

# UPDATE

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## Default Bail – An Introduction and Analysis

### A. Introduction

Default bail, also known as statutory bail, is a species of bail which accrues as a right to an accused detained in custody, when the police fail to or are unable to complete the investigation and file the chargesheet within the time frame stipulated under the law. As the term implies, default bail is issued on the default of the investigating agency to conclude its investigation and file its report within time. For an effective understanding of the concept, it is necessary to first understand that under Section 57 of the Criminal Procedure Code, 1973 (“CrPC”), any person arrested by the Police without a warrant, cannot, under any circumstance, be detained in custody beyond 24 hours, in the absence of a special order of a Magistrate so empowered under Section 167 of CrPC authorising such detention. The statutory relief of default bail is different from the usually availed relief of bail under Sections 437, 438 or 439 of CrPC.

The concept of default bail is enshrined under and governed by Section 167 of CrPC. Per sub-section 2 of Section 167, a Magistrate to whom an accused is forwarded under Section 167, may authorize detention of such accused when investigation has not been completed within the 24-hour mandate, for a term not exceeding fifteen days in the whole. A further mandate, under the proviso to Section 167(2), is that on expiry of such authorised detention, which may be extended to a period of 90/60 days as may be applicable, depending on the nature of the offence alleged, an accused shall be released on bail if he is prepared to and does furnish bail. It is pertinent to note that the said provision does not however lay down any time limit for completion of the investigation. In substance, it only deals with the detention of an accused in custody. The essence of the proviso is that an accused cannot be detained beyond the stipulated 90/60 days, as may be applicable.<sup>1</sup> If the investigation is not completed within that time frame, on the expiry of such period, the accused is to be released on bail if he is prepared to and does furnish bail. It is therefore axiomatic that first, investigation must be completed, pursuant to which a chargesheet must be filed within the stipulated period. Failure to do so would trigger the statutory right of default bail under Section 167(2) of CrPC.

Considering the aforesaid, it can be deduced that the said provision serves two primary purposes: (i) to provide the police with sufficient time to investigate and interrogate the accused and at the same time, (ii) to ensure that the accused is not kept in custody indefinitely, leaving them at the mercy and discretion of the authorities. Default bail helps in maintaining checks and balances between any abuse of power or arbitrariness by the police on the one hand and preserving and protecting the rights and/or liberties of the accused, on the other. This is so because default bail has been recognised as an indefeasible right, flowing from the right to life and personal liberty under Article 21 of the Constitution of India.<sup>2</sup> On several occasions, the Hon’ble Supreme Court of India has categorically noted and held that the right to avail default bail, under Section 167(2) of CrPC, is a limb of

<sup>1</sup> *M. Ravindran vs The Intelligence Officer, Directorate of Revenue Intelligence* (2021) 2 SCC 485

<sup>2</sup> *Rakesh Kumar Paul vs State of Assam* AIR 2017 SC 3948; *Bikramjit Singh vs State of Punjab* (2020) 10 SCC 616; *Jigar vs State of Gujarat* AIR 2022 SC 4641

Article 21 of the Constitution of India, and as such, the police have a constitutional duty to expediate the investigation within the stipulated timeframe, failing which, the accused is entitled to be released on default bail.<sup>3</sup> Notwithstanding the magnitude of the offence or the nature of the accusation alleged, an accused has a statutory right to be released on bail if furnished, and a denial of the same constitutes a violation of Article of 21 of the Constitution of India.<sup>4</sup>

## **B. The Judgment in *Ritu Chhabaria***

On this note, and more recently, the Hon'ble Supreme Court of India was once again faced with the question of granting default bail in *Ritu Chhabaria vs Union of India & Ors.*<sup>5</sup> wherein, the petitioner had approached the highest court seeking release of her husband on default bail. The facts giving rise to the writ petition are as follows:

An FIR was registered under Section 120(B) read with Section 420 of the Indian Penal Code, 1860 along with Sections 7, 12 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. The petitioner's husband was nowhere named in the said FIR. The Central Bureau of Investigation ("CBI") filed multiple supplementary chargesheets without naming the petitioner's husband as an accused. Thereafter, the investigation was transferred to another investigating officer, and the accused was then arrested by the CBI and was remanded to police custody on 28 April 2022. More such supplementary chargesheets were filed over time, naming the accused as a suspect and as such, his remand, under Section 309(2) of CrPC, was renewed and extended time and again, without him ever being released on default bail. It was against this extension and consequent continuation of detention and the scuttling of the statutory right of default bail, that the petitioner had approached the Hon'ble Supreme Court of India. The Court was to determine whether investigating agencies can file a chargesheet/prosecution complaint in piecemeal, without first completing the investigation, and whether such chargesheet would extinguish the right of an accused for default bail.

The Division Bench of Hon'ble Justice Krishna Murari and Hon'ble Justice C.T. Ravikumar decried the trend of investigating agencies filing incomplete chargesheets, solely with the intention to scuttle and negate the statutory right to default bail. The Bench, in particular, opined that an investigating agency cannot file a chargesheet or prosecution complaint without first completing the investigation, purely to deny and deprive the detained accused of the right to default bail under Section 167(2) of CrPC. A chargesheet so filed, without first completing the investigation, would not extinguish the right to default bail. Statutory bail becomes entirely futile and anodyne if the right can be circumvented just by investigating agencies submitting a bunch of papers in court before the 90/60-day mandate expires. It is rather significant to note that the judgement in *Ritu Chhabaria* is one amongst the few decisions on CrPC jurisprudence and personal freedom that acknowledges the disparity and power imbalance between the accused individual and the State and/or its instrumentalities and strives to give the procedural safeguards under the law some teeth.

## **C. Aftermath**

Nonetheless, like most seminal decisions, it is the aftermath of the case that merits scrutiny. What befell was an application for a "recall" of the judgement. The Centre approached the Hon'ble Supreme Court of India, urging the Court to constitute a three-judge bench to consider its recall application, contending that the judgement in *Ritu Chhabaria* was *per incuriam* as it ignored and failed to account for the binding

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<sup>3</sup> *Satendar Kumar Antil vs CBI & Anr.* (2022) 10 SCC 51

<sup>4</sup> *Union Of India vs Thamisharasi & Ors.* (1995) 4 SCC 190

<sup>5</sup> 2023 SCC OnLine SC 502

decisions of co-ordinate benches in *Abdul Azeez*<sup>6</sup> and *Dinesh Dalmia*,<sup>7</sup> both of which laid down a contrary principle law, holding water for almost 16 years. While the three-judge bench comprising of the Hon'ble Chief Justice of India D.Y. Chandrachud, Hon'ble Justice P.S. Narasimha and Hon'ble Justice J.B. Pardiwala refused to stay the judgement, it directed courts to defer all applications for default bail, and to not rely on the judgement. Subsequently, the bench, on 12 May 2023, stated that "... we clarify that interim order of this Court dated May 1, 2023, shall not preclude any trial court or High Court from the grant of default bail independent of and not relying upon the Ritu Chhabria judgment on April 26, 2023."<sup>8</sup>

#### **D. Conclusion and Way Ahead**

The discourse surrounding the aftermath of *Ritu Chhabria* brings to light a rather neglected aspect of default bail jurisprudence and poses a pertinent question of reconciling conflicting interests. When it comes to default bail, the right of the accused to be enlarged on bail, upon failure of the investigating agency in completing its investigation, is at logger heads with the duty of such investigating agency to conduct an effective investigation, with an intention to apprehend the real culprits behind the crime. It is also pertinent to note that during investigation, there are several factors that fall outside the control of the investigating agencies, which invariably contribute to the delay in filing the chargesheet. To illustrate, consider a situation where an investigating officer is awaiting crucial forensic reports, but is constrained to file a preliminary chargesheet without enclosing such reports. In such a situation, forensic reports are then enclosed in a supplementary chargesheet. Therefore, not every delayed/supplementary chargesheet is an attempt to scuttle the rights of an accused.

Be that as it may, in light of the aforementioned interim order dated 12 May 2023, the law as it stands today is that once a chargesheet is filed, the right under the proviso to Section 167(2) ceases and is not resuscitated only because further investigation remains pending within the meaning of Section 173(8), as laid down in *Abdul Azeez* (supra) and *Dinesh Dalmia* (supra). However, if the judgement in *Ritu Chhabria* was to attain finality, with the Centre's recall application being dismissed, then investigating agencies would longer have the right to file a chargesheet/prosecution compliant in piecemeal, without first completing the investigation.

Nonetheless, investigating agencies always have the option of filing for cancellation of default bail, as was seen in *T. Gangi Reddy*,<sup>9</sup> where the Hon'ble Supreme Court of India reaffirmed the view that the accused does not have an absolute right to remain on bail. By virtue of the deeming provision under the proviso to Section 167(2), default bail issued therein would be one under Section 437(1) or (2) or Section 439(1) of CrPC and therefore, the power to cancel bail would lie under Sections 437(5) and 439(2) of CrPC, which can be exercised only for special reasons and on strong prima facie evidence<sup>10</sup>, such as the subsequent chargesheet filed by the investigation agency.

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<sup>6</sup> *Abdul Azeez P.V. & Ors. vs National Investigation Agency* (2014) 16 SCC 543

<sup>7</sup> *Dinesh Dalmia vs CBI* (2007) 8 SCC 770

<sup>8</sup> *Directorate of Enforcement vs Manpreet Singh Talwar* 2023 SCC OnLine SC 545

<sup>9</sup> *Central Bureau of Investigation vs T. Gangi Reddy* (2023) 4 SCC 253

<sup>10</sup> *Aslam Babalal Desai vs State of Maharashtra* (1992) 4 SCC 272