



Default Bail

For Prelims: [Default Bail](#), [Supreme Court](#), [Section 167\(2\) of the Criminal Procedure Code \(CrPC\)](#), [Article 21](#), [Article 22](#), [Fundamental Rights](#).

For Mains: Default Bail and related Provisions. Types of Bail.

Why in News?

The [Supreme Court \(SC\)](#) has instructed lower courts to consider [Default Bail](#) pleas in criminal cases when the charge sheet is **not filed within 60 or 90 days, allowing them** to grant default bail independently **without relying on its own** judgment of **Ritu Chhabaria versus Union of India (26th April, 2023)**.

- The observations were made by the SC while hearing an [Enforcement Directorate \(ED\)](#) appeal, seeking the recall of the **Ritu Chhabaria judgment**.
- The Ritu Chhabaria judgment held that **“the right of default bail under Section 167(2) of the Criminal Procedure Code (CrPC) is not merely a statutory right, but a [fundamental right](#) that flows from [Article 21 of the Constitution](#)”** to protect accused persons from the “unfettered and arbitrary power of the State”.

What is Default Bail?

- **About:**
 - 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 (CrPC)**.
- **Section 167(2) of the CrPC:**
 - If the **police are unable to complete an investigation within a specified period**, a person in judicial custody has the right to seek bail.
 - When the police cannot finish the investigation within 24 hours, they present the suspect before a magistrate who decides whether the suspect should be held in police custody or judicial custody.
 - According to Section 167(2) of the CrPC, the **magistrate can order the accused person to be detained in police custody for up to 15 days**. If more time is needed, the magistrate can authorize the accused person's detention in judicial custody, which means jail. However, the **accused cannot be held for more than:**
 - **Ninety days** if the investigating authority is looking into a crime that is punishable by death, life imprisonment, or imprisonment for at least ten years.
 - **Sixty days** if the investigating authority is handling any other offense.
- **Special Cases:**
 - Some special laws like the [Narcotic Drugs and Psychotropic Substances Act](#), the time period for investigation may be different, **such as 180 days**.
 - 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.**

What are the Previous Judgements Related to Default Bail?

▪ **CBI vs Anupam J. Kulkarni (1992):**

- The SC Held that a magistrate can authorize **police custody for a maximum of 15 days** after the arrest of the accused. After this period, any further detention must be in judicial custody, except in cases where the same accused is implicated in a different case **arising from a separate incident or transaction.** In such situations, the magistrate may consider authorizing police custody again.

▪ **Uday Mohanlal Acharya vs. State of Maharashtra (2001):**

- The SC while relying upon the judgment of Sanjay Dutt vs State, 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.
- If an order of default bail is passed in favour of the accused, but he/she fails to furnish bail and a charge sheet is filed in the meantime, then the right to default bail shall stand extinguished.

What are the 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 CrPC.** It is issued only by the Sessions Court and High Court.

What are the 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. 	
<ul style="list-style-type: none"> ▪ These safeguards are not available to an enemy alien. 	<ul style="list-style-type: none"> ▪ This protection is available to both citizens as well as aliens.

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