



Default Bail

Why in News

Recently, the [National Investigation Agency \(NIA\)](#) has filed an appeal against the **Bombay High Court order**, which granted **statutory bail** to **lawyer-activist Sudha Bharadwaj**.

- **Bail** is the **conditional/provisional release of a person** held under legal custody (in matters which are yet to be pronounced by the Court), by undertaking a promise to appear in the Court as and when required.

Key Points

- **About Default Bail:**

- **Legal Source:** This is 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.
 - It is also known as **statutory bail**.
 - This is enshrined in **Section 167(2) of the Code of Criminal Procedure**.
- **Supreme Court Judgment:** In **Bikramjit Singh case 2020**, the [Supreme Court](#) had observed that the **accused gets an indefeasible right to 'default bail'** if he makes an application after the maximum period for investigation of an offence is over, and before a charge sheet is filed.
 - **Right to default bail** under Section 167(2), CrPC not merely a statutory right, but part of **procedure established by law under Article 21**.
- **Underlying Principle:** In general, the right to bail on the investigation agency's default is **considered an 'indefeasible right'**, but it should be availed of at the appropriate time.
 - Default bail is a right, regardless of the nature of the crime.
 - The stipulated period within which the charge sheet has to be filed begins from the day the accused is remanded for the first time.
 - Under **Section 173 of CrPC**, the police officer is obligated to file a report after the completion of the necessary investigation of an offence. This report is called the **Charge Sheet in common parlance**.
- **Time Period:** The issue of default bail arises where it is not possible for the police to **complete an investigation in 24 hours**, the police produce the suspect in court and seek orders for **either police or judicial custody**.
 - For most offences, the police have **60 days** to complete the investigation and file a final report before the court.
 - However, where the offence attracts **death sentence or life imprisonment**, or a jail term of not less than 10 years, **the period available is 90 days**.
 - In other words, a magistrate cannot authorise a person's judicial remand beyond the 60-or 90-day limit.
 - At the end of this period, if the investigation is not complete, the court shall release

the person “if he is prepared to and does furnish bail”.

- **Special Cases:** The 60- or 90-day limit is only for ordinary penal law. Special enactments allow greater latitude to the police for completing the probe.
 - In the **Narcotic Drugs and Psychotropic Substances Act 1985**, the period is 180 days, which can be extended up to one year.
 - In the [Unlawful Activities \(Prevention\) Act 1967](#), the default limit is 90 days only, which can be extended to another 90 days.
 - This extension can be granted only on a report by the **Public Prosecutor** indicating the progress made in the investigation and giving reasons to keep the accused in continued detention.
 - These provisions show that the extension of time is not automatic but requires a judicial order.

Other Types of Bail in India:

- **Regular Bail:** It is a direction given by the Court (any Court within the country) to release a person who is already under arrest and kept in police custody. For such Bail, a person can file an application under **Section 437 and 439 of the CrPC**.
- **Interim Bail:** Bail granted for a **temporary and short period** by the Court till the application seeking Anticipatory Bail or Regular Bail is pending before a Court.
- **Anticipatory Bail:** A direction issued to **release a person on Bail even before the person is arrested**. In this situation, there is apprehension of arrest and the person is not arrested before the Bail is granted.
 - For such Bail, a person can file an application under **Sec. 438** of the [Code of Criminal Procedure \(CrPC\)](#). It is issued only by the Sessions Court and High Court.

Constitutional Provisions Related To Arrest

- **Article 22** grants protection to persons who are arrested or detained. Detention is of two types, namely, punitive and preventive.
 - Punitive detention is to punish a person for an offence committed by him after trial and conviction in a court.
 - Preventive detention, on the other hand, means detention of a person without trial and conviction by a court.
- **Article 22** has two parts—the first part deals with the cases of ordinary law and the second part deals with the cases of preventive detention law.

Rights Given Under Punitive Detention	Rights Given Under Preventive Detention
<ul style="list-style-type: none"> ▪ Right to be informed of the grounds of arrest. 	<ul style="list-style-type: none"> ▪ The detention of a person cannot exceed three months unless an advisory board reports sufficient cause for extended detention. ▪ The board is to consist of judges of a high court.
<ul style="list-style-type: none"> ▪ Right to consult and be defended by a legal practitioner. 	<ul style="list-style-type: none"> ▪ The grounds of detention should be communicated to the detenu. ▪ However, the facts considered to be against the public interest need not be disclosed.
<ul style="list-style-type: none"> ▪ Right to be produced before a magistrate within 24 hours, excluding the journey time. 	<ul style="list-style-type: none"> ▪ The detenu should be afforded an opportunity to make a representation against the detention order.
<ul style="list-style-type: none"> ▪ Right to be released after 24 hours unless the magistrate authorises further detention. 	

▪ These safeguards are not available to an enemy alien.

▪ This protection is available to both citizens as well as aliens.

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