

RIGHT OF DEFAULT BAIL UNDER ARTICLE 21 WITH RESPECT TO UNDERTRIAL PRISONERS IN INDIA

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Abstract

Bail is a matter of right given to the accused person under various provision of code of criminal procedure. At various times we talk about the regular bail (S.436 CrPC) and Anticipatory bail (S. 438 CrPC). There is another kind of bail that is available to accused that is the Default bail. The provision in respect of default bail has been discussed in Section 167(2) of CrPC. When we say that the bail is a right which means that there is a cardinal principle which says that the court presumes the person innocent unless he is proved guilty in the trial procedure. So, the right of such person comes in place where the person is being kept in the police custody under the provision and if there is a delay in the filing of charge sheet under s. 173 of CrPC by the concerned police officer. The police officer gets 90 days / 60 days' time period to file charge sheet / police report (under s. 173 CrPC) and if there is a failure to file the charge sheet in the stipulated time period then the accused has the right to get the default bail under s. 167(2) of CrPC. This paper focuses mainly on the aspect that the undertrial prisoners are also covered under the constitutional provisions and hence the right of default bail cannot be taken away. Statistics have been used in the paper to address the issue.

Introduction

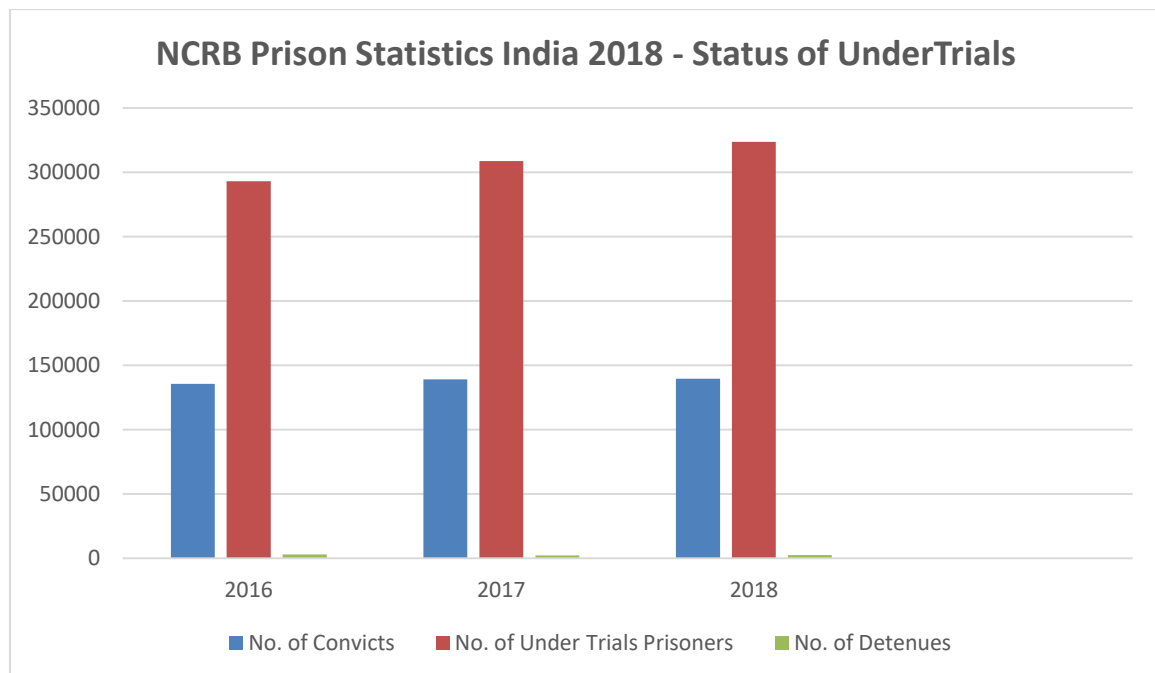
In a practical situation this time period is most of the time challenged in the court of law or there is lack of proper investigation on the part of the police officer concerned in order to avoid accuse getting bail under section 167(2) CrPC. In most cases, the police officer ensures that the accused doesn't get bail as per the provision is given in the police custody for 15 days period on the orders of the magistrate. In *Sanjay Dutt v. State of Maharashtra*¹ the court observed whenever the default bail application is filed, the magistrate has to hear the application forthwith and grant bail to the accused. However, If the bail application is not filed or bail has been granted but not furnished then upon filing of charge sheet, the right to bail of accused will get defeated. There are many cases like this lying pending in the court of law. The purpose of choosing this topic is to find out as to why there is defeat in the ends of justice when the question comes on the bail of the accused person. Why there is so much delay in doing the investigation and framing false charges on the accused person so that the accused person does not exercise his right to get default bail as per the provision. Also, to find out as to the current scenario on the right to default bail with respect to under-trial prisoners. It also highlights on the violation of their article 21 of the Indian constitution which clearly specifies that

¹ 1994 SC

“No person shall be deprived of his life or personal liberty except according to procedure established by law.” Why the constitutional sanctity is put at stake by the concerned officers and who gives them the power to take away the rights of the under-trial’s prisoners. Thus, this comes to point as to where is the concept of cardinal principle. Why the principle has been to put to stake? There have been numerous landmark judgements on right to privacy, in *Meneka Gandhi V. Union of India*² it was held that the person has the liberty and freedom. Article 14, Art.19 and Art.21 (also known as golden triangle) of the Indian constitution to be read and interpret in consonance with each other.

Status of Undertrial Prisoners

There has been an exponential growth in the undertrial prisoners. The number of these undertrials prisoners has increased from 293058 in 2016 to 323537³ in 2018 which is about 10.4% rise during this period. U.P. has the maximum number of undertrials inmates i.e. 23.2% (75,206 undertrials) followed by Bihar i.e. 9.7% (31,488 Undertrials) and Maharashtra i.e. 8.3% (26,898 Undertrials) by the end of year 2018.



The above-mentioned statistics on the undertrial shows there has been lot of violation of the provisions of the bail in India. As said earlier also, the bail is a right which is guaranteed to the accused person. It is not the courts discretion to grant or not to grant bail rather is a right enjoyed by the person.

Right of Default Bail and its Violations

² 1978 SC

³ NCRB Prison Statistics India 2018

Every Individual has the right to life and personal liberty and such right cannot be curtailed without any reasonable justification. Similarly, the accused also has the right to life and personal liberty and hence the court has to create a fair balance between the societal interest and individual interest of the accused. The main purpose for appeal for bail is to get the relief from the police or judicial custody. Another purpose is that the accused does not want to be subject of custodial torture being reported at past. In relation to custodial torture, landmark judgement D.K. Basu v. State of West Bengal⁴ where certain guidelines were issued by the Hon'ble Supreme Court of India. One of the major guidelines was that arrestee should be taken to medical examination every 48 hours and also to be allowed to meet his pleader during interrogation (part on investigation). Another important judgement which can be discussed on custodial torture and harassment by the police officials. Sube Singh case⁵ Decided by Former CJI B.N. Srikrishna and Justice R.V. Raveendran, held that the custodial torture and harassment in the police custody must stop and necessary actions to be taken If there is any violation in such case.

In Dinesh Dalmia V. CBI⁶, the court gave number of situations and guidelines with respect to default bail in the criminal procedure.

- If on the 90th or 60th day the officer has filed the incomplete charge sheet just to prevent default bail of the accused then the right to default bail will not get defeated rather the accused will still be granted bail. The court has to go one step ahead in such cases to find out the foul play in filing of the charge sheet.
- If the charge sheet filed on the 90th/60th day is complete but some reports are pending then under that situation the right to default bail will get defeated.
- If the completed charge sheet is filed on the 90th/60th day but the further investigation under section 173(8) is going on then it will not be considered to be an incomplete charge sheet and the right to default bail will be defeated.
- When the police officer has filed the charge sheet on the 90th/60th day but has not filed xerox copies of necessary documents which is being asked by the magistrate. The police officer submits it on the next day then also the right of default bail will get defeated.

In Uday Mohan Lal Acharya v. state of Maharashtra⁷, when the bail application has been rejected and the appeal is pending irrespective of any reason as to why the bail application was rejected, then also the right to default bail will continue to exist and the accused will get bail if the appellate court has set aside the rejection order.

In State of M.P. v. Rustom⁸ & Pragya Singh Thakur v. State of Maharashtra⁹ it was held that in the light of Section 9 and 10 of general clauses act, either the first day or the last day of the period shall be excluded from the counting of 60/90 days period. Thus, in effect of which the period will become

⁴ 1997 1 SCC 416

⁵ 2006 CrI. 237 of 1998

⁶ 2007, SC

⁷ 2001, SC

⁸ 1995 SC

⁹ 20011, SC

91/61 days and therefore if the charge sheet has been filed on the 91st/61st day then also the right to default bail will get defeated.

In Ravi Prakash Singh v. State of Bihar¹⁰ & Alam Khan Umar Khan v. State of Gujarat¹¹, decided that no such exclusion is followed which has been in discussed in Pragya Singh Thakur case.

It can be clearly examined that over a very long period of time, these undertrials are subjected to multiple level of harassments, either in police custody or judicial custody or relation to their right to get bail. This eventually leads to a very disheartening situation as to when their rights are taken away.

Opportunities for further research

There are numerous questions which comes to persons mind that why there is lot of undertrials in the prisons? Why they have not been released or is there a violation of the provision of the criminal procedure. Why the constitutional provision art. 21 has been put to stake when comes to discuss about the right to live life with respect and dignity. As per the statistics Number of Inmates eligible for premature release under section 436A of CrPC is 1822 inmates while the number of undertrial inmates released is only 1072. Here there are about 750 undertrial inmates those who are eligible to get pre-mature release as per the provision but they have not been released. What is stopping the government agencies to release these inmates? There is a violation of Art. 21 of the Indian Constitution. The research addresses various aspects and also raises serious questions on the authority and power of the police officials and government agencies.

Conclusion & Suggestion

- **Victim compensation scheme**

It is the role of the state government in coordination with the central government that it will prepare a scheme for providing funds to be given to the victims as compensation who have suffered loss/injury. The quantum of such compensation is to be decided by the District Legal service authority or state legal service authority. If the compensation provided under section 357 of CrPC is not adequate then such authority can award additional compensation. When the person is not found and the victim files an application with the legal services authority for the award of compensation. Such enquiry by the appropriate authority is to be completed within 2 months' time period. There is a provision to provide the immediate first aid facility or medical benefits to the victim / accused who has suffered great loss or injury.

- **Loss of reputation and money**

¹⁰ 2015, SC

¹¹ 2015, Guj. HC

Over the period of time, there has been lot of discussions and debate at various levels. Either at judicial level, legislature level or executive level but the loss of reputation of undertrial prisoner cannot be compensated by any scheme. Once the person is sent to jail whether it is a police custody or judicial custody, the reputation of that person in the society diminishes. It becomes very challenging and difficult for him to survive his rest of his life. It is not only the person but also the family in particular who faces the maximum harassment and torture. That is a life time punishment which they get once the person is ordered custody by the court. Under this situation if the person gets default bail then his reputation is somewhat or the other is protected in the society because he has been released on bond with or without sureties. So, it is important here to understand that the right to get the default bail not only helps the person to justify himself but also at the same time, his family is also protected by the virtue of that bail. They live their life with respect and dignity and are not subjected to discrimination or elimination from the society.

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