



WHAT HAPPENS IF THE INVESTIGATION IS NOT COMPLETE WITHIN 24 HOURS?

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ABSTRACT

The criminal procedure was earlier governed under the Code of Criminal Procedure, 1973 (hereinafter CrPC). But it held the influence or mindset of the British colonial era, even though the amendment was carried out. Later, the legislature introduced the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter), which came into force on 1 July 2024. BNSS provides for the procedure for prosecuting, convicting, and punishing the accused. In that process, BNSS does the balancing of interest between the individual on one hand and society on the other. The new law goes through the scrutiny of the people, and the most highlighted topic is Section 187, Chapter 13 (Investigation). It deals with the arrest and detention of the person beyond 24 hours and also talks about the remand of the accused to police or judicial custody during the investigation (Earlier it was Section 167 of the CrPC). This article deals with the concept of Section 187 BNSS: does this section provide rights of the person who gets arrested, is it effective, is the new provision of this section able to handle the modern investigation method, or does it violate Article 21 of the Constitution? Does the Section 187 BNSS framework effectively deal with modern investigation or not?

Keywords: Arrest, Investigation, Default Bail, Interchangeable Custody, Section 58, Section 57.

SECTION 187: PROCEDURE WHEN INVESTIGATION CANNOT BE COMPLETED IN 24 HOURS

When a person is arrested without a warrant, it is the primary and bounden duty of the arresting police officer to produce the arrestee before the area magistrate or officer in charge of the police station immediately and without unnecessary delay as per Section 57 BNSS. The officer in

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charge of the police station doesn't need to be the arresting officer, and to prevent any violation of the right of the arrestee, a duty has been imposed upon the arresting officer to follow Section 57 and produce the arrestee before the competent authority, that is, the area magistrate or officer in charge of the police station. (*Uday Mohanlal Acharya v. State of Maharashtra*).¹

Section 58 states that no police officer shall keep a person in his custody for more than 24 hours to produce the person within a reasonable time before the magistrate, and if he doesn't, then it violates Article 22(2) of the Constitution.

If the police officer finds that there is a prima facie case against the accused, but within 24 hours the investigation cannot be completed, then we have to produce the accused under Section 187(1), and upon such production, if the police officer wants further police custody, then he will have to file the remand report seeking police custody from the magistrate. The magistrate is not bound to grant police custody upon the request of the police officer. Rather, it is the discretion of the magistrate to grant police custody or judicial custody, or if a bail application has been moved, then he also grants bail.

If the police officer during the investigation finds out that there is a prima facie case but no further interrogation is required, then the police officer will produce the accused along with the case diary before the judicial magistrate under Section 187(1), but he will not apply for police custody; rather, that discretion will be of the judicial magistrate to either send the accused to judicial custody or release him on bail if the grounds for bail are made out.

The magistrate's maximum competency to grant custody in the course of investigation is 90 days or 60 days, depending upon the prescribed punishment for the offence. Thus, if the said 90- or 60-day period is over, then the magistrate will not have any more competency to grant custody beyond 90 or 60 days. However, if within the 60 or 90-day period the police report is filed, then it will be said that the investigation is complete and an enquiry has begun. Here, since Section 187 applies only at the stage of investigation and filing of the police report marks the end of investigation, the magistrate gets competency to detain the accused in custody for a future period under Section 346(2) BNSS. If 60 and 90 days are over and the police report has been filed, Section 187 ceases to apply. The magistrate is also duty-bound to check the validity of the arrest.

¹ *Uday Mohanlal Acharya v. State of Maharashtra* (2001) 5 SCC 453.

If there are pregnant violations of the right of the accused at the time of arrest, then the magistrate can discharge the accused under Section 64 BNSS.

CASE ANALYSIS

Hussainara Khatoon v State of Bihar: In this case, the Supreme Court observed that every person has the right to a speedy trial. The court mentioned that under Article 21, no person shall be destitute of his life or personal liberty except according to procedure established by law. The Supreme Court stated that the right to a speedy trial is a constituent of Article 21 of the Constitution.²

D.K. Basu v State of West Bengal: This is another landmark judgment of the Supreme Court regarding custody. In this case, the court observed that the prolonged period of custody increases the vulnerability of the accused to torture and ill-treatment by the police officer. Therefore, safeguards are required to ensure the safety of the accused: inform the relative of the accused about the detention, prepare the custody memo, and conduct the medical examination of the accused. These guidelines are included in Article 21 and Article 22 of the Constitution, which are the right to life and personal liberty and protection against arbitrary arrest and detention.³

Arnesh Kumar v State of Bihar: In this case, the Supreme Court observed that the magistrate will not mechanically grant custody whenever the police ask them. The magistrate will need to ensure and justify by the facts, and the reason should be sufficient to grant the custody because here it is a question of life and liberty.⁴

Satender Kumar Antil v CBI: In this case, the Supreme Court observed that if the 60 or 90-day period is over and the investigation is not yet completed, then by default the accused will get bail, as prolonged detention at the stage of investigation itself frustrates the right to a fair trial and violates the basic right of the accused; the process becomes punishment. This term is the default bail.⁵

² Hussainara Khatoon v State of Bihar AIR 1979 SC 1360.

³ D.K. Basu v State of West Bengal AIR 1997 SC 610.

⁴ Arnesh Kumar v State of Bihar (2014) 8 SCC 273.

⁵ Satender Kumar Antil v CBI AIR 2022 SC 4340;

CRITICAL ANALYSIS OF SECTION 187

If, after the arrest of the accused and interrogation by the police, it is found that there is no prima facie case against the accused, then Section 187(1) is silent about the situation. However, in such a case, the accused can either be discharged by the police officer under Section 60 BNSS, or he may be released by the police officer under Section 180, and later a closure may be filed under Section 193.

Section 187 increases the vulnerability of the accused. The prolonged and segmented custody period increases the ill-treatment of the accused. The time period of 90 days to file the chargesheet, and if the police are not able to do so, then the right of default bail will arise, and if the chargesheet is filed, then the right will be exhausted, even though the chargesheet is filed on the same day when the accuser's application for default bail is filed, but it is filed earlier than the application. This section is also silent about the people who are not able to furnish bail. The discretion granted to the magistrate can become an arbitrary power and it might violate Articles 21 and 22 of the Constitution of India.

CONCLUSION

Section 187 of the BNSS is a new era which removes the influence of the British era. This section provides the police with great power to arrest people while ensuring that no one's rights are infringed upon. This provision provides safeguards for arrest and also compliance with Articles 21 and 22 of the Indian Constitution. But there are some loopholes, like the vulnerability of the accused, what if there is no prima facie case, etc. With respect to making the arrest of people better, the Supreme Court has given many judgments by providing guidance for the safeguards of the accused.