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SCOPE OF DEFAULT BAIL: A DETAILED ANALYSIS

Bail is a temporary release of a person who has been arrested or charged with a crime and whose trial or court appearance is pending.¹ In the words of Justice Deepak Gupta, right to get ‘default bail’ is a very important right. The term ‘default bail’ is not used anywhere in any legislation. It is also known as ‘compulsive bail’, ‘mandatory bail’ or ‘statutory bail’. The origin of default bail can be traced back from section 167 of the Code of Criminal Procedure, 1973.

Legal Provision:

According to Section 57 of the Code of Criminal Procedure, 1973 an accused must be produced before the nearest Magistrate within 24 hours of arrest. Section 167(2) of the Code of Criminal Procedure, 1973 provides that if the investigation is not completed within 24 hours, then the accused must be produced before the Magistrate and if the Magistrate thinks fit, he can grant detention for a term not exceeding 15 days. This detention can either be in judicial custody or police custody. Furthermore, if the investigation is not completed within these 15 days, the Magistrate can give detention maximum up to 90 days, if the offence committed is punishable with death, imprisonment for life, and imprisonment for more than 10 years or 60 days, if the offence committed is punishable with less than 10 years of imprisonment. This detention must only be in judicial custody. If the investigation is not completed within the given time period, then an accused is entitled to be released on bail, provided that the bail is furnished. This bail is called as default bail.

Requisites of Section 167:

- i. Application by the accused.²
- ii. Application can be written or oral.³

¹ DRISHTI IAS, <https://www.drishitias.com/pdf/1700491741.pdf> (last visited on January 17, 2023)

² Parul Thapaliyal, *Default Bail and Charge sheet*, UTTARAKHAND JUDICIAL ACADEMY, (Jan.17, 2023, 5:29 PM) <https://ujala.uk.gov.in/files/12.pdf>

³ Rakesh Kumar Paul v. State of Assam, (2017) 15 SCC 67

- iii. Investigation should be pending,
- iv. Period of investigation i.e., 90 days or 60 days must have lapsed.
- v. Report under Section 173 of the Code of Criminal Procedure, 1973 not submitted till submission of the application.
- vi. Indefeasible right has accrued.
- vii. Accused must furnish bail.⁴

Default bail in special legislations:

Special legislations include the Unlawful Activities Prevention Act, 1967 ('UAPA'), Terrorist and Disruptive Activities (Prevention) Act, 1987 ('TADA'), Prevention of Money Laundering Act, 2019 ('PMLA'), etc.

In the context of UAPA, the period of default bail extends to 180 days. Section 43D of the UAPA, 1967 states that Section 167 of the Code applies to the legislation in the same manner. Section 43D (2) of the Act of 1967 provides that the expressions 'fifteen days', 'ninety days' and 'sixty days', shall be construed to refer to 'thirty days', 'ninety days' and 'ninety days' respectively.⁵

According to Section 20(4) (bb) of the TADA, 1987, the period of detention in custody extends to 180 days, provided the requirements are fulfilled.

Cancellation of Default Bail:

The default bail can be cancelled as per the merits of the case. Such order can be made considering the grounds of cancellation under Section 437(5) and Section 439(2) of the Code of Criminal Procedure, 1973⁶. Section 167 does not provide any provision regarding cancellation of default bail, the power to cancel the bail can only be traced to Section 437(5) and section 439(2) of the Code.⁷

Landmark Judgments:

⁴ Standard protocol for default bail, CHANDIGARH JUDICIAL ACADEMY, (Jan.18, 2023, 6:45 PM) <https://cja.gov.in/Blog/The%20law%20of%20bail%20a%20compendium.pdf>

⁵ Anushka Satya and Nishant Kumar, *Conundrum Around the Right to Default Bail Under Section 167*, 12 NLIJLR 43, 58-60 (2023)

⁶ Rajnikant Jivalal v. Intelligent Officer, NCB, 1989 SCR (3) 377

⁷ Standard protocol for default bail, CHANDIGARH JUDICIAL ACADEMY, (Jan.18, 2023, 6:56 PM) <https://cja.gov.in/Blog/The%20law%20of%20bail%20a%20compendium.pdf>

In *CBI v. Anupam J. Kulkarni*, 1992 AIR 1768 it was held that a magistrate can authorize police custody up to maximum 15 days after arrest of the accused. After that, any detention given, must be in judicial custody, except in any exceptional cases.

However, in the recent case of *CBI v. Vikas Mishra*, (Criminal Appeal No. 957 of 2023) bench of Justices MR Shah and CT Ravikumar held that the judgment in the Anupam J. Kulkarni case needs reconsideration. The idea that after 15 days of detention, no further detention in police custody must be given a purposive interpretation because no accused can be permitted to play with the legislation and deliberate attempt by an accused to surpass a police custody cannot be entertained.

In *Jasbir Singh v. National Investigating Agency*, (Criminal Appeal No. 1011 of 2023) bench of justices CJI DY Chandrachud and J. JB Pardiwala, while referring the case of *Suresh Kr. Bhikamchand Jain v. State of Maharashtra*, (2013) 3 SCC 77, held that an accused is not entitled to default bail when the charge sheet has been filed within the stipulated time.

In *Ritu Chhabria v. Union of India*, (Criminal Appeal No. 60 of 2023) it was held that default bail is a fundamental right of an accused. Incomplete charge sheets filed by investigating agencies to deny default bail violates rights of the accused.⁸

In the case of *Satyendra Kr. Antil v. CBI*, SLP(Crl) No. 5191/2021 default bail under section 167(2) of the Code of Criminal Procedure, 1973 is a limb of Article 21 i.e., right to life and personal liberty under the Constitution of India.

“Custody” under Section 167 of the Code of Criminal Procedure, 1973 includes custody by Investigating Agencies such as ED, CBI, NIA not just by Police only, as held in the case of *V. Senthil Balaji v. The State Represented by Deputy Directors*, (Criminal Appeal No. s 2284-2285 of 2023).

In *State Through CBI v. T. Gangi Reddy*, (Criminal Appeal No. 37 of 2023) it was held that default bail can be cancelled if the investigation is completed within 90 days.

Conclusion:

⁸ Chaitanya M. Hedge, *Incomplete charge sheet and further investigation – A convenient tool to delay custody of an Accused*, LAW AND OTHER THINGS, (Jan.19, 2023, 8:20 PM), [https://lawandotherthings.com/incomplete-chargesheet-and-further-investigation-a-convenient-tool-to-delay-custody-of-an-accused/#:~:text=Summary%3A,under%20section%20173\(8\).](https://lawandotherthings.com/incomplete-chargesheet-and-further-investigation-a-convenient-tool-to-delay-custody-of-an-accused/#:~:text=Summary%3A,under%20section%20173(8).)

The accused's right to be released on bail on failure to complete investigation is the fundamental right of the accused granting protection of life and personal liberty. Though the Indian judiciary through its innovative judgements has clarified certain confusions but it would be better if the Legislature enacts the laws on some particular points. For example-as decided by the courts, after expiry of stipulated time as given in section 167 (2), if the accused applies to the Magistrate for his release and the police files charge-sheet simultaneously, what will be status of accused's right to default bail? What will be the method to decide that who has applied first? The answer of this question will decide the fate of detainee.⁹ Thus, law should be made effective and beneficial for both accused and the prosecution.

⁹ Dr. PK Pandey, *Right of Accused to Default Bail in India: A Critical Study*, 3 JALC 3, 15-19 (2023).