CONDITIONS FOR DEFAUT BAIL AND ITS PRACTISE

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Abstract—The Indian Criminal Justice System demands that an accused should get a fair trial according to the principles of natural justice. Whereas the process of dispensing justice is not limited to the courts, it also follows the pre-trial stage where the role of law enforcement agencies assumes significance. Arrest, remand and bail are components allied to the investigation and come to aid the investigation. Code of Criminal Procedure lays down an elaborate scheme for investigation agencies as time assumes great significance after the arrest of the accused. The time frame this paper focuses on is after the arrest of the accused and before the court takes cognizance because, the grant of bail is the rule and jail an exception, and refusal of bail acts as a restriction on the personal liberty of individual guaranteed under Art. 21 of the Constitution. The Investigation Agency after arresting the suspect must make every effort to avoid any delay in investigation and file chargesheet within the stipulated time. As the Code does not define any time frame for completing the investigation, if the investigating officer under the Code fails to file the charge sheet in 60 or 90 days depending upon the nature of the offence, it entitles the accused to bail in lieu of default of the investigating officer. In this pre-cognizance stage, the role of courts in granting bail is extremely important. In addition, to mitigate the instances of unnecessary continued detentions, bail provisions in the Code play a vital role. Arrest and the associated stigma attached to this has been a matter of great concern in the judicial fraternity, from the Sessions

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Court to the High Courts and Supreme Court. If no final report is filed against the accused under section 173 of Cr.P.C. and the prescribed period as per section 167(2) is over, then the courts can grant default bail statutory bail or compulsory bail. It has been seen that the power related to this has been misused several times against and in favour of the accused hence, the legislative purpose behind enacting a provision for providing default bail is undermined by the ignorance of the accused about such a legal provision, which results in protracted detention. The aim of Chapter XII of the Code is to complete the investigation without unnecessary delay, although there is no express definite time limit for the completion of the investigation. This creates a heavy leaning on the colonial past as well as an unnecessary penchant for adversarial traits in favour of the accused and in this case limiting the Investigating Agency. Thus, this paper analyses the rights and responsibilities of investigating agencies and accused in cases of default bail.

Keywords: Default Bail, Arrest, Investigation, Pre-Cognizance Arrest, Section 167 Cr.P.C.

I. INTRODUCTION

Personal liberty is an integral aspect of bail and a precious value of our constitutional system recognised under Article 21. According to the constitutional mandate, personal liberty of a person can be taken away only by the 'procedure established by law'. The phrase 'procedure established by law' has been explained by the Supreme Court in Maneka Gandhi's case[1] to be just, fair and reasonable. Though personal liberty is a valuable asset but liberty of those who are law abiding is equally valuable to those who break law as they are themselves responsible for the forfeiture. The Supreme Court has observed that in considering the questions of bail, justice to both sides governs the cautious exercise of the Court's judicial discretion.[2] While dealing with such matters court has to be prudent in order to protect the right to liberty of the accused. Law of bails is an important branch of procedural law and not static. It is constantly evolving with the society. It carries within it two conflicting demands namely, the need of the society for being defended from the peril of being exposed to the disadvantages of an alleged accused versus the fundamental canon of criminal jurisprudence i.e. presumption of innocence of a person

1 Maneka Gandhi v. Union of India, (1978) 1 SCC 248: AIR 1978 SC 597.
2 Gurcharan Singh v. State (Delhi Admn.), (1978) 1 SCC 118: AIR 1978 SC 179.

until found guilty. Hence the researchers in this paper have endeavoured to trace the inter-twined obligation of the courts to protect the personal liberty of individuals and timely completion of investigation, together with consequences of default by investigation agencies.

When an arrest of suspected persons is made by investigating agency in furtherance of a complaint, to further the ends of investigation and to collect material evidence, the criminal court has to pass certain orders about the custody of accused at various stages of investigation, inquiry and trial. This is known as order of remand, meaning sending back prisoner into custody to allow further enquiry; that is to say recommitting the prisoner to custody.[3] Generally speaking, a person is in custody when he is in duress either because he is held by the investigating agency or other police or allied authority or he is under control of the court having offered himself to the court's jurisdiction and submitted to its order by physical presence.[4] The Criminal Procedure Code 1973, reposes the power of remand under sections 167, 209 and 309. Section 167 operates during the course of investigation, while sections 209 and 309 come into play after the cognizance of offence has taken place. However, when investigation in a case cannot be completed within 24 hours and further custody of the arrested person is required, the designated police officer, must produce him before the nearest Magistrate within the time stipulated under section 57 of Criminal Procedure Code (Cr.P.C.). Any further detention, if required can be obtained through the set procedure as mandated through the order of a Magistrate under Section 167 of the Cr.P.C. Here the court has to check the veracity of the case and if the court deems it fit, the court may order further detention as the case may be. Along with remand, "pre-trial detentions", as an integral part of investigations, have remained in dispute. The effort of the Supreme Court, during the past decades has been to classify default bail and to fill any vacuum.

II. RELEVANCE OF SECTION 167 VIS-À-VIS INVESTIGATION

Section 167 is a repository for remand and pre cognizance bail in Cr.P.C. Six subsections make up its structure. When a person is detained in custody after being arrested and the investigation cannot be finished in 24 hours as per section 57, section 167 (1) is a mandatory rule dictating what a police officer should do. Sub-section (2) pertains to power of remand available to a magistrate and the manner in which such powers should be exercised. These two sub-sections combined, lay the framework for cases where investigation cannot be completed within 24 hours of the arrest of accused and there are grounds to believe that the accusations or information is well founded, the officer

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[3] Urooj Abbas v. State of U.P., 1971 SCC OnLine All 414: 1973 Cri LJ 1458 (FB).

[4] Niranjan Singh v. Prabhakar Rajaram Kharote, (1980) 2 SCC 559: 1980 Cri LJ 426 (SC).

in-charge of the Police Station or Investigating Officer shall transmit, to the nearest Magistrate, a copy of the case diary and accused to such Magistrate, who may authorize detention of accused in custody, if he thinks fit for a term not exceeding 15 days. Here jurisdiction of the Magistrate to try the case is immaterial. This custody of 15 days may be either police custody or judicial custody. But, subsequently, the accused can be remanded only to judicial custody.[5] In case the period of remand exceeds 15 days, the Magistrate, if he does not have jurisdiction, must forward the accused to a Magistrate having jurisdiction to try the case or commit it for trial. The total period of remand during investigation, may extend to-

i. 90 days; if the alleged offence is punishable with death or imprisonment for life or imprisonment for a term of not less than 10 years, or

ii. 60 days; where the investigation related to any other offence.[6]

This remaining remand of 45 or 75 days may be, piecemeal or even for full 45 or 75 days at a time. On expiry of 90 or 60 days, as the case may be, the accused is entitled to bail and he must be released if he is prepare to and does furnish bail. So long as he does not furnish bail he shall be detained in judicial custody. In the specific context of the right to default Bail, under the first proviso to Section 167(2) of Cr.P.C., Supreme Court recently in Gautam Navlakha[7] held that, it is a fundamental right and when a remand order is passed in violation of law or lacks jurisdiction, a writ of habeas corpus will lie. Thus right to default bail is not a mere statutory right, but a part of the procedure established by law under Article 21 of the Constitution.[8] Next part deals with the judicial discourse on default bail and various practices related to it.

III. JUDICIAL PRONOUNCEMENT ON DEFAULT BAIL

Section 167(2) has been an issue of argument and deliberation. Over the years various questions cropped up regarding interpretation of various terms and phrases used in the section which gave rise to significant expansion in the field of default bail since the question pertained to personal liberty of an individual and thus directly related to Art 21 of the Constitution.[9] The legislature appear to have taken away all discretion from the courts and mandated that in cases of default, the accused be released on bail. It is not up to the court's discretion; it is a legislative mandate.[10] In this part author deals with the structure

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5 State (Delhi Admn.) v. Dharam Pal, 1981 SCC OnLine Del 368: 1982 Cri LJ 1103.

6 Criminal Procedure Code, 1973, §167, No. 2, Acts of Parliament, 1974 (India).

7 Gautam Navlakha v. National Investigation Agency, 2021 SCC OnLine SC 382.

8 Bikramjit Singh v. State of Punjab, (2020) 10 SCC 616: 2020 SCC Online SC 824.

9 In Bikramjit Singh v. State of Punjab, (2020) 10 SCC 616: 2020 SCC Online SC 824, a three-Judge Bench observed, that the right to secure a default bail under the first proviso to s.167(2) of the Code is a part of the procedure established by law under art. 21 of the Constitution of India. Therefore, the right therein is raised to the status of a fundament right.

10 Natabar Parida v. State of Orissa, (1975) 2 SCC 220: AIR 1975 SC1465.

of rights and liabilities of state and the accused and the related practice as interpreted by the Supreme Court and High Courts.

Failure to file Charge sheet: The Apex Court has upheld many times previously that upon expiry of the prescribed period for filing charge sheet, an indefensible, non-discretionary and mandatory right ensues to the accused to be enlarged on bail. If the stipulated period has already passed, an application for an extension of the duration of custody without a charge sheet will not be considered. It was also confirmed that the court must decide on the accused's bail application under Section 167(2) on the same day that the statutory deadline has passed without a charge sheet being submitted. And when the statute has provision for compulsive bail there is no question of it being contested.[11] However, if an accused person does not exercise his right to be released on bail because the prosecution did not file the charge-sheet within the maximum time permitted by law, he or she cannot argue that he or she had an unassailable right to do so at any time, even though the charge-sheet has been filed in the interim. Yet, if he uses the right within the legal window of time and is then freed on bond, he cannot be detained again just because the charge sheet has been filed.[12]

Can two spells of custody for the same crime be combined for the purpose of claiming default bail in the same crime?: In *K.A. Sabu* v. *CBI*[13], the question that appeared before the court was if an accused has undergone two spells in custody same crime, can he combine the two spells to claim "default bail" under Section 167(2)(a)(i) of Code of Criminal Procedure. The court held that the petitioner was entitled to combine two periods of custody that he has undergone for the purpose of claiming default bail under the above section.[14] The inquiry that was conducted by the preceding investigating agency doesn't get wiped out in the event that the investigation Agency changes. After conducting additional research, the new Investigating Agency is required to submit a subsequent report — not a new report — to the jurisdictional Magistrate outlining the additional information that was discovered. It is merely in the nature of further investigation to renumber the FIR and carry out an investigation. Similarly, re-registration of the crime cannot be treated as a new FIR, because a second FIR is not permissible under law. Hence arrest based on such facts will not be new one and the time period as stipulated under section 167(2) will continue to run even if the Investigation Agency changes.

Effect of the Investigation Agency's failure to notify the accused at the time of hearing their request for a time extension: Principles of natural justice require that notice be given to the accused or public prosecutor,

[11] Union of India v. Nirala Yadav, (2014) 9 SCC 457.

[12] Aslam Babalal Desai v. State of Maharashtra, (1992) 4 SCC 272, Bipin Shantilal Panchal v. State of Gujarat, (1996) 1 SCC 718.

[13] 2020 SCC OnLine Ker 1484: (2020) 2 KHC 601.

[14] Same was held in Vipul Shital Prasad Agarwal v. State of Gujarat, (2013) 1 SCC 197.

as appropriate, to ensure a fair trial. In the case of *Ishwar Tiwari* v. *State of Orissa*[15] the High Court of Orissa observed that, a notice would establish a fair balance between the treasured interest in an accused person's freedom and the interests of society at large as represented by the prosecuting authority. In accordance with the design of the Code, there is no restriction on giving such a notification to the defendant or the public prosecutor, and it cannot harm any person in any way. Also, it was decided that no other factors, such as the importance of the case, the seriousness of the offence, the character of the criminal, etc., may influence the court at that time to deny an accused person bail. The accused must be produced in court at the appropriate time to be informed that the issue of an extension of the period for completing the investigation.

Computation Of 60/90 Days Under Section 167: Next issue that caught the attention of the courts was regarding the computation of 60/90 days of custody. The question that was required to be addressed was whether to include the day of remand in calculating 60/90 days. In the very recent judgement of Enforcement Directorate v. Kapil Wadhwan, A three judge bench of the Apex Court upheld the line of reasoning adopted in the *State of Maharastra* v. *Bharati Chandmal Varma*[16] and various other judgments that the legislative intent behind providing 60/90 days was to ensure a speedy trial to the accused transforming him into a convict or releasing him on conclusion of the trial together with assuring speedy justice to the victim and society therefore. Further since section 167(1) runs in continuation to section 167 (2) the production of accused will be a sequel to his arrest, that too within 24 hours. Sub-section (2) of Section 167 gives the Magistrate the authority to approve detention of accused with the police on the day that he is brought on remand before the magistrate by allowing it to continue or remanding him to magistrate custody. The two procedures can't be stopped or interrupted in between. Since there is no time limit for concluding the investigation and filing the chargesheet, Section 167 does not contemplate any delimitation and cannot be incorporated into a period of limitation "from" or "to". The Court further emphasized that production before Magistrate is in continuation of arrest by police in order to avoid long incarceration. Therefore if the police can investigate starting from the day of remand itself, the 60/90 days period should also logically be calculated from that day itself. Overlooking the date of remand will mitigate the legislative intent of providing protection to the accused against extended custody and incarceration because of indolent investigation.

Interpretation of the phrase "Imprisonment For A Term Of Not Less Than Ten Years" In The Proviso To Section 167(2): In 2017, a 3 judge bench of the apex court in *Rakesh Kumar Paul* v *State of Assam*[17] got the occasion to

[15] Iswar Tiwari v. State of Odisha, 2020 SCC OnLine Ori 943.

[16] (2002) 2 SCC 121.

[17] By a majority of 2:1 (two separate, concurring judgments by Madan B. Lokur, and Deepak Gupta, JJ. and a dissenting judgment by Prafulla C. Pant, J.).

deal with the term 'an offence punishable with death, imprisonment for life or imprisonment for a term not less than ten years' given in section 167(2). The bench concurring 2:1 categorised offences as under:

a) offences where the maximum punishment is death

b) offences where the maximum punishment is life imprisonment

c) offences which are punishable with imprisonment 'for a term of not less than 10 years'

The learned Judge summarized that the language of the Code is explicit and clear. The legislature mentioned the first two categories state the maximum sentence that could be imposed, independent of the minimum. Hence, the maximum term of confinement allowed would be 90 days if the crime was punishable by death, regardless of the minimal sentence set forth for that crime. According to this, if a crime has a maximum punishment of life in prison, even though the minimum term is less than 10 years, the maximum time of custody is 90 days. The third group of offences that are penalised by a term of "not less than 10 years" clearly indicates that the minimum sentence set forth for the offence is 10 years, regardless of the maximum penalty. It was also emphasised that the minimum sentence must be 10 years in order to belong under the third category of offences only when the maximum penalty is less than life in prison. According to this view, if the charge-sheet is not submitted after 60 days of detention and the minimum sentence is less than 10 years but the maximum sentence is not death or life in prison, the accused will be eligible for default bail.

However the case of Rakesh Kumar Paul will need a re-consideration in the light of the facts that came up before the Delhi High Court in *Rajeev Sharma* v. *State (NCT) of Delhi*[18]. Because when the offence does not specify a minimum sentence and the maximum term of imprisonment specified is more than ten years, the Court will have to re-evaluate the legal position regarding the time required to file a charge-sheet for default bail under Section 167(2) of the Code of Criminal Procedure.

Applicability of the Limitation Act to Section 167 (2) Cr.P.C.: On March 23, 2020, the Supreme Court, by an order, extended the period of limitation in all proceedings, irrespective of the limitation prescribed under the general law or special law in view of the lockdown due to Covid-19. Later on May 6, all limitation periods prescribed under the *Arbitration and Conciliation Act, 1996*

[18] 2020 SCC OnLine Del 1531. Here the accused was detained for allegedly providing intelligence data to Chinese operatives under Section 3 of the Official Secrets Act, 1923. The claimed offence against him carried a potential 14-year prison sentence, but no minimum sentence was specified. While there was no minimum sentence specified, the court ruled that the charge-sheet needed to be prepared within 60 days. The Delhi High Court held that since the chargesheet was not filed within 60 days hence the petitioner was entitled to default bail.

and under Section 138 of the Negotiable Instruments Act, 1881 under Section 138 of the *Negotiable Instruments Act, 1881 were extended* with effect from March 15, 2020, until further orders. However an interesting issue cropped up before the Chief Justice of the High Court of Madras when two conflicting orders on the issue of default bail came up before him. On May 8, 2020 Justice G R Swaminathan had ruled that the right of an arrested person's grant of default bail cannot be diluted by applying the Supreme Court's March 23 limitation extension order to extend the time for filing an final report. While https://www.barandbench.com/news/litigation/why-sc-order-to-extend-limitation-during-covid-19-crisis-does-not-apply-to-grant-of-default-bail-usection-167-crpc-what-madras-hc-saidon May 11, however, Justice GR Jayachandran differed from this perspective, observing that it would be unfair to expect the investigating agencies to be able to file their final report within the allotted time amid the COVID-19 crisis.[19] Division Bench of Supreme Court in *S. Kasi* v. *State*[20], safeguarding individual freedom held that the earlier direction to relax limitation requirements, in light of Covid-19 pandemic, would not allow the State or the investigation agencies, any relaxation in terms of computing the investigation period and thereby allowing supplementary confinement of the accused curtailing their personal liberty. Thus, the period under section 167 is inviolable and cannot be expanded even by the Supreme Court in exercise of its power under Article 142.

Whether Period in House Arrest be Considered For default bail?: Another intriguing issue came before the Apex Court in the much publicized case of Gautam Navlakha[21] where provision under the National Investigation Agency Act, 2008 were invoked. A gamut of complex questions was involved in this case but the one for our purpose is, whether the period of house arrest be counted as custody for computing default bail under Section 167 (2) of Cr.P.C.? Bombay High Court observed that 34-day house arrest of Navlakha should not be included in computing 60/90 days for filing charge-sheet. Finally in 2022 Supreme Court held that Navlakha's house arrest for a period of 34 days does not constitute custody under Section 167 Cr.P.C. Although the logic used is unclear, it may nonetheless be said that the Supreme Court, for the sake of convenience, held that the High Court did not issue the home arrest while "purporting" to do so in accordance with Section 167. As a result, it upheld the Bombay High court order that home arrest cannot be considered to constitute detention under Section 167 and would not be included to the total amount of time spent in jail for Navlakha's default bail plea.

When does the Accused "Avail Of" her Right To Default Bail?: One contentious issue which caught the attention of many learned judges both before the Supreme Court and the High Court's is the expression "*availed*

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[19] S. Kasi v. State, (2021) 12 SCC 1.
[20] (2021) 12 SCC 1.
[21] 2021 SCC OnLine SC 382.

of". Supreme Court in *M. Ravindran* v. *Directorate of Revenue Intelligence*,[22] upholding Uday Mohanlal Acharya[23] held that avail of commences when the accused files an application and is prepared to offer bail on being directed." When the application is made, the accused is considered to have exercised his inalienable right, even while it is still being considered and the actual release is contingent upon adherence to the bail order. This view supports both the intent of Section 167(2) and Objectives and Reasons of the Cr.P.C.

The expression *'if not already availed of'* was explored by Supreme Court in the case of *Sanjay Dutt* v. *State*[24]. *Later in Uday Mohan Acharya*[25] *it was clarified to mean when the accused files an application and is prepared to offer bail on being directed*. In other words, on expiry of the period specified in Section 167(2)(a) *if the accused files an application for bail and offers to furnish the bail on being directed*, then it will be construed that the accused has availed of his indefeasible right even though the court has not considered the said application and has not indicated the terms and conditions of bail, and the accused has not furnished the same.

Can default bail be granted if the charge sheet filed by police is returned by the Magistrate for technical reasons?: In case of *Achpal* v. *State of Rajasthan*[26], the Supreme Court granted bail to the appellant because on completion of 90 days of prescribed period under Section 167 of the Code there were no papers of investigation before the concerned Magistrate. Here the report under section 173 was to be submitted by Additional Superintendent of Police, but it was submitted by a police officer below the rank of ASP and also after completion of 90 days.

Another issue of curing minor defects came up before the High Court of Kerala[27]. Here final report which was filed on time by the investigating officer, was returned due to lack of copy of the drug disposal committee. Later, it was filed only after the expiry of the statutory period and hence the applicant claimed the benefit of mandatory bail under Section 167 (2) Cr.P.C. However the High Court held that it was a defect which can be cured, and the charge-sheet can be called as defective but not required to be turned down. The prosecution was required by the jurisdictional court to cure the defect. The defects were cured and the charge-sheet was re-presented. Court held that the proviso to Section 167(2) Cr.PC would get attracted, and the accused will not get default bail if the chargesheet is represented, after curing the defects.

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22 (2021) 2 SCC 485.
23 Uday Mohanlal Acharya v. State of Maharashtra, (2001) 5 SCC 453.
24 (1994) 5 SCC 410.
25 Uday Mohanlal Acharya v. State of Maharashtra, (2001) 5 SCC 453.
26 (2019) 14 SCC 599.
27 Saharath V.P. v. State of Kerala, 2021 SCC OnLine Ker 1843: (2021) 4 KLT 621.

Can bail be cancelled once accused is enlarged on default bail by competent Court?: Bail is directly related to personal liberty of the person detained hence the courts have been over zealous to protect the same. A very pertinent issue, regarding the cancellation of default bail, arose before the Supreme Court in *State* v. *T. Gangi Reddy*[28]. The question for consideration was whether bail granted under section 167(2) can be cancelled after presentation of chargesheet and what are the grounds for cancellation of default bail granted for failure to complete the investigation?

The facts relate to the murder of a politician where the investigation shifted from local police to the SIT and CBI. The Court observed that, proviso to Section 167(2) serves to emphasize the necessity of a prompt examination within the allotted time frame and to guard against complacency in that regard. The goal is to in still a sense of urgency, and in the event of a default, the Magistrate will release the accused if he is prepared and provides bail. A decision to release someone on bail under the proviso of Section 167(2) Cr.P.C. is not based on the case's merits but rather on the prosecuting authority's failure to act. Thus the deeming fiction allowed by Section 167(2)'s proviso cannot be understood to the point of making an order of bail that was not based on merit look like it had been. Hence grant of default bail under the proviso to sub-section (2) of Section 167 Cr.P.C. is deemed to be released in terms of Chapter XXXIII of the Cr.P.C. and, therefore, the default bail, once granted, can be cancelled by the Court for the reasons germane to the cancellation of bail under Section 437(5) or Section 439(2) of the Cr.P.C. Chapter XXXIII envisages deemed bail hence apart from regular grounds of cancellation the ground that accused had committed a non-bailable offence and his arrest is necessary are sufficient grounds.

The whole intent of cancelling the bail lies in the dissenting opinion of Justice M M Punchi in *Aslam Babalal Desai* v. *State of Maharastra*[29], that the purpose of interpretation is to sustain the law, promote public good and prevent misuse of power. The Supreme Court also recalled the case of *Natabar Parida* v. *State of Orrisa*[30], where it was observed that, it might not be possible to finish the investigation into severe crimes within the upper bound of the period specified in the proviso. Still if the accused is willing to and does post bail in order to be released from custody at the end of 90 or 60 days, the repercussions are unavoidable, and the release will be a legal paradise for criminals — not by order of a judge, but by legislative mandate.

Therefore, the bail in favour of a person who has been released on default bail under Section 167(2) Cr.P.C. may be cancelled taking into account Section 437(5) and Section 439(2) Cr.P.C. when special reasons or grounds are made

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[28] (2023) 4 SCC 253: AIR 2023 SC 457.
[29] (1992) 4 SCC 272.
[30] (1975) 2 SCC 220: AIR 1975 SC 1465.

out from the chargesheet which reveals commission of a non-bailable crime[31]. Court summarily, but very aptly observed that non- cancellation of default bail will act as a premium to the lethargic/negligent attitude of the Investigation agency. It might be a deliberate attempt on the part of the investigating agency not to file the chargesheet within the prescribed time period, for some benefit of the accused.

Default bail vis a vis National Security: In cases of National Security where acts such as Unlawful Activities (Prevention) Act, 1967 Explosives Act, 1908, Narcotic Drug and Psychotropic Substances Act, 1985, are concerned there is an extra authority involved apart from the Investigation, Prosecution and Court i.e. the Sanctioning Authority. When investigation is completed and final report is submitted, the Investigating Officer has to send a copy of final report together with evidence and other material documents to the Sanctioning Authority in order to accord sanction for prosecution. This sanctioning authority is not connected to the investigation in any manner. Hence if the sanctioning authority takes time to accord sanction, it will not vitiate the final report before the court as all the agencies are different. This was one of the major observation in *Judgebir Singh* v. *National Investigation Agency*[32].

Another issue that was clarified by the Court was that if sanctioning authority takes some time to accord sanction, that does not vitiate the final report filed by the investigating agency before the Court. The sanction order is not mentioned at all under Section 173 of the CrPC. Additionally, Section 167 of the Criminal Procedure Code solely refers to investigations and not to the Magistrate's cognizance. Hence, final report serves as evidence that the investigation has been completed. If the final report is submitted within 180 days, 90 days, or 60 days of the initial date of the accused's remand, the accused cannot assert that he has a right to be released on bail due to the lack of a sanction order.

However, the Highest Court here pointed towards the lackadaisical attitude of one of the prominent prosecution agency. When the court had passed the order for extension of time limit for investigation by 90 days as per section 43-D[33], the period of 90 days had already expired and there was no charge sheet before the Court even on the 91st day. Had the accused been more alert they would have been released on default bail on fulfilment of conditions. This observation is vital for both the prosecution and the defence in the sense that even though default bail is an indefeasible right but still, bail under section 167(2) is not on merit. So both must be prompt in realising their rights, oth-

[31] Rajnikant Jivanlal v. Intelligence Officer, NCB, (1989) 3 SCC 532.

[32] 2023 SCC Online SC 543.

[33] S.43D empowers the Court to extend the period of 90 days to a total of 180 days on the report of Public Prosecutor, in case it is not possible to complete the investigation in 90 days. S.43D of the UAPA operates as a special provision vis a vis the applicability of rights granted under S. 167(2)(a) of the CrPC.

erwise in cases such concerning national security and related matters, critical information may be lost and for the accused his right might be jeopardised.

IV. SUGGESTIONS

Investigation by police is not done in vacuum it is affected by many factors such as over burden of work on investigating agencies, impact of delay of FSL reports, any other calamity which may postpone the investigation such as pandemics and medical leaves of Investigating Officers. With the enormous increase in population and uneven police-citizen ration certain obstructions are bound to hinder the process of investigation. Thus the authors suggest that the Investigating Officer must get full 90 days to investigate and conclude the report. There are stances wherein the crime is committed and the accused are so habitual in nature that they resist the interrogation and do not give any information on weapons or techniques of crimes. In such circumstances, the IO will resort to his dependence on connecting chain of evidence which may take considerable time. In such cases, if the time period will be counted as per existing system, then it may give chance to the accused to destroy evidence or mishandle it in order to weaken the case of the prosecution. This must not be done in order to protect the interest of the victim. For example, if the accused is charged for murder and weapon of murder is destroyed by him after being released on default bail, then prosecution will not be able to establish the guilt of the accused beyond reasonable doubt and accused will ultimately be acquitted. Another example is that the if accused is charged with economic crime wherein he had taken disproportionate amount from the complainant. And accused later doesn't co-operate to disclose the location of currency during remand. Investigation takes place and the IO tries to join the dots of crime but is not able to sort within 90 days and the accused gets default bail. In such condition, there is high risk that the accused may dispose of the money which is subject matter of the crime and may also destroy other relevant evidences. Thus some legislative will is needed to increase the time period given for investigation so that a concrete charge sheet is prepared and the accused should not take undue advantage of default bail. Secondly, the Investigation Agencies must be very meticulous about the forum and jurisdiction where they are filing the chargesheet in grave and serious offences otherwise their whole exercise will go waste when the accused secures bail from the correct jurisdiction. Lastly in the recent case of Gautam Navlakha[34], though the Supreme Court has broadened the meaning and scope of the term "custody" but failed to specify whether house arrest will constitute police or judicial custody. Hence this will need to be determined on a case-to-case basis as of now. It might also create some confusion in its application in short term at least. Additionally reflection on the issues of transit remand and house arrest as part of custody under Section 167 will require necessary deliberation in future cases.

[34] Gautam Navlakha, *supra* note 7.