

# DEFAULT BAIL

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# Default Bail?

- a right to bail that accrues when the police fail to complete investigation within a specified period in respect of a person in judicial custody.
- enshrined in **Section 167(2)** of the Code of Criminal Procedure (CrPC)

- Sec 167 (1) - police to produce the suspect to the nearest Magistrate and seek orders for either police or judicial custody if they are unable to complete an investigation in **24 hours**.

- **Section 167(2)**- Magistrate can order an accused person to be detained PC/JC for 15 days
- Beyond the custody of 15 days, the accused cannot be detained in JC for more than:
  - 90 days, when offense punishable with death, life imprisonment or imprisonment for 10 years; or
  - 60 days, any other offense.
  - In some other special laws like NDPS, this period may vary- 180 Days.aw

Now,

In case the investigation is not completed by the end of this period, the court shall release the person “if he is prepared to and does furnish bail”. This is known as **default bail**.

# PURPOSE OF DEFAULT BAIL-

- 1- To provide sufficient time to police to investigate and interrogate the accused &
- 2- To ensure that the accused is not kept in custody indefinitely, thus protecting the rights of the accused.

# Conditions for grant of default bail-

1. Expiry of the stipulated period of 60/90 days of custody
2. Investigation should be pending
3. Application by the accused- Mere expiry of the period of 60/90 days does not ipso facto entail in default bail to accused.

Written application is must to realize the default bail.

**(Hitendra Vishnu Thakur vs. State of Maharashtra, AIR 1994 SC 2623)**

# “Availed Of”

When the accused is said to have 'availed of' his right of default bail-

- **Is it when he applies** for bail & offer his willingness of being released ? or
- **When a bail order is passed** & he furnishes bond & is released on bail?

# Sanjay Dutt vs. State, (1994) 5 SCC 410

- created some amount of **confusion** as to whether the indefeasible right accruing to an accused gets extinguished and becomes unenforceable on the challan being filed.
- **Held-** if the right of seeking default bail have not been already availed of prior to filing of the charge-sheet, by the accused, then this right no longer stays enforceable after filing of the chargesheet.
- **Held-** Right to default bail 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.



# Uday Mohanlal Acharya vs. State of Maharashtra (2001) 5 SCC 453

Supreme Court explained the observations made in Sanjay Dutt's case & held:

if an accused does not avail of its right under 167 (2) then on filing of challan, his rights become unenforceable. But if an accused, upon failure of the police to file chargesheet within the stipulated time, promptly files an application seeking default bail and the matter is not decided and is kept pending, his right won't get extinguished on account of subsequent filing of charge-sheet before the decision on the said default application.

# Uday Mohanlal Acharya ...(2001)

- The SC held that the accused shall be said to avail of his right to default bail when he files an application for the same and not when he is released on default bail.
- **“An accused must be held to have availed of his indefeasible right, the moment he files an application for being released on bail and offers to abide by the terms and conditions of bail.**
- **If “availed of” to mean actually being released on bail after furnishing the necessary bail required would cause great injustice to the accused and would defeat the very purpose to Section 167 (2) CrPC.”**

# **Union Of India Through CBI vs. Nirala Yadav, (2014) 9 SCC 457**

Reiterated and affirmed **#Uday Mohanlal's Case**

Held- when the accused files an application for default bail, willing and prepared to furnish bail bonds and no charge-sheet has been filed till that time, then the accused has availed his right.

Now, if after this a charge-sheet is filed then the right of accused will not extinguish.

# Necessity of filing of formal application for availing Default Bail-???

**Earlier:** an accused must file a written application seeking default bail

**NOW-** even an **oral application** by an accused seeking 'default bail' would suffice since it deals with the personal liberty of an individual - **Rakesh Kumar Paul vs. State of Assam, (2017) 15 SCC 67**

# **Rakesh Kumar Paul's case, (2017) 15 SCC 67**

Held- In our opinion, in matters of personal liberty, we cannot and should not be too technical and must lean in favour of personal liberty. Consequently, whether the accused makes a written application for “default bail” or an oral application for “default bail” is of no consequence.

# **Bikramjit Singh vs. State of Punjab, MANU/SC/0749/2020.**

Held-

...A conspectus of the aforesaid decisions would show that so long as an application for grant of default bail is made on expiry of the period of 90 days (**which application need not even be in writing**) before a charge sheet is filed, the right to default bail becomes complete. ...”

**M. Ravindran vs. The Intelligence Officer, Directorate of Revenue Intelligence, 2020 (12) SCALE 190**

Crystallized the law on Default bail  
& Held-

...The 90 day limit is only available in respect of offences where a minimum ten year imprisonment period is stipulated, and that the **oral arguments** for default bail made by the counsel for the accused before the High Court **would suffice in lieu of a written application. ...**

# M. Ravindran... (contd).

- The accused is deemed to have exercised his indefeasible right up on **filing of the bail application**, though his actual release from custody is inevitably subject to compliance with the order granting bail.”
- The **right** to be released on default bail continues to remain **enforceable** if the 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 of the chargesheet during the interregnum when challenge to the rejection of the bail application is pending before a higher Court.
- However, if the accused fails to furnish bail and/or comply with the terms and conditions of the bail order within the time stipulated by the Court, his continued detention in custody is valid.



**Impact of subsequent filing  
of charge-sheet  
on grant of default bail**

- \*Default bail granted under Section 167(2) is deemed to be a **normal bail** granted under Chapter XXXIII of CrPC
- \*mere filing of subsequent charge sheet does **not** result in cancellation of default bail.
- \*default bail can be **cancelled** only in terms of the principles contained under Section 437 (5) and Section 439 (2) of the CrPC. **Natabar Parida & Ors. vs. State of Orissa, (1975) 2 SCC 220.**

**Grounds of Cancellation of**  
**Default Bail-**  
**illustrative and not exhaustive**

- Interference with the due course of administration of justice,
- or abuse of the liberty granted to him.
- Indulging in similar or other unlawful acts
- accused has committed a non-bailable offence
- leaving the country .
- placing himself beyond the reach of the sureties.
- Interfering with investigation- by causing disappearance or tampering of evidence etc

# Consequences of accused being released on Default Bail

- **Rakesh Kumar Paul vs state of Assam (2017) case-**
  - The release of accused on default bail does not prohibit his arrest or re-arrest on cogent grounds in respect of the subject charge and
  - upon arrest or re-arrest, the accused is entitled to petition for grant of regular bail which application should be considered on its own merit.
- **Achpal vs state of Raj. (2018) case-**
  - Affirmed # Rakesh Kumar Paul's case
  - Held- a person granted default bail can be arrested and committed to custody only in terms of the principles governing Sec.437(5) & 439(2) CrPC.

# Achpal vs State of Rajasthan (2018)

- The Supreme Court held that an investigation report, albeit complete, if filed by an unauthorized investigating officer, would not bar the accused from availing default bail.

# Jasbir Singh vs National Investigating Agency (2023)

- The Supreme Court held that an accused is not entitled to seek default bail on the grounds that the **chargesheet, though filed within the requisite period, remains “incomplete”** for lack of sanction under Section 167(2) of the Code of Criminal Procedure.

# **Charge-sheet and Default Bail** **Application filed on same day**

It is a settled position that when accused files application and is prepared to offer bail on being directed then it is deemed that the accused has availed of his right. But the Magistrate while entertaining the application has to satisfy himself that the statutory period for filing of charge-sheet has expired and the same has not been filed.

contd...



- The magistrate cannot ignore the charge-sheet in order to grant default bail. Where both are filed on the same day the Magistrate will not entertain the application of the bail as the stage cease to exist.
- **To sum up-**

Once the bail application is filed, the accused has availed of his right and the same needs to be disposed off without undue delay, but
- where both application and charge-sheet are filed on the same day, the stage for entertaining the application is over.

# Latest case- Ritu Chhabaria v. UOI, 2023 SCC Online SC 502

**Brief facts-** FIR registered u/s 420, 120B IPC & PCAct. The petitioner's Husband not named in FIR. Several supp. c/s filed without naming Husband as accused. Accused arrested & remanded. Supp c/s filed showing H to be suspect. Remand extended & never released on default bail. Wife moved SC

Q- Question before court whether investigating agency can file a c/s without first completing the investigation & Whether such C/S would extinguish the right of accused to default bail.

# Division Bench Judgment-

- **Held-** that an incomplete chargesheet filed by the investigating agency without completing the investigation will not defeat the right of the accused for default bail.
- As agencies file in routine incomplete or supplementary charge sheets within the 60/90-day period, to deprive the accused from seeking default bail.
- Else, **stautory bail becomes futile** just by submitting a bunch of papers in court before the mandate of 60/90 days expires.

Challenged the DB judgement before 3 judge bench, being per incuriam. (sometimes, an IO is constrained to file prelim. C/S without enclosing FSL report, which are in turn filed with supp. c/s. So, not every delayed c/s is attempt to scuttle the rights of accused.

And ordered that all default bail applications be decided independent of Ritu Chhabaria's judgt.

## Current position-

Once a c/s is filed, the right to Default Bail ceases & is not resuscitated only because further investigation is pending. The agency always have the option of filing for cancellation of Default Bail.

# Conclusion: Right to Default Bail

- an indefeasible right (Bikramjit Singh vs.State of Punjab)
- not mere statutory right under the first proviso to Section 167(2)
- But a fundamental right U/A 21 granted to an accused person to be released on bail, once the conditions of sec-167(2) CrPC are fulfilled