

Right to to Default Bail is a Fundamental Right

April 29, 2023

In news— A Supreme Court bench of Justices Krishna Murari and C.T. Ravikumar has recently held that the relief of statutory bail under Section 167(2) of the Criminal Procedure Code, is a fundamental right.

What did the SC bench said?

- It said that right **statutory bail is directly flows from Article 21 of the constitution**, and the violation of such a right attracts consideration under Article 32 of the constitution.
- The bench relied on a recent judgment of the court in **Satendar Kumar Antil vs CBI wherein it was held that Section 167(2) of the CrPC is a limb of Article 21** of the constitution, and as such, the investigating authority is under a constitutional duty to expedite the process of investigation within the stipulated time, failing which, the accused is entitled to be released on default bail.
- If a person is arrested and the investigation of the case cannot be completed within the mandatory 24 hours, he has to be produced before the magistrate to seek his remand under Section 167(2) of the CrPC during continued investigation.
- However, the same cannot extend beyond 90 days, as provided under Section 167(2)(a)(i) in cases where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years and 60 days, as provided under Section 167(2)(a)(ii), where the investigation relates to any other offence.
- The relevant section further provides that on expiry of

the period of 90 days or 60 days, as the case may be, the accused has a right to be released on default bail in case he is prepared to and furnishes bail.

- The bench made it clear that a supplementary chargesheet, wherein it is explicitly stated that the investigation is still pending, cannot under any circumstance, be used to scuttle the right of default bail.
- Without completing the investigation of a case, a chargesheet or prosecution complaint cannot be filed by an investigating agency only to deprive an arrested accused of his right to default bail under Section 167(2) of CrPC, the bench held.
- Such a chargesheet would not extinguish the right to default bail.

What is a bail?

- **Bail is a Release of the convicted person to submit a personal bond or assurance** to comply with the conditions imposed by the court and to appear before the court.
- In the Indian legal system, **provisions related to bail can be found in Chapter III CrPrc under Section 436 to 450.**
- In the context of bail, the **term offense has been categorized asailable offenses and non-ailable.**
- **As defined in Section 2(a),ailable offense(usually less heinous) means an offense which is shown asailable** in the First Schedule, or which is made available by any other law for the time being in force; **non-ailable offense means any other offence.**
- In the event of such an offence, after such requirements have been met, bail can be issued as a matter of law under Section 436 of the CrPC.
- In the case ofailable offences, at the time of arrest or incarceration, the police are allowed to issue bail to the defendant.

- Therefore, in bailable offences, it is mandatory upon the court and police to release the accused at any time during their arrest or custody.
- **The term non-bailable doesn't imply that bail can't be granted at all. It simply means that the accused can't claim it as a matter of their right** at the time of the arrest or custody. But they can approach the court when while they are under trial.
- When opposed to bailable offences, these offences are grievous in nature. The sentence in the case of non-bailable crimes is three years or more.
- **In non-bailable offences, it's the court's discretion to grant bail to the accused.** And the same must be decided judiciously and not whimsically.

Types of bails-

Based on the types of criminal act, four types of bail includes Regular Bail, Interim Bail, Anticipatory Bail, and Default Bail.

- **Regular bail** is frequently issued to an individual who has previously been arrested and detained by police.
- **Interim Bail** granted when the court is certain that doing so will prevent the accused from being unjustly imprisoned or detained.
- **Anticipatory Bail or Pre-arrest Bail** is a legal provision that allows an accused person to apply for bail before being arrested. In India, pre-arrest bail is granted under section 438 of the Code of Criminal Procedure, 1973. It is issued only by the Sessions Court and High Court.
- Also known as **statutory bail, Default Bail** 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 enshrined in Section 167(2) of the Code of Criminal Procedure (CrPC).