



Right to Default Bail

This editorial is based on [A Court recall that impacts the rights of the accused](#) which was published in The Hindu on 16/05/2023. It talks about the Supreme Court's recent decision on default bail and issues associated with it.

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

For Mains: Default Bail and related Provisions, Arguments in favour and against, Way Forward

The bail refers to the temporary release of a person who has been arrested or charged with a crime, pending their trial or court appearance.

The Supreme Court, in a recent decision upon the insistence that central investigation agencies were 'facing difficulties' on filing chargesheets, directed lower courts to decide pending default bail applications without relying on its own judgment in Ritu Chhabaria versus Union of India case.

The decision is alarming because:

- It may compromise the right to default bail.
- The concerns of investigative authorities may be prioritized over the constitutional rights of the accused.
- The judgment may have serious implications for the constitutional rights of the accused.
- Procedural legitimacy should not be sacrificed for administrative convenience.

What is Default Bail?

- 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)**
- Sec 167 (1) requires the police to produce the suspect to the nearest Judicial Magistrate and seek orders for either police or judicial custody if they are unable to complete an investigation in 24 hours.
- Under Section 167(2) of the Code, a **Magistrate can order an accused person to be detained in the custody of the police for 15 days. Beyond the police custody period of 15 days, the Magistrate can authorize the detention** of the accused person in judicial custody where the **accused cannot be detained for more than:**
 - **ninety days**, when an authority is investigating an **offense punishable with death, life imprisonment or imprisonment for at least ten years; or**

- **sixty days**, when the authority is **investigating any other offense**.
- In **some other special laws** like Narcotic Drugs and Psychotropic Substances Act, **this period may vary**.
 - In Narcotic Drugs and Psychotropic Substances Act, the period is 180 days.
- **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.**

What is the Ritu Chhabaria Case?

- The Ritu Chhabaria judgment, the court 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”.
- In Ritu Chhabaria, the court 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 investigating authorities routinely filed incomplete or supplementary charge sheets within the 60/90-day period, to prevent the accused from seeking default bail.

What are the Other Cases 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.
- **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 in this case 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.

What are the Arguments in favour?

- **Presumption of Innocence:** Default bail upholds the fundamental principle of “innocent until proven guilty.” It ensures that individuals who are accused of a crime but have not been convicted are not subjected to indefinite pre-trial detention.
- **Protecting Civil Liberties:** Default bail protects the civil liberties and rights of individuals. It ensures that people are not deprived of their liberty without sufficient evidence and a formal trial, promoting the principles of fairness and justice.
- **Promoting Rehabilitation and Integration:** Default bail helps accused individuals stay in their communities for rehabilitation and integration, while still working and supporting their families, increasing their chances of successful reintegration if found not guilty.
- **Preventing Abuse of Power:** Default bail acts as a safeguard against potential abuse of power by the investigating agencies. It prevents authorities from unjustly keeping individuals in custody without presenting evidence and framing charges within a reasonable period.

- **Balancing Detention and Liberty:** Default bail strikes a balance between the need to prevent potential flight risks and the preservation of an individual's right to liberty. It allows the court to assess the necessity of continued detention based on the prosecution's ability to present evidence within the prescribed time frame.
- **Reducing Overcrowding in Prisons:** Default bail helps in mitigating [prison overcrowding](#) by ensuring that individuals who are not promptly charged or have weak cases are not unnecessarily detained. This contributes to more efficient utilization of prison resources.

What are the Arguments Against Default Bail?

- **Risk of Granting Bail to Potentially Dangerous Individuals:** Default bail is granted when the prosecution fails to file charges within the stipulated time period. Granting automatic bail in such cases may pose a risk if the accused is potentially dangerous or a threat to society. It could compromise public safety and hinder effective law enforcement.
- **Undermining the Investigation Process:** Automatic bail provisions can potentially undermine the investigation process. If the accused is released on default bail without charges being filed, it may impede further gathering of evidence or hamper the prosecution's ability to build a strong case. This could lead to a lack of justice and hinder the fair resolution of cases.
- **Accountability and Public Perception:** It may give the impression that accused individuals are getting away without facing due process or being held accountable for their alleged crimes.
- **Undermine the rights of the Victims:** Granting automatic bail may impede the rights of victims to see timely justice and could lead to a sense of injustice or inequality in the treatment of different parties involved in the case.

What should be the Way Forward?

- **Review and Refine Time Limits:** Review and revise existing time limits for filing charges based on case complexity to ensure thorough investigation and avoid unnecessary delays.
- **Involve Judicial Discretion:** Granting judiciary the discretion to deny default bail in cases that pose a risk to public safety or hinder investigation process may allow judges to make informed decisions based on individual circumstances.
- **Enhanced Scrutiny and Conditions:** Implement stricter scrutiny and impose appropriate conditions for granting default bail, such as stringent reporting requirements.
- **Expedite Legal Proceedings:** Expedite legal process by investing in infrastructure, enhancing investigative capabilities, increasing judges and court staff, and implementing case management techniques.
- **Follow Victim-Centered Approach:** Recognize victims' rights and interests by providing timely information about case progress and involving them in bail decision-making process, where appropriate, to ensure a balanced approach.

Drishti Mains Question

In the light of recent developments, discuss the concept of default bail in India's criminal justice system. Examine its significance in safeguarding the rights of the accused and ensuring speedy justice.

UPSC Civil Services Examination, Previous Year Questions (PYQs)

Q. With reference to India, consider the following statements: (2021)

1. Judicial custody means an accused is in the custody of the concerned magistrate and such accused is locked up in police station, not in Jail.
2. During judicial custody, the police officer in charge of the case is not allowed to interrogate the suspect without the approval of the court.

Which of the statements given above is/are correct?

- (a) 1 Only
- (b) 2 Only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

Ans: (b)

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