released on bail once the conditions of the first proviso to Section 167(2) are fulfilled.¹⁰ Law says that a person is innocent for any kind of offence until he is proven guilty. The accused have right to get released on bail until is proven guilty. And hence for the protection of the interest of the accused, Article 21 of Indian Constitution is provided by law.

Article 21 talks about the personal liberty of a person, here the term ‘no person’ is any person who is citizen of India and also other than that, therefore accused can apply for default bail

⁸ Natabar vs. State of Orissa, AIR 1975 SC 1465.

⁹ *Bikramjit*, supra note 5 at para 29

¹⁰ *Bikramjit Singh v. State of Punjab*, 2020 SCC Online SC 824

under this article as his personal liberty and get protection of his rights. Right to default bail is not merely a statutory right but it is fundamental right under Article 21. This article and its interpretation keep changing according to the public needs and requirement of liberty. It says that no person shall be deprived of his liberty except according to procedure established by law. Thus, the accused will have his liberty but also certain proceedings can be done against him.

If the charge sheet is not filed by the investigating agency during the period of 60 or 90 days, as case maybe, or even after that and the accused is further kept into the custody then it will be considered as illegal custody. This leads to the violation of a person's liberty and his right under Article 21. Hence, keeping accused under custody after the end of period of investigation would be against his personal liberty.

It is important to note that this fundamental right granted to an accused person of being released on bail is only applicable when the condition given in provision under 167(2) (a) of Cr.P.C are fulfilled. Right to default bail is a fundamental right of an accused because the procedure given in Section 167(2) (a) of Cr.P.C is part of Article 21; under which words 'procedure established by law' are stated. This means that the procedure of granting default bail as personal liberty of an accused is hereby mentioned.¹¹

Under Article 21, the sanctity of a person is protected by law. Since liberty is a constitutional right, time period specified in provision of section 167(2); under which accused will have a right to default bail is a valuable right. An accused exercises his right to default bail from the moment he applies for it in court. Magistrate has to mandatorily grant the accused person of their statutory right, especially those from the poor section of the society.

This right of default bail continues to remain enforceable if accused has applied for such bail, notwithstanding pendency of the bail application or subsequent filing of the chargesheet or a report seeking extension of time by the prosecution before the court or filing the chargesheet during the interval when challenge to the rejection of the bail application is pending before a higher court.

In the case of S Kasi vs. State through Inspector of police the Samaynallur police station Madurai district it was stated that "The right of prosecution to carry on investigation and submit a chargesheet is not akin to right of liberty of a person enshrined under Article 21 and

¹¹ Fakhrey Alam vs. State of Uttar Pradesh on 15th March 2021

reflected in other statutes including Section 167, CrPC”.¹² Hence, Right to seek default bail is a fundamental right and an indefeasible part of right of personal liberty under constitution.

COMPUTATION OF PERIOD OF 60 OR 90 DAYS

Due to default on the part of police officer or investigating agency in completing the investigation within the time period prescribed under section 167(2) of the Cr.P.C, a magistrate is compulsorily required to grant default bail to the accused.

The time period for which an arrested person can be detained for the purpose of investigation is 24 hours as mentioned under Section 57¹³. Further, if the investigation cannot be completed in twenty four hours and there are grounds for believing that the accusation or information is well founded, the officer in charge of police station or the officer making the investigation shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.¹⁴

Further, if the magistrate has the jurisdiction to try that particular case, authorise the detention of the accused in such custody for a time period not exceeding 15 days and if he has no jurisdiction to try the case and considers further detention unnecessary, then he may order the accused to be forwarded to the magistrate having such jurisdiction. Moreover, the magistrate can further authorise to exceed the detention period i.e. exceeding fifteen days, in the police custody, but in no case the magistrate can authorise the detention of the accused exceeding 60 or 90 days¹⁵, as the case maybe. On the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person is released on bail if he is prepared to and does furnish bail, and the person so released is said to be released on default bail.

While granting the same, the magistrate requires to examine whether the charge sheet has been filed or not and whether the time period prescribed under the code, has elapsed or not.

¹² (2020) SCC 452

¹³ Section 57 of Criminal Procedure Code, 1973

¹⁴ Section 167(1) of Criminal Procedure Code, 1973

¹⁵ As per section 167(2), 90 days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years; and 60 days, where the investigation relates to any other offence.

For the calculation of such time period, date of remand, date of application of bail, date of arrest and date of filing of the charge sheet are required to be examined by the magistrate.

Now the major question that arises is whether while computing the period of 90 days or 60 days as contemplated in Section 167 (2) (a) (ii) of the CrPC, the day of remand is to be included or excluded, for considering a claim for default bail. The said question has been considered by the Court in various matters, but there is divergence of opinion on how the period available for completing the investigation is to be computed. Some judgements have favoured the exclusion of date of remand, while few other cases have taken a contrary view.¹⁶

In the cases *State of M.P. vs. Rustom & Ors.*¹⁷, *Ravi Prakash Singh vs. State of Bihar*¹⁸ and *M. Ravindran vs. Intelligence Officer, Director of Revenue Intelligence*¹⁹, it was held that the date of remand is to be excluded for computing the permitted period for completion of investigation. On the other hand in *Chaganti Satyanarayan vs. State of Andhra Pradesh*²⁰, *CBI Vs. Anupam J Kulkarni*²¹, *State Vs. Mohd. Ashraft Bhat*²², *State of Maharashtra Vs. Bharati Chandmal Varma*²³, and *Pragyna Singh Thakur vs. State of Maharashtra*²⁴ it was contended that the date of remand must be included for computing the available period for investigation for determining entitlement to default bail.

Thus the above mentioned precedents of Supreme Court laid down two different propositions of law which in turn has become problematic for high courts and lower courts to follow the principle for computation of 60 or 90 days. Moreover, in *Shalini Verma vs State Of Chhattisgarh*²⁵, the Chhattisgarh High Court held that if two different propositions of law are laid down by benches of similar strength, the earlier view shall be binding on the courts.

However, in some cases the date of remand is included while in other cases the same is excluded, while not following the previous judgement; which is further creating confusion to the subordinate courts. Therefore, the alleged issue needs to be presented before a larger

¹⁶ Enforcement Directorate vs. Kapil Wadhawan & Anr. etc Appeal nos. 701-702 OF 2020

¹⁷ 1995 (Supp) 3 SCC 221

¹⁸ (2015) 8 SCC 340

¹⁹ (2020) SCC OnLine SC 867

²⁰ (1986) 3 SCC 141

²¹ (1992) 3 SCC 141

²² (1996) 1 SCC 432

²³ (2002) 2 SCC 121

²⁴ (2011) 10 SCC 445

²⁵ Criminal no. 2551 of 2018

bench of the apex court since all the aforementioned judgements were adjudicated by two judge benches. In *ED v. Kapil Wadhawan*²⁶ the Supreme Court referred the issue to a larger bench. Considering the inconvenience caused to the public, the matter should be settled by the apex court at the earliest.

INTERPRETATION OF THE TERM “AVAILED OF”

Accused must file an application on the expiry of the period and before the filing of the charge sheet to avail the benefit provided under proviso to section 167(2) of the Cr.P.C.²⁷

Once the period prescribed under the code i.e. 60 or 90 days, as the case maybe, elapses, the accused becomes eligible to avail the indefeasible right of default bail provided that he is prepared to and does furnish bail. Subsequently, on the date of filing of application, the accused is said to be ‘availed of’ the right of default bail.

Moreover, in *Uday Mohanlal Acharya vs. State of Maharashtra*²⁸, the Supreme Court interpreted the term ‘availed of’. The court observed:

“after expiry of 60 days for filing challan the accused filed an application for being released on bail and was prepared to offer and furnish bail, however, the magistrate rejects application on erroneous interpretation about non application of section 167(2) to the case pertaining to MPID act of 1999 and accused approaches higher forum in meanwhile charge sheet is filed, the indefeasible right of accused being released on bail does not get extinguished by subsequent filing of charge sheet. The accused can be said to have *availed of* his right to be released on bail on the date he filed application for being released on bail and offer to furnish bail.”

Furthermore, while interpreting the expression "if not already availed of" in *Sanjay Dutt v. State through CBI*²⁹, the court held that on expiry of the period specified in para (a) of the proviso to Sub-section (2) of Section 167, if the accused files an application for bail and offers also to furnish the bail on being directed, then it has to be held that the accused has availed of his indefeasible right even though the court has not considered the said application and has not indicated the terms and conditions of bail.

²⁶ Criminal Appeal no. 701-702 of 2020

²⁷ *Ohana Kuttan Pillai vs. State of Kerela* 2004 Cr LJ 3453

²⁸ AIR 2001 SC 1910; 2001 AIR SCW 1500 (para 8); (2001) 5 SCC 453

²⁹ MANU/SC/0554/1994 : (1994) 5 SCC 410

The court also said:

"The indefeasible right accruing to the accused in such a situation is enforceable only prior to the filing of the challan and it does not survive or remain enforceable on the challan being filed, if already not availed of."

Considering the abovementioned judgements, it can be understood that if the accused is prepared to and does furnish bail and have applied for the same before the court then he is said to be *availed of* the right of being released on bail. On the other hand, after the prescribed period, if the accused fails to furnish bail and subsequently the investigating agency files charges sheet, the said right of bail would be extinguished.

CANCELLATION OF BAIL

The power of court to cancel bail under section 437 and section 439 is available for cancelling default bail. The fact that before an order was passed under section 167(2) the bail petition of the accused were dismissed on merits is not relevant for the purpose of taking action under section 437 or 439. The court before directing the arrest of the accused and committing them to custody should consider it necessary to do so under section 437. This may be done by the court coming to the conclusion that after the challan had been filed there are sufficient grounds that the accused had committed a non bailable offence and it is necessary that he should be arrested and committed to custody. It is necessary that the court should proceed on the basis that he has been deemed to have been released under section 437 (1) and (2).³⁰

Therefore the accused cannot claim any special right to remain on bail when he is released under section 167(2). If the investigation reveals that the accused has committed a serious offence and charge sheet is filed, the bail granted under proviso (a) to section 167(2) can be cancelled.

An order for release on bail under section 167(2) cannot be defeated by lapse of time, the filing of charge sheet or by the remand to custody under section 309 (2). The order for release on bail may be cancelled under section 437 (5) and section 439(2). The grounds for

³⁰ Bashir vs. State of Haryana AIR 1978 SC 55 (para 6): 1977 4 SCC 410

cancellation of bail are interference or attempt to interfere with the due course of administration of justice, or abuse of the liberty granted to accused.

Where bail has been granted under the proviso of section 167(2) for the default of the prosecution is not completing the investigation in 60 days, after the defect is cure by filing a charge sheet, the prosecution may seek to have bail cancel on the ground that there are reasonable grounds to believe that the accused has committed a non bailable offence and that it is necessary to arrest him and commit him to custody. In the last mentioned case one would expect very strong grounds indeed.³¹

Power of cancelling default bail cannot be exercised suo motu. It can be exercised only after application for cancellation is moved and allowed.³² Moreover, Section 439(2) confers powers on the High Court and the Sessions Court to direct re-arrest of the accused who have been released on bail by any court. . High Court has jurisdiction to entertain the application under Section 439(2) for cancellation of bail notwithstanding that the Sessions judge had earlier admitted the appellant to bail.

DEFAULT BAIL BY SPECIAL COURTS

Default Bail under Unlawful Activities Prevention Act (UAPA)

Unlawful Activities Prevention Act (UAPA) was enacted for the more effective prevention of unlawful activities of individuals and association, and for dealing with terrorist activities for the matters connected therewith.

Bail is an indispensable part of criminal law system. Although in some cases which deals with organized crimes such as unlawful association of individuals and dealing with terrorist activities the ambit of judicial discretion is done.

Bail whether regular or default both are available under UAPA as per the provisions of Criminal Procedure Code (CrPC). For instance, regular bail can be granted by magistrate under section 437 of CrPC and the provisions for default bail is available under section 167(2) CrPC read with section 43D (2) of UAPA.

³¹ Raghbir Singh vs. State of Bihar AIR 1987 SC 149 (para 22): 1986 (2) SCALE 452: (1986) 4 SCC 481

³² R. J. Sharma vs. R.P. Patankar Asst. Collector of customs 1993 CR LJ 1550 (Bom) (para 7)

For default bail under UAPA, the investigation has to be completed within the period of 90 days. And if the investigation is not completed within the said period of 90 days, then the accused is entitled to default bail. The Supreme Court held that Magistrate cannot favour to extend the period of investigation in Unlawful Activities Prevention Act (UAPA).

UAPA does not have any specific conditions to be satisfied for the grant of bail as it is given under the CrPC. However, Supreme Court have listed certain factors to be considered while deciding for bail applications which includes:

- i. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence
- ii. Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant
- iii. Prima facie satisfaction of the court in support of the charge.³³

Under UAPA bail is granted through provisions of CrPC so the factors and procedure adopted for granting bail in UAPA is same as that of other offences. Although in unlawful activities act does the UAPA does not provide any specific rule to deny bail, hence provisions of CrPC are applicable in case of unlawful activities. If a person was suspected of the crime of an offence punishable with death or imprisonment for life then there must exist grounds which specifically negate the existence of reasonable ground for believing that such an accused is guilty of the offence.³⁴

However, under the first proviso in Section 43-D (2) (b), the 90 day period indicated by the first proviso to Section 167(2) of the Code can be extended up to a maximum period of 180 days if “the Court” is satisfied with the report of the public prosecutor indicating progress of investigation and specific reasons for detention of the accused beyond the period of 90 days.

The Magistrate will have power under Section 167 (2) Cr.P.C. read with Section 43 (a) of UAP Act to extend the period of investigation up to 180 days and then, commit the case to the Court of Sessions as per provisions of Section 209 Cr.P.C., whereas in case the investigation is conducted by the agency under the NIA Act, the power shall be exercised by the Special Court and challan will be presented by the agency before the Special Court.³⁵

³³ Kalyan Chandra Sarkar vs. Rajesh Ranjan, 2004(7) SCC 528

³⁴ Prahlad Singh Bhati vs. NCT, Delhi, 2001(4) SCC 280

³⁵ Bikramjit vs. State of Punjab, also referred in Sudha Bharadwaj vs. NIA app. No. 2024 of 2021

Recently, it was held by the Supreme Court that Special court designated under the National Investigation Act (NIA) to decide UAPA offences would have the sole jurisdiction to investigate a case only after it is take over by the NIA.³⁶

Default Bail under Narcotic Drugs and Psychotropic Substances (NDPS)

Narcotic Drugs and Psychotropic Substances Act is an act to consolidate and amend the law relating to narcotic drugs, to make provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances and for matters connected therewith.

Under Section 167(2) an accused can be detained in custody for a time period for 90 days for crime punishable with death, life imprisonment or sentence of over 10 years. Here, as per Section 37-A (4) of N.D.P.S Act in some special statutes as the N.D.P.S Act, the period of detention can be extended for 180 days.

If the investigation is not completed within the aforesaid time period, then the accused is entitled to default bail. The Special Court in certain cases may extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of 180 days.³⁷

Furthermore, as per apex court, “Once the accused files an application for bail under provision to Section 167(2) he is deemed to have availed of or enforced his right to be released on default bail, accruing after expiry of stipulated time limit for investigation”.³⁸ The court shall release the accused on bail as it would be an indefeasible right of the accused to be so released.³⁹

In the majority opinion it’s held that the accused is deemed to have exercised his right to default bail under Section 167(2), CrPC. The moment the accused files the application for bail and offers to abide by the terms and condition laid down in bail the prosecution cannot frustrate the object of Section 167(2), CrPC as the accused is entitled to get bail.⁴⁰

³⁶ Naser Bin Abu Bakr Yafai vs. State of Maharashtra, 2021

³⁷ Section 36A (4) N.D.P.S Act,1985(Offences trailable by Special Courts).

³⁸ M Ravindran vs. Directorate of Revenue Intelligence, 2020

³⁹ Hitendra Vishnu Thakur vs. State of Maharashtra (1994)4 SCC 602

⁴⁰ Uday Mohanlal Acharya vs. State of Maharashtra,2001

CONCLUSION

Bail is a matter of a person's liberty and every person has the right to claim it without any delay. But there are certain factors which lead to delay for the justice.

Money is the main factor while procuring bail. Poor population in India is required to serve sureties even in bailable offences due to lack of money. As a result, they are kept behind bars for long period being treated as convicts, which in turn hinder their right of being released on bail. Whereas, "The person in the custody have free legal aid under article 39(A) of the Indian constitution, this article also emphasis that free legal services are an unalienable element of 'reasonable, fair, and unjust procedure' for without a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice".⁴¹ Further to state, the prosecution may frustrate right of the accused accrued in his favour under the mandates of the statute by several delict tactics or even in contingency like absence of the presiding officer of the court or the non-availability of the court to take an application of bail and passing order thereon.

Although there could be certain causes for such defects, one could be delay in filing a charge-sheet by investigating officer mainly due to seriousness of crime, tampering evidence, staff, burden of investigation, etc. and another reason could be court delay due to an increasing crime rate, the expanded network of laws, the inaccessibility to courts of person in isolated geographic areas, securing legal aid, etc.

Default bail being a matter of fundamental right under Article 21 is of utmost importance since it encompasses right of personal liberty. Denial of bail erroneously by court or police would be illegal and against the person's right to liberty. Hence, in order to conclude, default bail should be granted by court on the very day of application or at the earliest possible opportunity. Moreover, legal aid and assistance should be provided by government for public good at large.

⁴¹ Hussainara Khaton and Ors. Vs. Home Secretary 1979

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