
DEFAULT BAIL UNDER SECTION 167 CRPC

Aril Lamay, B.A.LLB. (Hons.) National Law University, Delhi

ABSTRACT

This scholarly paper provides an in-depth analysis of the provision of bail under Section 167 of the Code of Criminal Procedure (CrPC) in India. It elucidates the procedural aspects when an investigation cannot be completed within a stipulated twenty-four hours, and the pivotal role of this section in maintaining a balance between the rights of the accused and societal interests. The paper explores the concept of bail as an effective legal remedy against prolonged pre-trial detention, and its interpretation by the judiciary.

It delves into the specific provisions of Section 167, including the investigation timeline, remand, maximum detention period, and the provision of default bail. The paper also examines the concept of custody under Section 167, distinguishing between police custody and judicial custody. It discusses the interpretation of custody by the Supreme Court of India and its consequential impact on the rights of the accused and the provision of bail. The paper further analyses default bail under Section 167, its constitutional underpinning, and significant judicial pronouncements on default bail. It also discusses state amendments to Section 167 and their implications.

The paper concludes by emphasizing the need for continuous review and reform to ensure that the provision of bail under Section 167 continues to uphold the principles of justice, fairness, and personal liberty. This scholarly discourse serves as a testament to the democratic values of India, emphasizing that while crime control is necessary, it must not come at the cost of sacrificing individual rights and liberties.

Introduction

The administration of justice is a key pillar of any democratic society. In India, the Code of Criminal Procedure (CrPC) serves as the primary legislation for the administration of procedural aspects of the criminal law. One of the significant sections of the CrPC is Section 167, which deals with the procedure when the investigation cannot be completed within twenty-four hours. This section plays a crucial role in balancing the rights of the accused and the interests of the society. It ensures that an accused person is not detained beyond a certain period without the merits of the case being considered by a court.

The concept of bail finds its place in this section, providing an effective remedy to the accused against prolonged pre-trial detention. The provision of bail under Section 167 is not merely a statutory right but also a crucial aspect of the fundamental right to personal liberty enshrined in Article 21 of the Constitution of India. However, the application and interpretation of this section have been a subject of judicial scrutiny and legislative amendments.

This paper aims to provide a comprehensive analysis of the provision of bail under Section 167 of the CrPC, its interpretation by the courts, and its impact on the criminal justice system in India.

Provisions of Section 167 CrPC

Section 167 of the Code of Criminal Procedure (CrPC) is a pivotal procedural provision aimed at addressing situations where an investigation cannot be concluded within the initial twenty-four hours. This section serves as a crucial safeguard against the potential abuse of power leading to the indefinite detention of the accused during the investigative process.

Investigation Timeline:

One of the fundamental aspects of Section 167 is the stipulation regarding the timeline for investigations. When an investigation surpasses the initial twenty-four hours, the officer in charge of the police station or the investigating officer is mandated to transmit a copy of the entries in the case diary to the nearest Judicial Magistrate. This provision ensures transparency and judicial oversight in cases where the investigation extends beyond the immediate timeframe.

Remand:

Upon receiving the case diary, the Judicial Magistrate holds the authority to authorize the detention of the accused in a manner deemed suitable, for a period not exceeding fifteen days

in total. If the Magistrate lacks jurisdiction to try the case or commit it for trial and believes that further detention is unnecessary, the accused may be directed to be forwarded to a Magistrate possessing the requisite jurisdiction. This provision underscores the importance of judicious custodial decisions, preventing unwarranted or prolonged detention.

Maximum Detention Period:

Crucially, Section 167 sets clear limitations on the duration of detention for the accused. The total period of detention cannot surpass ninety days if the investigation pertains to an offense punishable by death, life imprisonment, or imprisonment for a term of not less than ten years. For investigations related to other offenses, the maximum period of detention is capped at sixty days. This limitation ensures that the investigative process is conducted expeditiously while respecting the accused person's right to a swift and fair legal procedure.

Default Bail:

A significant safeguard incorporated into Section 167 is the provision for default bail. Upon the expiration of the stipulated detention period—ninety or sixty days, depending on the nature of the offense—the accused person becomes eligible for release on bail if willing and able to furnish the required bail. This provision prevents undue prolongation of pre-trial detention and reinforces the principle of presumption of innocence until proven guilty.

In essence, these provisions within Section 167 meticulously balance the imperative of conducting a thorough investigation to uncover the truth with the paramount rights of the accused to personal liberty and protection against arbitrary detention. By setting specific timelines, delineating the powers of the Judicial Magistrate, and incorporating safeguards like default bail, the section contributes to the equitable administration of justice, preventing potential abuse of authority during the investigative phase. The judicious application of these provisions ensures a delicate equilibrium between law enforcement necessities and individual rights, upholding the core tenets of justice and fairness in the criminal justice system. It is to be noted that this right accrues only when the charge sheet has not been filed.¹

Concept of Custody under Section 167 CrPC

The concept of custody plays a pivotal role in the interpretation and application of Section 167 of the Code of Criminal Procedure (CrPC). This section, which addresses the procedural

¹ Gunjeet Singh Bagga, Default Bail under section 167 of The Code of Criminal Procedure, 1973, IPleaders (Nov. 10, 2021), <https://blog.ipleaders.in/default-bail-under-section-167-of-the-code-of-criminal-procedure-1973/>.

aspects of the detention of an accused during the investigation phase, distinguishes between two primary forms of custody: police custody and judicial custody.

Police Custody:

When an individual is apprehended by the police for investigative purposes, they enter what is commonly known as police custody. During this period, law enforcement authorities have the legal authority to interrogate the accused, seeking to gather evidence and clarify facts related to the case. However, it's important to note that the duration of police custody is explicitly limited to a maximum of 15 days, as outlined in Section 167(2) of the CrPC.

The confinement in police custody serves a dual purpose—facilitating the investigative process for law enforcement while subjecting the accused to a temporary, controlled environment. This phase is critical for the gathering of evidence, and the time constraint is intended to prevent undue or prolonged deprivation of the accused's liberty without judicial oversight.

Judicial Custody:

In instances where the police deem it necessary to extend the investigatory period beyond the initial 15 days, they can seek judicial custody of the accused. Judicial custody involves the transfer of the accused to a prison facility, where they are held until further court appearances. During this phase, the accused is produced before the court as required for proceedings related to the case.

The amalgamation of police and judicial custody is subject to specific limitations under Section 167. For offenses punishable with death, life imprisonment, or imprisonment for a term not less than 10 years, the cumulative period of custody cannot exceed 90 days. In cases involving other offenses, the combined period of custody is capped at 60 days. These restrictions emphasize the need for expeditious investigations and reinforce the principle that the accused should not be held in custody indefinitely without a proper legal process.

Interpretation by the Supreme Court:

The Supreme Court of India has played a crucial role in interpreting and refining the concept of custody under Section 167. The court has elucidated that 'custody' extends beyond mere physical restraint, encompassing any situation where an accused is subjected to some form of restraint.² Additionally, the notion of 'constructive custody' has been acknowledged by the

² ANUJ BERRY ET. AL., *Enlarging 'Custody' under Section 167: An Analysis of the Concepts of 'House Arrest' and 'Transit Remand' in Light of the Supreme Court's Judgment in Gautam Navlakha v. National Investigation Agency*. (September 28, 2021)

Supreme Court, referring to a scenario where the accused willingly submits to the jurisdiction of the court and is prepared for remand.

In the case of *Gautam Navlakha v. NIA*³, the Supreme Court was faced with a dilemma of whether House Arrest would be considered as a valid form of custody. Since the detained individual can only interact with family members and lawyers, but not the police. The Supreme Court held that although the concept of House Arrest is alien to custody in India, there is no reason as to why it cannot be considered as a valid form of custody if passed from an authorised Magistrate.⁴

Due to this, in recent times, the judiciary has evolved its understanding of custody to include 'house arrest' as a recognized form of detention.⁵ House arrest, where the accused is confined to their residence rather than being incarcerated in a traditional jail setting, is considered a less restrictive form of detention. This alternative is often considered in cases where factors such as the accused's age, health condition, or antecedents warrant a more lenient approach.

Impact on Rights of the Accused and Bail:

Understanding the nuanced concept of custody is paramount as it directly influences the rights of the accused, particularly concerning bail. An accused is entitled to default bail if the investigation is not concluded within the stipulated period of 60 or 90 days, depending on the nature of the offense, and if the accused remains in custody during this period.

This intersection between custody and the right to default bail underscores the delicate balance the legal system seeks to maintain between the imperative of conducting thorough investigations and the protection of individual liberties. As the judiciary continues to adapt its interpretations in response to evolving legal landscapes, the concept of custody will likely remain a focal point in ensuring a fair and equitable criminal justice system.

Default Bail Under Section 167 CrPC

Section 167 of the Code of Criminal Procedure (CrPC) stands as a sentinel of procedural safeguards in the criminal justice system, and one of its significant facets is the provision of 'default bail' or 'statutory bail.' This provision is a crucial mechanism designed to prevent

<https://www.scconline.com/blog/post/2021/09/28/enlarging-custody-under-section-167-an-analysis-of-the-concepts-of-house-arrest-and-transit-remand-in-light-of-the-supreme-courts-judgme/>

³ *Gautam Navlakha v. NIA* 2021 (4) SCJ 236

⁴ SHIWANGI SINGH, *GAUTAM NAVLAKHA VS NIA - A NEW DIMENSION TO CUSTODY UNDER SECTION 167, CRPC*, 3 *JUS CORPUS* L.J. 70 (2022).

⁵ BERRY *supra* note 2

unwarranted delays in the investigation process and to safeguard the personal liberty of the accused.

The Essence of Default Bail:

Default bail becomes operable when the investigation extends beyond the stipulated period of 60 or 90 days, contingent upon the nature of the offense. If, at the culmination of this period, the accused remains in custody, and the charge sheet has not been filed, the accused gains the entitlement to be released on bail—this legal safeguard is commonly referred to as default bail.

The conditions for granting default bail are explicitly articulated in provision (a) to Section 167(2) of the CrPC. To avail this provision, the accused must apply for bail, express readiness to furnish bail, and should not be accused of an offense punishable with death, life imprisonment, or imprisonment for a term not less than ten years.

Constitutional Underpinning:

The Supreme Court of India has played a pivotal role in affirming the significance of the right to default bail. It has unequivocally held that this right is not merely a statutory entitlement but is deeply entrenched in the fundamental right to personal liberty under Article 21 of the Constitution. In doing so, the court has emphasized that the right to default bail is integral to ensuring a speedy trial and, consequently, is a facet of the broader right to justice.

The Fundamental Right to Default Bail:

The recognition of the right to default bail as a fundamental right underscores its intrinsic importance in the criminal justice framework. Article 21, which guarantees the right to life and personal liberty, is the constitutional anchor for this right. The Supreme Court, in a series of judgments, has consistently reiterated that the right to default bail is not contingent upon legislative generosity but is inherent in the constitutional guarantees of liberty and justice.

The right to a speedy trial, as enshrined in Article 21, finds expression in the provision for default bail.⁶ The legislature, cognizant of the need to balance the investigative process with the rights of the accused, crafted this mechanism to ensure that pre-trial detention does not transgress the boundaries of reasonableness.

⁶ S.N. SHARMA, FUNDAMENTAL RIGHT TO SPEEDY TRIAL : JUDICIAL EXPERIMENTATION, 38 *Journal of the Indian Law Institute* 236-242 (1996)

Conditional Nature of Default Bail:

While the right to default bail is robustly affirmed, it is not absolute. The CrPC allows for the denial of default bail under specific circumstances. Non-compliance with the conditions stipulated in the provision (a) to Section 167(2) is a pertinent ground for denying default bail. The accused must actively seek bail, express a willingness to furnish it, and the offense charged must not fall within the ambit of grave crimes warranting severe punishments.

Furthermore, the court may exercise its discretion to deny default bail if there are reasonable grounds to believe that the accused may abscond or tamper with evidence. This discretionary power is pivotal in instances where the court deems that releasing the accused on bail could jeopardize the investigative process or the overall interests of justice.

Judicial Pronouncements on Default Bail:

The jurisprudence surrounding default bail has evolved through notable judicial pronouncements. The Supreme Court, in various cases, has provided nuanced interpretations to strike a balance between the imperative of speedy trials and the legitimate concerns of law enforcement.

In the case of *Rakesh Kumar Paul v. State of Assam*⁷, the Supreme Court underscored the importance of default bail in preserving the individual's right to liberty. It reiterated that any dilution of this right would run afoul of the principles enshrined in the Constitution. The court emphasized that the right to default bail cannot be eclipsed by procedural technicalities and is indispensable for upholding the rule of law.

Similarly, in *Sanjay Dutt v. State through C.B.I.*⁸, the Supreme Court elucidated that the denial of default bail must be founded on valid and justifiable grounds. It reiterated that the right to default bail is an essential component of the fundamental right to personal liberty and cannot be abrogated without due process.

Potential for Reform and Future Considerations:

While the existing framework of default bail provides a crucial safeguard, there is ongoing discourse regarding potential reforms. Some legal scholars advocate for a reassessment of the prescribed time limits, arguing that certain cases may warrant a more nuanced approach to avoid potential miscarriages of justice.

⁷ *Rakesh Kumar Paul v. State of Assam*, (2017) 15 SCC 67

⁸ *Sanjay Dutt v. State through C.B.I.* (1995) 1 MLJ (Crl) 176

Additionally, there is a growing recognition of the need for procedural safeguards to prevent misuse of the discretionary power to deny default bail. Striking a delicate balance between the rights of the accused and the imperatives of justice remains a perpetual challenge for the legal system.

Case Laws and Interpretations

The Code of Criminal Procedure (CrPC) forms the backbone of criminal law procedures in India, and Section 167 holds a pivotal position within it. Over time, the interpretation of Section 167 has evolved through landmark judgments handed down by the Supreme Court and various High Courts. These judicial pronouncements have significantly shaped the understanding and application of the section, especially in the context of the right to default bail. This analysis delves into key judgments that have contributed to the evolution of Section 167 CrPC.

State of Rajasthan, Jaipur v. Balchand, AIR 1977 SC 2447 ⁹:

In this seminal judgment, the Supreme Court laid down foundational principles regarding the right to default bail under Section 167(2) of the CrPC. The court, in no uncertain terms, declared this right to be absolute and indefeasible. If the investigation is not concluded within the stipulated period, the accused is entitled to default bail. This decision set the stage for a robust interpretation of the section, emphasizing the fundamental nature of the right and its protection against arbitrary detention.

Analysis:

The Balchand case established a strong precedent by firmly establishing default bail as a non-negotiable right. The court's unequivocal stance provided a clear guideline for future cases, ensuring that the right to personal liberty, as enshrined in the Constitution, remains a paramount consideration. The decision not only secured the rights of the accused but also laid the foundation for a broader conversation on the delicate balance between the state's investigative powers and individual freedoms.

Sanjay Dutt v. State through CBI, Bombay (1994) 5 SCC 410¹⁰:

This case addressed the mandatory nature of the 90-day period for filing a charge sheet under Section 167(2) of the CrPC. The Supreme Court clarified that the time limit is not a mere

⁹ State of Rajasthan, Jaipur v. Balchand, AIR 1977 SC 2447

¹⁰ Sanjay Dutt v. State through CBI, Bombay (1994) 5 SCC 410

directory provision but a mandatory one. If the charge sheet is not filed within this period, the accused has an unequivocal right to default bail.

Analysis:

The Sanjay Dutt case solidified the temporal constraints imposed by Section 167(2), emphasizing the importance of strict adherence to statutory timelines. This interpretation serves the dual purpose of safeguarding the accused from prolonged pre-trial detention and ensuring that law enforcement agencies conduct investigations expeditiously. The decision reflects a commitment to the rule of law and reinforces the principle that procedural compliance is essential for justice to be served.

Uday Mohanlal Acharya v. State of Maharashtra, (2001) 5 SCC 453 ¹¹:

This judgment introduced a nuanced perspective on the accrual of the right to default bail. The Supreme Court held that the accused is deemed to have availed of the indefeasible right the moment they file an application for release on bail and express a willingness to comply with bail conditions.

Analysis:

The Uday Mohanlal Acharya case introduced a practical dimension to the right to default bail. By considering the filing of a bail application and the expressed willingness of the accused to comply with bail conditions as the trigger for the right, the court acknowledged the proactive role of the accused in asserting their rights. This interpretation aligns with the broader constitutional ethos of active legal participation and ensures that the accused's agency is recognized in the justice process.

Ritu Chhabaria v. Union of India, (2023)¹²:

This recent judgment underscores the constitutional significance of default bail by addressing attempts to circumvent it through the filing of multiple supplementary charge sheets. The Supreme Court clarified that central agencies cannot deny accused persons their right to default bail by filing incomplete or supplementary charge sheets after the statutory period has expired. The court affirmed that default bail is a fundamental right under Article 21 of the Constitution.

¹¹ Uday Mohanlal Acharya v. State of Maharashtra, (2001) 5 SCC 453

¹² Ritu Chhabaria vs. Union of India & Ors. 6 2011 (125) DRJ 471 [LNIND 2011 DEL 928]

Analysis:

The Ritu Chhabaria case extends the protection of default bail by preventing potential abuse of the legal process through the filing of supplementary charge sheets. By categorically stating that default bail is a fundamental right, the court reiterates the constitutional sanctity of personal liberty. This decision emphasizes that the state's actions, even in the course of ongoing investigations, must be consistent with the overarching principles of justice and individual rights.

Satender Kumar Antil v. Central Bureau of Investigation, (2022) ¹³:

This judgment addresses the bail conditions provided under Section 45 of the Prevention of Money Laundering (PMLA) Act. The Supreme Court clarified that the twin bail conditions under this section have been struck down. The court also laid down guidelines for the grant of bail, recognizing the need to ease the bail procedure, as lower courts are often hesitant to grant bail even after the cooperation of the accused.

Analysis:

The Satender Kumar Antil case marks a departure from stringent bail conditions, especially in cases falling under the PMLA. By striking down the twin bail conditions, the court acknowledges the importance of a more flexible approach, particularly in economic offenses. The laid-down guidelines provide a practical framework for lower courts, promoting a fair and just bail procedure that aligns with the spirit of justice and individual rights.

State Amendments to Section 167 CrPC

The Code of Criminal Procedure (CrPC) is a central law, but its application is not uniform across all states in India. The states have the power to amend the CrPC to suit their specific needs and circumstances. This power has been exercised by several states to amend Section 167 of the CrPC.

Amendment by the State of Uttar Pradesh:

In 2018, the Uttar Pradesh government amended Section 167(2) of the CrPC to extend the period of investigation from 90 days to 180 days for offences punishable with death, imprisonment for life or imprisonment for a term not less than seven years. This amendment was made in the context of increasing incidents of organized crime in the state.

¹³ Satender Kumar Antil v. Central Bureau of Investigation (2021) 10 SCC 773

Amendment by the State of Maharashtra:

The Maharashtra government, through the Maharashtra Control of Organised Crime Act (MCOCA), 1999, extended the period of investigation to 180 days. This was done to provide the police with more time to investigate complex cases involving organized crime.

These amendments reflect the states' efforts to adapt the provisions of the CrPC to their specific law and order situations. However, they have also raised concerns about the potential for misuse and the impact on the rights of the accused. It is important to strike a balance between the need for effective investigation and the protection of individual rights.

Conclusion

The provision of bail under Section 167 of the Code of Criminal Procedure (CrPC) is a significant aspect of the criminal justice system in India. It serves as a crucial safeguard against arbitrary and prolonged detention, upholding the principle of 'bail, not jail'. The concept of default bail, in particular, underscores the importance of a speedy trial and the right to personal liberty enshrined in Article 21 of the Constitution.

Through various judgments, the judiciary has played a pivotal role in interpreting and shaping the application of this section. These interpretations have reinforced the rights of the accused and emphasized the need for balance between effective investigation and protection of individual rights.

However, the application of Section 167 is not without challenges. The amendments by various states, while aimed at addressing specific law and order situations, have raised concerns about potential misuse and impact on the rights of the accused. There is a need for continuous review and reform to ensure that the provision of bail under Section 167 CrPC continues to uphold the principles of justice, fairness, and personal liberty.

In conclusion, Section 167 of the CrPC, with its provision for bail, serves as a testament to the democratic values of India. It emphasizes that while crime control is necessary, it must not come at the cost of sacrificing individual rights and liberties.

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