

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



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Peer Reviewed

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# **DEFAULT BAIL AND THE STATUTORY TIME LIMIT FOR INVESTIGATION IN INDIA**

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## **Abstract**

Default bail, also called statutory bail, protects a person in custody from being held without trial merely because the police have not finished their inquiry. The rule now sits in Section 187 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which replaced Section 167(2) of the Code of Criminal Procedure, 1973 (CrPC). Broadly, the police must complete the investigation and file a final report within 60 or 90 days, depending on how serious the offence is. If they do not, the accused acquires a right to be released on bail, subject to the conditions the law lays down. This paper studies the statutory text, the consequences of investigative delay and the part played by the courts in safeguarding the liberty of the accused. It also examines how the provision connects with Article 21 of the Constitution. Using a doctrinal method, the paper draws on statutes, reported judgments and secondary writing to identify the difficulties in enforcing these deadlines and to ask whether the present law fairly balances effective investigation against individual freedom. It concludes that default bail makes investigating agencies answerable for delay, limits prolonged pre-trial detention and advances fairness in the criminal process.

**Keywords:** Default Bail, Statutory Time Limit, BNSS, Criminal Investigation, Section 187, Article 21, Personal Liberty, Pre-trial Detention.

## **1. Introduction**

Justice V. R. Krishna Iyer observed in *Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh* ((1978) 1 SCC 240) that questions of bail involve liberty, justice, public safety and the burden on the public exchequer, and that a mature law of bail is part of a socially aware judicial process.

Default bail reflects exactly this balance between the State's interest in thorough investigation and the individual's interest in freedom. The right arises when the investigating agency does

not complete its work within the period fixed by law. It was developed under Section 167(2) CrPC and is now found in Section 187 BNSS, and its meaning has been shaped both by amendments and by court decisions.

These provisions deal with remand, but they also shield the accused from being kept in custody while an investigation drags on. Where the police fail to file a charge-sheet within 60 days, or within 90 days for offences punishable with death, life imprisonment or imprisonment of ten years or more, the accused can no longer be held and may claim release on bail. In practical terms, the right matures on the 61st day, or the 91st day, of detention.

## **2. The Statutory Framework: Section 187(3) BNSS**

Under Section 187(3), a Magistrate may allow detention beyond the first fifteen days if satisfied that adequate grounds exist. However, the total period of detention authorised during investigation cannot exceed (i) ninety days where the offence is punishable with death, life imprisonment or imprisonment of ten years or more, and (ii) sixty days for every other offence. Once the relevant period ends, the accused must be released on bail provided he is ready to furnish bail and does so. A person released in this way is treated as having been released under the bail provisions in Chapter XXXV of the Sanhita.

## **3. Judicial Interpretation**

### **3.1 The nature of the right**

In *Hitendra Vishnu Thakur v. State of Maharashtra* (AIR 1994 SC 2623), the Supreme Court explained that the legislature, by fixing an outer limit for investigation, gave the accused a right to release on bail if that limit is crossed, and that such release is treated as bail under the general bail provisions of the Code. Later decisions, including *Uday Mohanlal Acharya v. State of Maharashtra*, *Rakesh Kumar Paul v. State of Assam* and *Bikramjit Singh v. State of Punjab*, describe this as an indefeasible right that flows from Article 21. This reading fits the Court's wider position that any procedure depriving a person of liberty must be fair, just and reasonable (*Maneka Gandhi v. Union of India*), that a speedy process is part of that guarantee (*Hussainara Khatoon v. State of Bihar*), and that bail law should not treat pre-trial detention as the default (*Satender Kumar Antil v. CBI*).

### **3.2 An application by the accused is necessary**

The right does not operate by itself. A court cannot grant default bail merely because the period

has run out; the accused must apply for it. Lawyers sometimes only mention orally that the remand period has ended, but the statute contemplates a written application stating that the period has expired, that no charge-sheet has been filed and that release is sought. In *Hitendra Thakur*, the Court made clear that once the time for the charge-sheet (and any permitted extension) has passed, the accused may apply for bail and must be released if he offers the required bail.

### **3.3 The investigation must still be pending**

The filing of a charge-sheet under Section 173 CrPC marks the end of the investigation stage, and Section 167 stops applying after that point. Default bail is therefore available only while investigation is pending, and the application must come before the charge-sheet is filed. In *Sanjay Dutt v. State through CBI* ((1994) 5 SCC 410), the Supreme Court held that the right can be enforced only before the challan is filed; if it was not exercised by then, it is lost once the challan arrives, and bail must thereafter be decided on the merits under the ordinary bail provisions.

### **3.4 Application and charge-sheet on the same day**

A difficult situation arises when the application and the charge-sheet are filed on the same day. The accused is regarded as having exercised the right once he applies and expresses readiness to furnish bail. Even so, the Magistrate must first check that the statutory period has expired and that no charge-sheet had been filed when the application was made. A Magistrate cannot overlook a charge-sheet that is already on record. *Sanjay Dutt* also indicates that where an accused seeks bail and the prosecution simultaneously seeks more time to complete the investigation, both requests should be considered together.

### **3.5 Later filing of the charge-sheet and incomplete charge-sheets**

In *M. Ravindran v. Directorate of Revenue Intelligence* ((2021) 2 SCC 485), the Supreme Court held that a right already exercised cannot be taken away by a charge-sheet filed afterwards. In *Ritu Chhabria v.*

*Union of India* (2023), the Court held that an investigating agency cannot avoid default bail by filing a deliberately incomplete charge-sheet. This line of reasoning should be read together with the Court's later clarification in *CBI v. Kapil Wadhawan* (2024), which stresses that further investigation after a charge-sheet is permissible.

#### 4. Concerns Under the BNSS

The BNSS permits police custody to be taken in portions across the first 40 or 60 days of detention (depending on whether the overall limit is 60 or 90 days). This flexibility may be abused, since it can allow repeated or delayed requests for custody and lengthen the effective period of confinement, thereby adding uncertainty to the working of the default-bail guarantee.

#### 5. Conclusion and Way Forward

Default bail under Section 167(2) CrPC, now Section 187 BNSS, balances the State's need for time to investigate with the accused's right to liberty under Article 21. By setting an outer limit of 60 or 90 days according to the gravity of the offence, the law ensures that detention cannot be extended indefinitely while an investigation continues. The right arises once the period lapses without a charge-sheet and must be asserted before the charge-sheet is filed.

The following steps would strengthen the safeguard:

- strict enforcement of the statutory time limits by courts and supervising authorities;
- a duty on courts and legal-aid bodies to inform accused persons when the right matures;
- a narrow reading of any extension of time found in special statutes; and
- close judicial scrutiny of how police custody is divided across the remand period under the BNSS.

Default bail should be seen as a constitutional guarantee of personal liberty and not as a technical loophole through which accused persons escape. Its real purpose is to require the State to finish its investigation within a reasonable time.

#### References

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8. *Rakesh Kumar Paul v. State of Assam*, (2017) 15 SCC 67.
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13. *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.
14. *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81.
15. *Satender Kumar Antil v. Central Bureau of Investigation*, (2022) 10 SCC 51.

