

DEFAULT BAIL AND ITS EXCEPTIONS IN SPECIAL STATUES

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ABSTRACT

This article provides a comprehensive study of the kinds of bail available to the accused persons under the provisions of Indian Law with special emphasis on the provision of default bail. This article discusses in detail the provision of default bail/ mandatory bail as envisaged under Section 167(2) of the Code of Criminal Procedure and its various parameters. This article also entails the concept of calculation of time period for the purposes of custody for default bail. This article focuses on the concept of compulsory bail under various statutes like the Unlawful Activities Prevention Act, 1967, Narcotic Drugs and Psychotropic Substances Act, 1985 and Prevention of Children against Sexual Offences Act, 2012 and the exceptions under the respective statutes in the context of conditions as laid down under Section 167 of Code of Criminal Procedure. Various landmark judgments in the context of the provision of default bail under various statutes have also been discussed.

INTRODUCTION

In India, whenever any person is apprehended by the police, the foremost thing they approach is the Bail procedure. As per the Indian judicial system, bail is a procedure enabling the culmination of two human rights – Firstly, the right of freedom and personal liberty and secondly - ensuring the presence of the accused during the trial as envisaged in the Indian Constitution.

Bail refers to the judicial ad interim release of a person accused of a certain offence who is awaiting trial upon the lodging of a certain sum of money known as the bail bond as a guarantee assuring the appearance of the accused in the court during the trial proceedings.

The Code of Criminal Procedure inculcates the bail procedure for both bailable as well as non-bailable offences. Whereas bail is a matter of right in bailable offences, it depends upon the discretion of the judge in non-bailable offences.

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KINDS OF BAIL

Regular Bail under Bailable Offences: Section 436 of Cr. P. C. deals with the grant of regular bail in offences other than non-bailable offences. There are certain prerequisites for the procurement of bail under this provision of Cr.P.C. The conditions are as follows:

- The person seeking bail under this provision has been apprehended by an officer in charge of a police station without a warrant.
- The accused person so detained is presented or appears before a court.
- He must have all the requisites needed for the procurement of bail, i.e. he must be available with bail bonds while being apprehended by such officer of the police station.

This provision entails the grant of bail depending upon the nature of punishment enumerated for the offence and not upon the power and jurisdiction of the magistrate to grant bail.

Regular Bail under Non-bailable offences: Regular bail in non-bailable offences is dealt by Sections 437 and 439 of Cr. P. C. A person who is accused or suspected of commissioning an offence that is bailable in nature seeks the remedy of bail under these sections when detained or arrested and is brought before the court by an officer in charge of the police station.

Section 437 Cr. P. C.: The power to grant bail under this section lies with the magistrate. The application for grant of bail under this section is filed before the magistrate or the trial court before which the police produce the accused in case of non-bailable offences. The Magistrate will refuse the bail on the ground if the person is guilty of an offence punishable with seven years or more, imprisonment of life or death.

Section 439 Cr. P. C.: This section empowers the Session Courts and High Courts to direct the release of the accused on bail in cases of non-bailable offences. The High Court or Court of Session may impose any condition for the granting of bail under this section. It may also modify or set aside any condition which is imposed by the Magistrate when releasing the accused on ba

Anticipatory Bail: Section 438 of Cr. P. C. deals with the grant of anticipatory bail. Anticipatory bail refers to the advance bail application filed before the accused is

apprehended by the police authorities. The anticipatory bail application can only be filed before a Sessions Court or a High Court. The accused shall not be arrested if granted anticipatory bail. The accused is asked to join the investigation and is granted interim bail which is later on made absolute upon his joining the investigation and cooperating with the police authorities.

Default Bail: This bail is also known as Mandatory Bail. Section 167(2) of the Code of Criminal Procedure, 1973 deals with the provision of Default Bail. Judicial magistrates are empowered under this section to grant and authorize custody of a person accused of an offence in cases in which the investigation cannot be concluded within a period of 24 hours by the police. This section enumerates the maximum period for which an accused can be subjected to custody. This section contains the provision of default bail which enumerates that if the investigation of a case is not concluded within the specified maximum period, the accused shall be granted bail and be released, irrespective of the nature and kind of accusation leveled against the accused person.

Section 167(2) states that:

The Magistrate to whom an accused person is forwarded under this section may, whether he has or has no jurisdiction to try the case, from time to time, authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction: Provided that-

(a) The Magistrate may authorize the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days; if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorize the detention of the accused person in custody under this paragraph for a total period exceeding, -

(i) ninety 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;

1. subs. by Act 45 of 1978, s, 13, for paragraph (a) (w, e, f, 18- 12- 1978).

2. Ins. by act 10 of 1990, s. 2 (w. e. f 19- 2- 1990)

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]

(b) No Magistrate shall authorize detention in any custody under this section unless the accused is produced before him;

(c) No Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorize detention in the custody of the police. 1 Explanation I.- For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail;]. 2 Explanation II.- If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorizing detention.]

The Supreme Court in [State Of U.P vs. Laxmi Brahman &Anr, AIR 11 March 1983 SC 439](#) laid down the law regarding the non-applicability of restrictions imposed on the power of the magistrates with respect to granting bail under section 437 in cases where the magistrate grants bail under Section 167(2). This means that the existing notion in few judicial bodies that the default bail in offences that are triable by the Court of Sessions can only be granted by the Sessions Court is incorrect.

Calculation of the Time Period: The time period of 60 days or 90 days or 180 days is to be computed from the first day on which the accused is produced before the magistrate i. e. the 1st day of the remand and not from the day when the accused has been arrested.

SPECIAL STATUTES AND THEIR EXCEPTIONS

Unlawful Activities (Prevention) Act, 1967: Section 167 of the Code of Criminal Procedure is amended by [Section 43D](#) of the Act. The offense committed under this act is serious and heinous in nature, and the initial period of police custody is amended and extended to a period of 30 days. The total time period to complete the investigation of an offence irrespective of its nature is fixed to a maximum period of 90 days. Thus, the period of 15 days

is stretched to 30 days, the period of 60 days is stretched to 90 days and the period of 90 days is fixed to 90 days.

However, the period of 90 days can be extended to the maximum period of 180 days in cases where the investigation is not concluded within the specified period of 90 days. The period of 90 days is extended by the court on the submission of a report by the public prosecutor for the advancement in investigation and the justification for detaining the accused in custody beyond the period laid down in the statute.

However, the extension of the period of investigation cannot be done authoritarian but is subject to certain parameters:

- The report of the public prosecutor should be unfettered and independent from that of the officer investigating the case.
- There should be proper scrutiny and implementation of the personal intellect of the public prosecutor and not a reiteration of the report of the investigating officer.
- The report must entail progression in the investigation and precise and concrete justification must be ascribed against each of the accused for apprehending the accused beyond the specified period.
- The report of the public prosecutor so prepared shall be served upon the accused and he shall be given an opportunity of being heard before the order of extension is passed.

The extension of the specified time can only be granted if all of the above variables are complied with. In case, the order is passed in contravention of the above-stated criterion, such an order is unlawful and illegal and stands liable to be quashed. Quashing can be done under section 482 of Cr. P. C. by the High Court. Thus, the right of mandatory bail shall accrue only on the expiry of the extended time.

LANDMARK JUDGMENT

[Bikramjit Singh vs. The State Of Punjab, 2020 SC:](#) The Hon'ble Supreme Court comprising of a three-judge bench held that release of the accused on bail under Section 167(2) upon the

fulfillment of the requisites laid down in the provision, is a fundamental right of the accused and hence, cannot be denied.

[Sanjay Dutt vs. State Through C.B.I. Bombay, 9 September 1994](#): The Bench consisting of A.M. Ahmadi, J.S. Verma, P.B. Sawant, B.P. Jeevan Reddy and N.P. Singh laid down guidelines in the context of granting bail under section 167(2). The guidelines relate to the superseding of the inability of the accused to furnish bail over the completion of the investigation. This means that the failure on the part of the investigating agencies to conclude the investigation within the statutory period gives an unchallenged right to the accused to grant bail. He shall be released on bail on furnishing of bail bonds and surety bonds. However, if the investigating agency or officer completes the investigation before furnishing bail bonds by the accused, the right of the accused to default bail shall cease.

Narcotics Drugs or Psychotropic Substances Act, 1985: [Section 36A \(4\)](#) of NDPS enumerates the maximum time period for the conclusion of the investigation.

This section lays down two scenarios:

1. Cases where an offence committed under this Act concerns the recovery of commercial quantity of the prescribed drug or psychotropic substance
2. Offences committed which are penalized under Section 19, 24 or 27 A of the Act

In both of the above scenarios, the maximum time limit stipulated for the investigating officer or agency to conclude the investigation of the case and submission the report thereupon is fixed to 180 days. Like the UAPA, the court is empowered under this section to extend the period of 180 days and stretch it up to a period of one year on the submission of the report of the public prosecutor denoting the progression in the investigation and the justification for detaining the accused in custody beyond a period of 180 days.

However, apart from the above two scenarios mentioned, the time period of investigation of all the offences committed under this act shall be governed as per the provisions of Cr. P. C. This means that since no other offence under the NDPS Act is punishable for a period of more than 10 years, the maximum time period for the conclusion of the investigation and the submission of the report will be thus, 60 days. This time period cannot be extended in any case.

LANDMARK JUDGMENTS

[Rakesh Kumar Rathore vs. UOI through Central Bureau Narcotics, 2021, Allahabad High Court](#): This judgment envisages the dismissal of default bail on the ground that the application for an extension of the period for investigation beyond the period of 180 days was filed before the expiry of 180 days. Hence, the accused is not entitled to default bail.

[Manas Krishna TK vs. State, 2020, Bombay High Court](#): It was held that the non-inclusion of the chemical report in the Challan results in exposing the accused to endangering his liberty as the very cognizance of the case would depend upon the chemical report. Thus, the non-inclusion of chemical report results under Section 173 Cr. P. C. results in an incomplete challan and if not submitted within 189 days, it would entitle the accused to the benefit of default bail.

Protection of Children against Sexual Offences Act, (POCSO), 2012: This bill was enacted to criminalize child sexual abuse. This bill was enacted into a Law which prescribes severe punishments for committing the offence of child sexual abuse. These punishments are even made more severe by the amended act of 2019 which imposes a sentence of life imprisonment as well as a fine.

The major topic of discussion under this head in the context of default bail is Section 35. Section 35 enumerates the time frame within which the evidence of the child shall be normally recorded, i.e. within 30 days of taking cognizance by the Special Court. It also entails such cases should be tried as far as possible within a period of one year from the day of taking cognizance. In case of delay, the reasons should be recorded in writing.

The provision of default bail gives an indefeasible right to the accused to be released on bail upon the failure on the part of the investigating agency to complete the investigation within the stipulated period. Section 35, however, only lays down the timeline of the conclusion of a POCSO case for its expeditious disposal as in to lessen the burden on Children's Courts. The non-compliance with this provision does not give the right of default bail to the accused. The reasons for the non-entitlement of the accused to default bail in case of non-compliance with Section 35 have been discussed in various landmark judgments.

LANDMARK JUDGMENTS

[Mohiddin versus State of Karnataka, Karnataka High Court, 2017](#): The accused filed an application for default bail on non-compliance with Section 35(1) and on the ground that the victim's evidence was not recorded within a period of 30 days. The High Court dismissed the bail application on the ground that mere non-compliance with Section 35 of the Act does not entitle the accused to default bail. A delay in recording the statement of the victim cannot throw the entire case out of the window. The special court shall record the reasons for the delay in the proceedings but will not entitle the accused to bail as mere delay will not result in brushing aside the entire story of the prosecution.

[Hanumatha Mogaveera vs State of Karnataka, Karnataka High Court, 2021](#): The entitlement of the accused to mandatory bail in defiance of Section 35 of the POCSO Act has been discussed by the Division Bench of Karnataka High Court and the following has been held:

- The High Court held that the main objective of Section 35 is to decrease the trauma of the child victim. This section is for the benefit of the victim enabling his rehabilitation in society and cannot be used in the favor of the accused.
- Statements recorded before the Magistrate under Section 164 of Cr. P. C. is not to be treated as evidence.
- Strict compliance with Section 35 will result in deliberate attempts on the part of the accused to delay the proceedings beyond the period of one year and secure bail.

The lack of an adequate number of special courts dealing with POCSO cases often results in a delay of the proceedings of the said cases beyond a period of one year. This shall not entitle the accused to default bail.

CONCLUSION

Section 167 of Cr. P. C. envisages the procedure for the detention of a person who is accused of commission of an offence when the investigation is not complete within 24 hours by the investigating agency. The provision of mandatory bail secures the right to life and personal liberty guaranteed under Article 21 of the constitution by entitling the accused to the right of default and compulsory bail in case of failure on the part of investigating agency or officer within the time frame stipulated by the statute.

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