WORKSHOP – III

Paper on the topics of Powers and Duties of Magistrates, Sessions Judges and Special Sessions Judges pertaining to Default Bail, Grounds on which bail can be granted/rejected, Imposition of conditions while granting bail and Power to modify conditions of bail.

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Introduction:

The concept of bail is one of the facets of right to life and liberty guaranteed under Article 21 of the Constitution of India. With the increase of crime, in proportion to advancement of Science and Technology and equally, the derogation of morals and sensitivity in human beings, as against their very nature to be humane, the bail jurisprudence has attained prominence in the context of enforcement of Article 21 of the Constitution of India, which ofcourse is an guaranteed inherent natural right.

The concept of bail constitutes an imminent part of criminal jurisprudence and the term "bail" is one of the most familiar words often used even by an illiterate or a common man in country side, indeed being aware of what it is and its procedure is.

To comprehend the meaning of what bail is, as per the definition in Black's Law Dictionary, bail is,

> *"A security such as cash or a bond; esp., security required by a court for the release of a prisoner who must appear in court at a future time."*

Coming to the definition of bail, although the term bail is not defined in the Criminal Procedure Code, 1973, herein after referred as "CrPC", but Section 2(1)(b) of Bharatiya Nagarik Suraksha Sanhita, 2023, herein after referred as "BNSS", defines bail.

Section 2(1)(b) of BNSS:

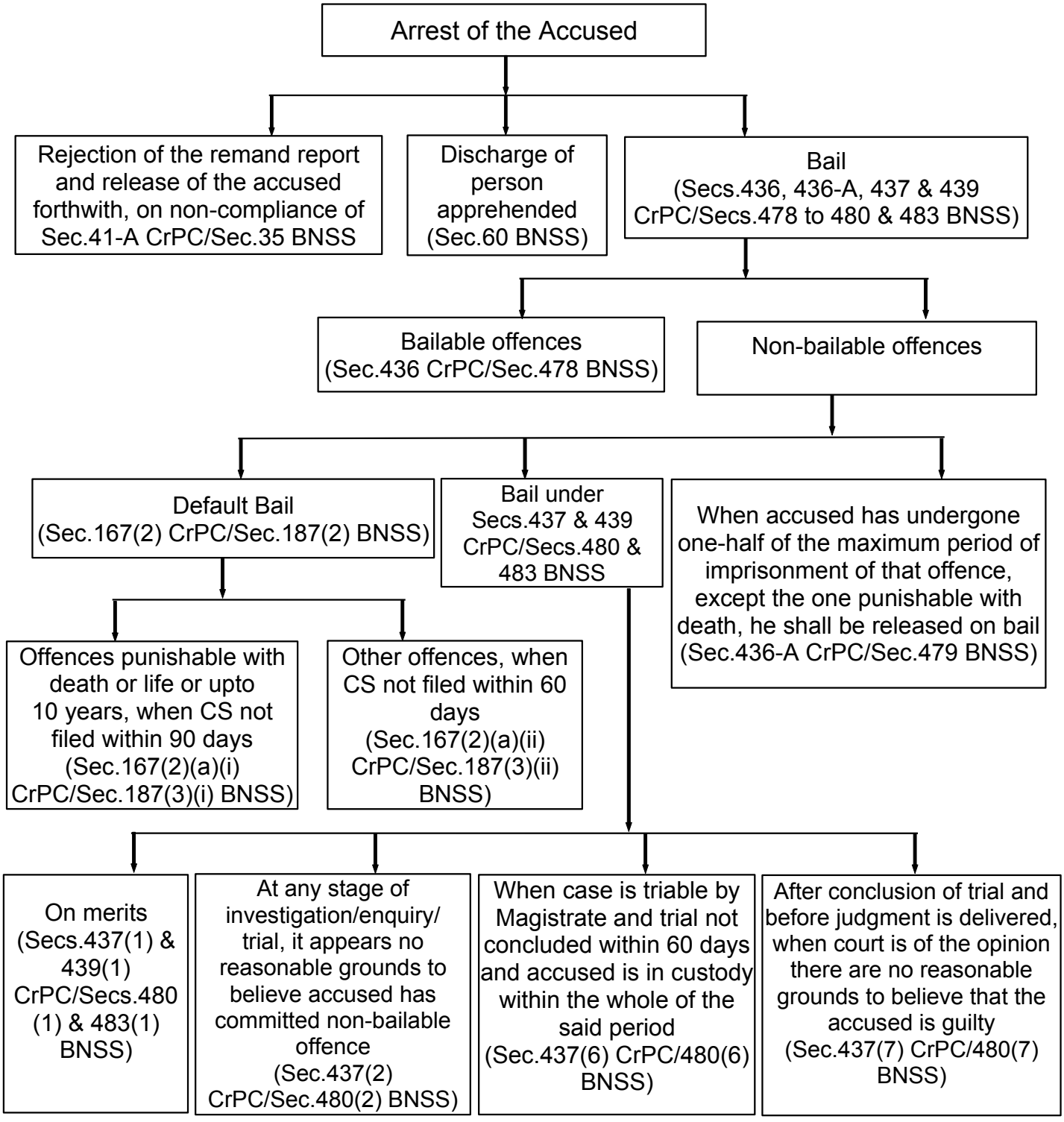
> *"Bail means release of a person accused of or suspected of commission of an offence from the custody of law, upon certain conditions imposed by an officer or court on execution by such person of a bond or a bail bond."*

To make the term bail more understandable, it is also appropriate to know what a bond and bail bond are.

As per Section 2(1)(d) of BNSS, bail bond means “an undertaking for release with surety”. So also, Section 2(1)(e) of BNSS defines bond as “a personal bond or an undertaking for release without surety”.

Upon reading together the above definitions, bail can be said as surety given by executing a personal bond or an undertaking for release of the accused by the orders of the court/police/investigating agency, for his due appearance before the court for trial of the case. The reason why the concept of bail jurisprudence is prominent is, in India the criminal jurisprudence is adversarial in nature and as per adversarial system, the accused is presumed to be innocent, till his guilt is proved by the prosecution, beyond all reasonable doubt. In such a circumstance, the arrest and detention of the accused at pre-trial stage cannot be construed as the punishment imposed on the accused as his guilt is not yet proved and the case is at pre-trial stage only. Hence, the courts have to exercise the discretionary power vested in them, judiciously and with conscience, either to allow or deny bail to the accused by weighing multiple aspects as set out by precedents, and no single or stray circumstance can be said as warranting either for grant or refusal of bail to the accused.

Before proceeding to the sub-topics on bail assigned to me, for vivid understanding of the concept of bail, following the arrest of the accused, the provisions under IPC and BNSS, regulating the concept of bail at large, are as follows in a chart form.


Arrest of the Accused
Rejection of the remand report and release of the accused forthwith, on non-compliance of Sec.41-A CrPC/Sec.35 BNSS
Discharge of person apprehended (Sec.60 BNSS)
Bail (Secs.436, 436-A, 437 & 439 CrPC/Secs.478 to 480 & 483 BNSS)
Bailable offences (Sec.436 CrPC/Sec.478 BNSS)
Non-bailable offences
Default Bail (Sec.167(2) CrPC/Sec.187(2) BNSS)
Bail under Secs.437 & 439 CrPC/Secs.480 & 483 BNSS
When accused has undergone one-half of the maximum period of imprisonment of that offence, except the one punishable with death, he shall be released on bail (Sec.436-A CrPC/Sec.479 BNSS)
Offences punishable with death or life or upto 10 years, when CS not filed within 90 days (Sec.167(2)(a)(i) CrPC/Sec.187(3)(i) BNSS)
Other offences, when CS not filed within 60 days (Sec.167(2)(a)(ii) CrPC/Sec.187(3)(ii) BNSS)
On merits (Secs.437(1) & 439(1) CrPC/Secs.480 (1) & 483(1) BNSS)
At any stage of investigation/enquiry/ trial, it appears no reasonable grounds to believe accused has committed non-bailable offence (Sec.437(2) CrPC/Sec.480(2) BNSS)
When case is triable by Magistrate and trial not concluded within 60 days and accused is in custody within the whole of the said period (Sec.437(6) CrPC/480(6) BNSS)
After conclusion of trial and before judgment is delivered, when court is of the opinion there are no reasonable grounds to believe that the accused is guilty (Sec.437(7) CrPC/480(7) BNSS)

(i) DEFAULT BAIL

Now, coming to the first of the sub-topics assigned to me, on default bail, as the very name connotes, the concept of default bail is on the footing of default of doing the specific act mandated by the legislation i.e., completion of investigation within the stipulated period from the date of remand of the accused. Default bail is also known as statutory bail or compulsory bail. The accused acquires right to default bail, on failure of the investigating agency to complete the investigation within the stipulated time. The object behind the concept of default bail is dual, primarily to enforce the constitutional right of the accused, of his liberty and the other to fasten completion of investigation within time and thereby the expeditious disposal of the case. The relevant provisions under CrPC and BNSS that deal with default bail are Section 167(2) and Section 187(2)(3) respectively and they are, as follows:

Section 167 of CrPC:

"167. Procedure when investigation cannot be completed in twenty-four hours. -

(1) …….

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that, -

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding, -

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence,

and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;

(c) no Magistrate of the Second Class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

Explanation I.- For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.

Explanation II.- If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising

detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be.

(3) …….

(4) …….

(5) …….

(6) …….”

Section 187 of BNSS:

“187. Procedure when investigation cannot be completed in twenty-four hours.

(1) …….

(2) The Magistrate to whom an accused person is forwarded under this section may, irrespective of whether he has or has no jurisdiction to try the case, after taking into consideration whether such person has not been released on bail or his bail has not been cancelled, authorise, from time to time, the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole, or in parts, at any time during the initial forty days or sixty days out of detention period of sixty days or ninety days, as the case may be, as provided in sub-section (3), and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

(3) The Magistrate may authorise the detention of the accused person, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this sub-section for a total period exceeding—

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of ten years or more;
(ii) sixty days, where the investigation relates to any other offence,
and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXV for the purposes of that Chapter.
(4) …….
(5) …….
(6) …….
(7) …….
(8) …….
(9) …….
(10) …….”

In fact, Section 187 of BNSS corresponds to Section 167 of CrPC on all aspects with respect to default bail and there is no distinction at all, but for the variance in the numerals as to the Section and Sub-Sections. So, for the sake of convenience, instead of of section 167(2) of CrPC and section 187(2)(3) of BNSS, hereafter, the relevant provision for default bail shall be referred as section 167(2) CrPC.

I. <u>Under which of the clauses (i) or (ii) of Section 167(2)(a) CrPC, the offence punishable with 10 years imprisonment falls:</u>

When the question of interpretation of the term “not less than ten years” in Section 167(2)(a)(i) CrPC, arose before the Hon’ble Supreme Court of India, in the case of **Rajeev Chaudhary Vs. State (N.C.T.) Of Delhi**, reported as AIR 2001 SC 2369, the Hon’ble Apex Court held that the expression not less

than would mean imprisonment should be 10 years or more and would cover only those offences for which punishment could be imprisonment for a clear period of 10 years or more.

As the said finding still holds the field, it can be said that period of 90 days is applicable with respect to the offences punishable with death or imprisonment for life or imprisonment for a term of 10 years or more and time limit of 60 days is applicable to offences punishable with imprisonment less than 10 years, for completion of investigation and filing of charge sheet by the investigating agency, else right to default bail accrues in favour of the accused.

II. <u>Categorization of the offences from time limit for completion of investigation point of view under section 167(2) CrPC and Special Enactments:</u>

(a) As per Section 167(2) of CrPC, time limit stipulated for completion of investigation with respect to the offences punishable with death, imprisonment for life or imprisonment for term not less than 10 years is 90 days. Whereas, with respect to the other offences, time limit specified is 60 days.

(b) However, with respect to special legislation, Narcotic Drugs and Psychotropic Substances Act, 1985, herein after referred as 'NDPS Act' for brevity, it embodies provision substituting 90 days time for completion of investigation with respect to the offences punishable under Sections 19, 24, 27-A and for offences involving commercial quantity under NDPS Act. As per Section 36A(4) of the NDPS Act, which has come into force with effect from 02.10.2001 by virtue of Act 9 of 2001, the time limit for completion of investigation with respect to offences punishable under Sections 19, 24, 27-A and for offences involving commercial quantity under NDPS Act is 180 days. Further, the proviso to Section 36A(4) of NDPS Act also contemplates that if it is not possible to complete the investigation within the said period of 180 days,

the Special Court for trial of the offences under NDPS Act may extend the said period upto one year, but for on the report of Public Prosecutor indicating the progress of investigation and also the specific reasons seeking for detention of the accused beyond 180 days.

(c) Likewise, with respect to the offences covered under the Unlawful Activities (Prevention) Act, 1967, Section 43D, inserted by Act 35 of 2008 and which came into effect from 31.12.2008, stipulates, inter alia, that the word '60 days' in Section 167(2) of CrPC, shall be construed as '90 days' for the offences punishable under UAPA Act. In other words, it can be said that irrespective of the quantum of punishment which the offences under UAPA Act attracts, the time limit for completion of investigation is 90 days even with respect to offences punishable below 10 years and there is no distinction of the offences under UAPA Act with respect to the punishment prescribed for the said offences. Further, the proviso to Section 43D of the UAPA Act provides that if it is not possible to complete the investigation within the said period of ninety days, the Court if satisfied with the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for further detention of the accused beyond the said period of ninety days, extend the said period upto 180 days.

For easy understanding of the above, in tabular form, it is as follows:

Sl.No.	**Section & Act**	**Offences**	**Time limit for completion of investigation**
1.	Sec.167(2)(i) of CrPC	Punishable with death, imprisonment for life or imprisonment for term not less than 10 years	**90 days**
2.	Sec.167(2)(ii) of CrPC	All other offences	**60 days**

3.	Sec.36A(4)NDPS Act	Offences punishable under Sections 19, 24, 27-A and for offences involving commercial quantity under NDPS Act	**180 days and even upto one year**, but for the report of the Public Prosecutor disclosing the progress of the investigation and specific reasons for further detention of the accused beyond the said period
4.	Sec.43D of UAPA Act	All offences under UAPA Act	**90 days and even upto 180 days,** but on report of Public Prosecutor disclosing the progress of the investigation and specific reasons for further detention of the accused beyond the said period

III. <u>When the offence prescribes minimum and maximum punishment, which of the two is to be taken into consideration in computing 60/90/180 days, as the case may be:</u>

When the offence sets the arena of imprisonment, minimum and maximum, a doubt may arise as to which of the two, whether minimum sentence or maximum sentence that has to taken into consideration in computing 60/90/180 days, as the case applies. The judgment of the Hon'ble Apex Court of India, in the case between **Rakesh Kumar Paul Vs. State of Assam**, reported as AIR 2017 SC 3948, sheds light on this aspect. The Hon'ble Apex Court held that when an offence prescribes imprisonment of minimum and also maximum sentence, for computing the number of days under section 167(2) CrPC or special enactments for grant of default bail, the court shall take into consideration the minimum sentence prescribed and the benefit shall be given to the accused. The reason for such analogy is that as Section 167(2) is enforcement of the constitutional right to liberty, a liberal approach in favour of the accused has to be taken.

IV. <u>Days to be included/excluded in computation of the period of 60/90/180 days, as the case may be:</u>

(a) Whether in calculating the period of 60/90/180 days, it has to be reckoned from the date of arrest or not, as per the ratio laid down by the Hon'ble Supreme Court of India, in the case of **Chaganti Satyanarayan & Ors Vs. State of Andhra Pradesh**, reported as AIR 1986 SC 2130, in computing the total period of detention of the accused, the date of arrest of the accused till produced before the Magistrate for remand is to be excluded. The reason is, the detention of the accused can be inferred from the moment the order of remand is made by the Magistrate and in the event the period from the arrest of the accused is also to be taken into consideration in computation of 60/90/180 days, it amounts to ratifying the custody of the accused with the investigating officer/police as detention and also imposes onerous/unmeasurable liability on the court even when the accused is not produced before it and is in the custody of police/investigating agency, leading to unwarranted circumstances.

(b) Whether the day on which the accused is remanded to judicial custody is to be computed, irrespective of the time at which the accused is remanded i.e., even at the eleventh hour of the day, as per the judgment of the Hon'ble Supreme Court of India in the case between **Enforcement Directorate, Government of India Vs. Kapil Wadhawan and Another etc.**, dated 27.03.2023 in Crl.Appeal Nos.701 and 702 of 2020, Sections 9 and 10 of the General Clauses Act, 1897 have no application to Section 167(2) Cr.P.C. and period of detention by the Magistrate runs from the very day of remand order irrespective of the time of the day, and on filing of the application by the accused under Section 167(2) Cr.P.C. on the 61st/91st day, on failure of the prosecution to file charge-sheet within 60/90 days of the date of remand of the accused, the right to compulsory bail accrues in favour of the accused.

(c) One may encounter a situation where the 90th day happens to be a holiday and when so, can the court consider filing of the charge sheet on the next immediate working day i.e., 91st day as within the stipulated time. On this aspect, the order of Hon'ble High Court of Bombay in a case between **Naresh @ Nana Baliram Sonwane and Others Vs. State of Maharashtra**, reported as 2000(5)BOMCR382, clinches the controversy. As per the said order, the time limit stipulated under Section 167(2) Cr.P.C. does not get enlarged or extended although the last day happens to be a holiday and on failure of the investigation officer to complete the investigation within 60/90 days, a right is accrued in favour of the accused for statutory bail.

V. <u>Whether the accused has to file application for grant of default bail or it is the duty of the court to grant the same in default:</u>

(a) There is no specification either in CrPC or BNSS, as to whether the accused has to file application seeking for his release on default bail or he has to be released in default on expiry of the stipulated period within which the investigating agency fails to complete the investigation and file the final report. The judgment of the Hon'ble Supreme Court of India in the case between **Hitendra Vishnu Thakur Vs. State of Maharastra,** reported as AIR 1994 SC 2623, throws light on this aspect. In the said judgment, the Hon'ble Apex Court brushed aside the arguments advanced that the court has to grant default bail to the accused on failure to complete investigation and file the charge sheet within the stipulated period of 60/90/180 days as the case may be, and held that there is no duty imposed on the court to consider the grant of default bail to the accused on its own and the accused has to necessarily file application to consider the same.

(b) The Hon'ble Apex Court has reiterated the same in its judgment dated 26.10.2020 in the case between **M Ravindran Vs. The Intelligence Officer,**

Directorate of Revenue Intelligence, reported as AIR 2020 SC 5245, wherein the Hon'ble Apex Court at Paragraph No.12, held that the court cannot release the accused on its own motion if the accused fails to file any application seeking for his release on default bail.

(c) A situation may arise, where regular bail is filed and by the time it comes for hearing, the period of 60/90/180 days would had been lapsed without filing of charge sheet by the investigating agency and the accused would be entitled for default bail. In such a scenario, as per the majority judgment of Hon'ble Apex Court in the case of **Rakesh Kumar Paul Vs. State of Assam,** reported as AIR 2017 SC 3948, it is held that even in a regular bail, when oral arguments seeking for default bail are advanced and no objection raised initially, the same suffice for grant of default bail to the accused and a separate application seeking default bail is not required.

(d) In a given case, when regular bail petition is pending either before Hon'ble Supreme Court or Hon'ble High Court or the Sessions Court and in the mean time, the investigating agency fails to file the charge-sheet within 60/90/180 days as the case may be, and application is filed by the accused under Section 167(2) CrPC, one may entertain a doubt whether the Special Court/Magistrate is competent to grant default bail or not. As per the Order of Hon'ble High Court of Punjab and Haryana in the case between **Gurmeeth Singh Vs. State of Punjab** dated 05.08.2025 in CRM-M-21371-2025, it is held that the concerned Sessions Court or Magistrate Court, as the case may be, is competent to grant default bail and pending of the regular bail application does not disentitle the Magistrate or the Sessions Court in exercise of their powers under Section 167(2) Cr.P.C. or 187(2) BNSS and to the contra, failure to grant bail amounts to violating the fundamental right of the accused or contravening the judgments of Hon'ble Supreme Court of India.

VI. <u>Time stipulated for disposal of the application filed under Section 167(2) CrPC/187(2) BNSS:</u>

There is no time specified under CrPC/BNSS or any other legislation for disposal of the application filed seeking default bail, but for notice to the public prosecutor. However, the Hon'ble Supreme Court in the case of **Uday Mohanlal Acharya Vs. State of Maharashtra**, reported as AIR 2001 SC 1910, issued guidelines, *inter alia*, that when an application for bail is filed by an accused for enforcement of his indefeasible right to default bail claimed to have been accrued in his favour on account of failure on the part of the investigating agency in completing the investigation within the specified period, the Magistrate/special court must dispose of the application forthwith and prompt action on the part of the Magistrate/special court will not enable the prosecution to frustrate the object of the Act and the legislative mandate of an accused being released on bail on account of the default on the part of the investigating agency in completing the investigation within the period stipulated.

VII. <u>Whether the default bail granted under Section 167(2) of CrPC, stands cancelled on filing of the charge sheet:</u>

(a) On plain reading of Sections 167(2) of CrPC, it is understandable that on failure of the investigating officer to complete investigation and file final report within the stipulated period of 60/90/180 days with respect to the respective offences, the accused is entitled for statutory bail and the question is, whether subsequent filing of charge sheet can set at naught the default bail granted earlier, as it is not on merits. As per the ratio as laid down by the Hon'ble Apex Court in the case of **Raghubir Singh & Others Etc Vs. State of Bihar**, reported as AIR 1987 SC 149 and reiterated in the case of **Abdul Basit**

@ Raju & Ors. Etc. Vs. Md.Abdul Kadir Choudhary, reported as (2015) 1 SCC (Cri) 257, once the accused has availed his right to default bail, it cannot be canceled on the sole ground of filing of charge sheet. So, it can be concluded that once default bail is granted, though it is not on merits, it cannot be disregarded/cancelled on the only premise of filing of the charge sheet by the investigating officer.

(b) However, the situation is not the same when the accused released on default bail interferes with the investigation or tampers the evidence or does not cooperate with the trial of the case. As per the latest judgment of the Hon'ble Apex Court in the case between the State, through **Central Bureau of Investigation Vs. T. Gangi Reddy @ Yerra Gangi Reddy**, reported as 2023 LiveLaw (SC) 37, there is no absolute bar to cancel the default bail on merits, on grounds like tampering with the evidence/witnesses, not cooperating with the investigating agency and/or not cooperating with the trial Court etc., as are available for cancellation of bail granted under Sec.437(5) or Sec.439(2) of Cr.P.C.

VIII. <u>Is right to default bail an absolute right to bail without conditions:</u>

It is settled proposition that default bail is also known as statutory bail or compulsory bail, which implies that the accused is entitled to bail on failure of the investigating agency to complete the investigation and file the charge sheet within the mandate period of 60/90/180 days, as the case may be. In this back drop, one may entertain doubt whether such indefeasible right to bail has to be granted free of any conditions or imposing of any conditions while granting the default bail may amount to preventing the accused of his access to his statutory bail. On this aspect, the findings of Hon'ble Supreme Court of India in the case of **Rakesh Kumar Paul Vs. State of Assam**, reported as

AIR 2017 SC 3948, enlightens us. The findings of the Hon'ble Apex Court that the accused therein is entitled to default bail on reasonable terms and conditions, makes it clear that the right of the accused to default bail is not absolute without any conditions and imposing of reasonable terms and conditions does not amount to defeating the statutory right of the accused to compulsory bail.

IX. Filing of final report under Section 173 CrPC vis-a-vis application by the accused for grant of default bail on expiry of the stipulated period of 60/90/180 days, as the case applies:

(a) A doubt may arise whether filing of the charge-sheet extinguishes the indefeasible right of the accused to default bail or cognizance of the offence is necessary. On this aspect, the Hon'ble Apex Court in the case between **Judgebir Singh @ Jasbir Singh Samra @ Jasbir and Others Vs. National Investigation Agency,** dated 01.05.2023, in Crl.Appeal No.1011/2023 held, reiterating the findings in **Suresh Kumar Bhikamchand Jain Vs. State of Maharashtra & Anr**, dated 13 February, 2013, that taking cognizance is different from the completing the investigation, completion of investigation and filing of the charge-sheet is the duty of the investigating agency, while taking cognizance of the offence is the power of the Court and what is contemplated under Section 167 Cr.P.C. is that the Magistrate/designated Court has no power to order detention of the accused beyond 60/90/180 days and once final report is filed with all documents on which the prosecution proposes to rely, the investigation shall be deemed to have been completed, and Section 167 Cr.P.C. speaks only about investigation and not about cognizance by the Magistrate and hence filing of charge-sheet is sufficient for compliance of the provision under Section 167 of Cr.P.C.

(b) On the issue whether filing of the application by the accused under Section 167(2) CrPC amounts to availment of the right accrued in favour of the

accused for default bail on failure of police/investigating agency to complete the investigation and file charge sheet within 60/90/180 days, as the case may be, with the judgments of the Hon'ble Supreme Court, in the year 1994 in the case of **Sanjay Dutt Vs. State Through C.B.I. Bombay**, reported as 1994 (3) Suppl. SCR 263, reiterated in 2014 in the case of **Union of India through C.B.I. Vs. Nirala Yadav @ Raja Ram Yadav @ Deepak Yadav**, reported as AIR 2014 SC 3036 and reaffirmed in the year 2023 in the case of **Ritu Chhabaria Vs. Union of India and Others**, reported as 2023 SCC OnLine 502, the law on accrual of indefeasible right of the accused to default bail on lapse of the investigating officer/investigating agency to complete the investigation and file charge sheet within the stipulated period of 60/90/180 days, as the case may be, and availment of such right by the accused on filing of his application by the accused much before filing of the charge sheet by the investigating officer/investigating agency and thereafter, extinguishment of such right, ***is crystallized with the findings that once application is filed by the accused under Section 167(2) Cr.P.C., it amounts to availment of the right to default bail by the accused and even though charge sheet is filed much prior to furnishing of the sureties by the accused or his release or challenging rejection of his bail application is pending before higher court, the right to default bail accrued in favour of the accused does not get annulled.***

(c) On the aspect whether filing of charge sheet within 60/90 days as the case may be, but on return, failure to comply objections and remains not represented by 60th/90th day, accrues right in favour of the accused to default bail under Section 167(2) CrPC, as per the judgment of the Hon'ble High Court of Telangana in the case of **Avasarala Venkateshwara Rao Vs. The Directorate of Enforcement**, Criminal Petition 6428/2022, dated 04.08.2022, the Hon'ble High Court of Telangana referring to the Judgments of Hon'ble

Apex Court in **Achpal @ Ramswaroop and Another Vs. State of Rajasthan**, reported as (2019) 14 SCC 519 and **M Ravindran Vs. Intelligence Officer, Directorate of Revenue Intelligence**, reported as AIR 2020 SC 5245, held that mere filing of a bunch of papers titled as charge-sheet with an intention to nullify the right of the accused to default bail, does not amount to filing of the final report as contemplated under Section 167(2) Cr.P.C. and the accused is entitled for default bail.

(d) On the aspect whether the offences added to the FIR after remand of the accused and in the course of investigation, can be taken into consideration in assessing the punishment which the offence attracts for application of 60 days or 90 days under Section 167(2) of CrPC, the judgment of Hon'ble High Court of Delhi in the case of **Amarjeet Singh Dhillon Vs. State Nct of Delhi** on 28 May, 2024, in CRL.M.C. 3814/2022 & CRL.M.A. 14335/2024, throws light. The facts of the said case are, FIR is registered against the accused for the offences under Sections 420/468/471/120B of the Indian Penal Code, on the report filed by the complainant and consequently, the accused was arrested, after expiry of sixty days from the date of his arrest, the accused field petition under Section 167(2) of CrPC. for grant of default fail and the same was opposed by the prosecution on the ground that in the course of investigation, prima facie case for the offence under Section 467 of IPC is also made out and the same is included in the case diary and hence, the number of days to be computed for grant of default of bail is 90 days, but not 60 days. On that, the concerned Court with the finding that no prima facie case for the offence under Section 467 of IPC is made out, granted default bail to the accused. Assailing the order of the concerned Court, the prosecution preferred revision to the Principal District Court, and on allowing the revision and canceling the default bail granted, the accused preferred revision before the High Court. The Hon'ble High Court of Delhi holding that revision is

maintainable against an order passed under Section 167(2) CrPC. as it is an intermediate order and dismissed the petition on the ground that it is quite premature for the concerned Magistrate Court to hold that prima facie case is made out or not at that juncture. The said order of the Hon'ble High Court is confirmed by the Hon'ble Apex Court vide its order dated 14 October, 2024 in Appeal (Crl.) No.7983/2024.

(e) One may encounter a situation where the charge sheet is not filed within the stipulated period of 60/90/180 days as the case may be and the accused files his application for default bail and the investigating officer also files charge sheet on 61st day or 91st day or 181st day. In this scenario, as per the judgment of Hon'ble Supreme Court of India, in case between **Sanjay Dutt Vs. State Through C.B.I. Bombay**, the constitutional bench held that when the accused files application for grant of default bail, the same amounts to availment of his right and when application by the accused for release on default bail and also a prayer for extension of time to complete the investigation are filed on 181st day, both of them should be considered together and the conspectus is that, on filing of the charge sheet, the default bail lapses. The same is reiterated by the Hon'ble Apex Court in the case of **Uday Mohanlal Acharya Vs. State of Maharashtra,** holding that if on the 61st day or 91st day, as the case may be, if application for default bail is filed and because of any bonafide view or procedure adopted by the court concerned some delay is caused and in the meantime challan is filed, the Court has no power to direct release under proviso to Section 167(2) of the Code as both the application and the charge sheet are to be considered together, resultantly the bail application is liable to be dismissed on filing of the charge sheet.

(f) However, in the recent times, the Hon'ble Supreme Court of India to safeguard the constitutional rights of the accused and to nullify the attempts of

the prosecution to frustrate the right of the accused of his entitlement to default bail by filing of charge sheet after filing of the application by the accused seeking default bail on failure of prosecution to complete investigation and file charge sheet within mandate period of 60/90/180 days, held in the case of **M Ravindran Vs. The Intelligence Officer, Directorate of Revenue Intelligence**, reported as AIR 2020 SC 5245, that as filing of charge sheet by the accused is much prior to filing of charge sheet on the same day, it is deemed that the accused has availed his indefeasible right to default bail and the accused is entitled to be released on default bail.

Further, the Hon'ble Supreme Court of India in the case of **Ritu Chhabaria Vs. Union of India and Others**, reported as 2023 SCC OnLine 502, when the investigating agency filed supplementary/incomplete charge sheet on incomplete investigation at the eleventh hour of the court working day, held that when the investigation agency files charge sheet with the only intention to deny the accrued right of the accused to default bail under Section 167(2) of the CrPC, the trial court, in such cases, cannot continue to remand an arrested person beyond the maximum stipulated time without offering the arrested person default bail. To understand the spirit in Section 167(2) of CrPC, it is quite appropriate to extract the conclusive words of the Hon'ble Apex Court in the said judgment and it is as follows:

> "34. Even at the cost of repetition, we find it pertinent to mention that the right of default bail under Section 167(2) of the CrPC is not merely a statutory right, but a fundamental right that flows from Article 21 of the Constitution of India. The reason for such importance being given to a seemingly insignificant procedural formality is to ensure that no accused person is subject to unfettered and arbitrary power of the state. The process of remand and custody, in their practical manifestations, create a huge disparity of power between the investigating authority and the accused. While

> there is no doubt in our minds that arrest and remand are extremely crucial for the smooth functioning of the investigation authority for the purpose of attaining justice, however, it is also extremely important to be cognizant of a power imbalance. Therefore, it becomes essential to place certain checks and balances upon the Investigation Agency in order to prevent the harassment of accused persons at their hands."

Therefore, in the light of the above precedents at the back drop, to uphold the constitutional right enshrined under Article 21, to which even the accused is also entitled and not deprived of, the Magistrate/Special Courts/Sessions Courts has to exercise the duty cast under Section 167 of CrPC/187 of BNSS and Special Acts viz., NDPS Act and UAPA Act, in a prompt and diligent manner, failing which, it violates the rights of the accused guaranteed under the constitution, of which the courts are the watch dogs. And, in that course, it is suggestable to note down the time of filing of the application by the accused for default bail and to decide the same at the earliest after hearing of the Public Prosecutor on that day itself, leaving no room for the prosecution to frustrate the object of the legislation or to scuttle the rights of the accused.

(ii) GROUNDS ON WHICH BAIL CAN BE GRANTED/REJECTED

The relevant provisions under procedural laws and special enactments, which deal with bails, are as follows:

Sl.No.	Enactment	Provisions
1.	The Code of Criminal Procedure, 1973	Secs.436, 437 & 439
2.	The Bharatiya Nagarik Suraksha Sanhita, 2023	Secs.478 to 480 & 483

3.	The Narcotic Drugs and Psychotropic Substances Act, 1985	Sec.37 r/w 36C
4.	The Prevention of Money-Laundering Act, 2002	Sec.45 r/w 46(1) & 44(2)
5.	The Unlawful Activities (Prevention) Act, 1967	Sec.43D(5)(6)(7)

I. <u>Grant of bail in bailable offences:</u>

With respect to the bailable offences, the classification of which under the Indian Penal Code/Bharatiya Nyaya Sanhita, 2023 is as per the classification-I of offences as provided under schedule-I of CrPC/BNSS respectively and with respect to the Special Laws as provided under respective laws and if not under the classification-II as provided in Schedule-I of CrPC/BNSS, the accused is entitle to bail as a matter of right. Indeed, the release of the accused is not invariable, but for on furnishing of sureties for his due appearance as provided under Section 436 CrPC/478 BNSS. However, such confinement of the accused in case of bailable offences can be extended not beyond a week, as the legal presumption is that the accused unable to give bail within a week of the date of his arrest is an indigent person and the accused can be either discharged/released on execution of self bond without sureties, for his due appearance before the court, but for on the first instance, and not in a later case.

II. <u>Grant/Rejection of bail in non-bailable offences:</u>

As the law and its application is in relation to the aspects prevailing in the society and the human conduct, which are variable and not static, and cannot be assessed in concrete terms, the law laid down by the Hon’ble Apex Court and the Hon’ble High Courts from time to time, adaptable and meeting

the changing times, are not only mere precedents, but indeed are torch bearers to assess the facts of the case, for judicious application of discretionary power of the courts in granting or rejecting the bail application, which directly effects the constitutional rights of the accused and equally, the case of the complainant/victim.

(a) <u>Time limit for disposal of bail applications:</u>

Neither the procedural laws nor the special enactments stipulate time limit within which the bail applications has to be disposed of. However, the Hon'ble Supreme Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation and Another,** reported as (2022) 10 SCC 51, issued directions, inter alia, that the bail applications has to be disposed within a period of two weeks, with the exception being an intervening application.

To ensure compliance of the above direction, the Hon'ble High Court of Andhra Pradesh issued **Circular No.10/2023, vide ROC.No.99/SO/2023, dated 19.06.2023**.

(b) <u>Whether the Magistrate is competent to entertain bail application with respect to all non-bailable cases, including the offences triable exclusively by court of Sessions:</u>

The procedural laws do not distinguish the non-bailable offences for which the bail petition before the Magistrate under Section 437 CrPC is maintainable. So, it can be said that there is no express provision under CrPC that debars the Magistrate to entertain bail application even with respect to the offences exclusively triable by the court of Sessions.

When a situation arose before the Hon'ble High Court of Kerala in a case between **Satyan Vs. State,** reported as 1981CRILJ1313, on the power of

Magistrate to entertain bail application with respect to the offence under Section 326 of IPC as it attracts maximum punishment of imprisonment to life and the Magistrate refused to grant bail on the ground that the punishment prescribed for offence under Section 326 of IPC is imprisonment to life, Hon'ble Ms. Justice P. Janaki Amma, held that when the offence under Section 326 of IPC is triable by Magistrate, the bail application with respect to the offence under Section 326 of IPC is well maintainable alike the bail application for the offence under Section 420 of IPC, which attracts imprisonment upto seven years.

In the later years, the Hon'ble Supreme Court in the case of **Prahlad Singh Bhati Vs. N.C.T., Delhi & Anr,** reported as (2001) 4 SCC 280, held more elaborately that the power of the Magistrate while dealing with the applications for grant of bail are regulated by the punishment prescribed for the offence in which the bail is sought and when the offence is exclusively triable by the court of Sessions, the Magistrate has no jurisdiction to grant bail unless the matter is covered under the Provisos' to Section 437 of CrPC, and in cases where the offence is triable exclusively by a court of Sessions, the Magistrate has to refrain from exercising the powers of granting the bail and refer the accused to approach the higher courts unless he is fully satisfied that there is no reasonable ground for believing that the accused has been guilty of an offence punishable with death or imprisonment for life.

In the light of the ratio as laid down in the above cited judgment, the Magistrate is though not expressly precluded by any provision of law to entertain bail application with respect to offences triable exclusively by the court of Sessions, but by virtue of precedent, it is proper and appropriate on the part of Magistrate not to entertain bail application with respect to offences triable exclusively by the court of Sessions, unless is fully satisfied that the

accused did not commit offence punishable with death or life imprisonment, as provided under Section 437 of CrPC.

(c) <u>The manner in which the power of the court to deal with bail application, has to be exercised:</u>

The Hon'ble Supreme Court of India in the case of **Ram Govind Upadhyay Vs. Sudarshan Singh & Ors,** reported as AIR 2002 SC 1475, observed how a bail application has to be dealt with. It is appropriate to extract the said observations and it is as follows:

> *"Grant of bail though being a discretionary order but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for Bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the Court and facts however do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic consideration for the grant of bail more heinous is a crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter."*

(d) <u>Notice to Public Prosecutor/defacto complainant/victim/informant on application for grant of bail:</u>

The Proviso to Section 437(1) CrPC provides that no accused with respect to the offence punishable with death or imprisonment for life/imprisonment for seven years or more shall be released on bail without giving an opportunity of hearing to the Public Prosecutor. Further, Section

439(1) CrPC also provides that the Hon'ble High Court or the Court of Sessions before granting bail to a person accused of offence triable exclusively by the Court of Sessions, give notice to the Public Prosecutor and if not practicable, assign reasons in writing. A similar corresponding provisions are made in BNSS under Provisos to 480(1) and 483(1) respectively.

However, with respect to offences under Section 65 or 70(2) of BNS i.e., rape or gang-rape, notice to Public Prosecutor is made mandate under second Proviso to 483(1).

With respect to notice to the defacto complainant/victim/informant, although initially there is no specific provision in CrPC, directing or mandating notice to the defacto complainant/victim/informant on bail application and hearing them on the said application, subsequently by way of the Criminal Law (Amendment) Act, 2018, Section 439(1A) is incorporated in CrPC and the same came into force from 21.04.2018. As per Section 439(1A) of CrPC, presence of the informant or any person authorised by him at the time of hearing of the bail application of the person accused of the offences punishable under Sections 376(3) or 376AB or 376DA or 376DB of IPC.

The same is reaffirmed by the Hon'ble Apex Court vide Order dated 13.12.2024 in the case of **X Vs. The State of Uttar Pradesh** in Criminal Appeal No.5385 of 2024, holding that it is obligatory under Section 439(1A) CrPC, (i) to hear the informant or any person on his/her behalf with respect to bail application relating to offences under Sections 376(3) or 376AB or 376DA or 376DB and (ii) it is also mandatory under Section 15A(3) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, on the part of Special Public Prosecutor to inform the victim about the court proceedings, including bail proceedings with respect to offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

Corresponding to Section 439(1A) CrPC, Section 483(2) of BNSS obligates the presence of informant or any person on his/her behalf at the time of hearing the bail application with respect to offences under Sections 65 or 70(2) of BNS i.e., rape or gang-rape.

(e) <u>The factors to be taken into consideration in disposal of bail applications relating to the offences under IPC/BNS and other offences, excluding the offences under special enactments:</u>

With respect to the offences under Indian Penal Code (IPC)/Bharatiya Nyaya Sanhita (BNS), other than the offences covered under the special enactments mentioned in the above table, the factors of paramount consideration for grant/rejection of bail are (i) the severity of the offence, (ii) the stage of the investigation, leaving no room for the accused to interfere and (iii) the conduct of the accused not to tamper the witnesses and to appear before the court in the later stage for trial of the case i.e., chances of the accused fleeing from the process of the court, in addition to other similar factors.

The three Judges Bench of Hon'ble Apex Court in the case of **The State Vs. Captain Jagjit Singh**, reported as AIR 1962 SC 253, setting aside the bail granted by the Hon'ble High Court, held that the two aspects of the the possibility of accused not fleeing from the jurisdiction of the court and the trial of the case may take considerable time are not the only aspects on which bail can be granted, enunciated that various other considerations, such as,

(i) nature and seriousness, of the offence,

(ii) the character of the evidence,

(iii) circumstances which are peculiar to the accused,

(iv) reasonable possibility of the presence of the accused at the trial,

(v) reasonable apprehension of witnesses being tampered with,

(vi) the larger interests of the public or the State and

(vii) similar other considerations to be taken into consideration while granting bail in non-bailable case.

The Hon'ble Supreme Court reaffirmed the above aspects in the case of **Gurcharan Singh & Ors Vs. State (Delhi Administration)**, reported as AIR 1978 SC 179.

Later, in 2001 the Hon'ble Apex Court in the case of **Prahlad Singh Bhati Vs. N.C.T., Delhi & Anr,** reported as (2001) 4 SCC 280, articulated the following aspects to be kept in mind while granting the bail,

(i) the nature of accusations,

(ii) the nature of evidence in support thereof,

(iii) the severity of the punishment which conviction will entail,

(iv) the character, behaviour, means and standing of the accused,

(v) circumstances which are peculiar to the accused,

(vi) reasonable possibility of securing the presence of the accused at the trial,

(vii) reasonable apprehension of the witnesses being tampered with,

(viii) the larger interests of the public or State and similar other considerations.

Further, the Hon'ble Apex Court has emphasized that the words used by the legislation to be taken into consideration for granting the bail are "reasonable grounds for believing" instead of "the evidence", which means that the satisfaction of the court dealing with the grant to the extent whether there is a genuine case against the accused and the prosecution would be able to produce prima facie evidence in support of the charge or not, suffice and it is not excepted at this stage to have the evidence establishing the guilt of the accused beyond reasonable doubt.

Nearing to a decade later, the Hon'ble Apex Court in the case of **Prasanta Kumar Sarkar Vs. Ashis Chatterjee & Anr,** reported as AIR 2011 SC 274, reiterating the aspects to be taken into consideration in granting bail,

as held in Prahlad Singh Bhati and other cases, has set out the factors to be borne in mind while considering an application for bail and they are as follows:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.

In the recent years, the Hon'ble Apex Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation and Another,** reported as (2022) 10 SCC 51, in its elaborative judgment on bail jurisprudence, evaluated the factors to be taken into consideration in determining the possibility of fleeing of the accused from justice and that forms consideration for grant of bail, and they are:

(i) The length of his residence in the community,

(ii) his employment status, history and his financial condition,

(iii) his family ties and relationships,

(iv) his reputation, character and monetary condition,

(v) his prior criminal record including any record of prior release on recognizance or on bail,

(vi) the identity of responsible members of the community who would vouch for his reliability,

(vii) the nature of the offence charged and the apparent probability of conviction and the likely sentence insofar as these factors are relevant to the risk of non-appearance, and

(viii) any other factors indicating the ties of the accused to the community or bearing on the risk of willful failure to appear.

It is mentioned even at the cost of repetition, that to ensure compliance of the above directions, the Hon'ble High Court of Andhra Pradesh issued **Circular No.10/2023, vide ROC.No.99/SO/2023, dated 19.06.2023**.

Of the latest, in the case of **State of Karnataka Vs. Sri Darshan etc.,** in Criminal Appeal Nos.3528 to 3534 of 2025, dated 14.08.2025, filed seeking to set aside the bail granted to the accused, the Hon'ble Supreme Court reiterating the settled principles laid in the cases of Prahlad Singh Bhati, Prasant Kumar Sarkar, Abdul Basit, Gurcharan Singh & Others, Ram Govind Upadhyay and other cases, has laid down the following principles for grant of bail.

(i) Prima Facie Case – At the bail stage, the Court must only be satisfied that there is prima facie material to support the charge; it should not conduct a mini-trial or evaluate evidence in detail,

(ii) Nature and Gravity of Offence – The seriousness of the crime (here, premeditated murder with conspiracy under Sections 302, 364, 120B IPC, etc.) is a vital consideration. More heinous the offence, stronger the reasons required for granting bail,

(iii) Severity of Punishment – The potential punishment if convicted (death or life imprisonment for murder) weighs against granting bail,

(iv) Likelihood of Misuse of Liberty – The Court must assess whether the accused is likely to tamper with evidence, threaten witnesses, or obstruct justice,

(v) Position and Influence of the Accused – Where an accused wields power, celebrity status, or a large following (as in Darshan's case), risk of intimidation or undue influence is higher,

(vi) Apprehension of Witness Tampering – Reasonable fear of influencing or threatening prosecution witnesses militates against grant of bail,

(vii) Medical Bail – Bail on health grounds requires *independent medical opinion* (preferably by a board). Vague or unsupported medical claims are insufficient,

(viii) Procedural Lapses – Delay or irregularity in furnishing written grounds of arrest is not, by itself, a ground for bail unless prejudice is shown,

(ix) Balancing Liberty and Societal Interest – Personal liberty (Article 21) is important, but it is not absolute. In heinous crimes, *the cry of society for justice* and preservation of rule of law can override liberty claims and

(x) No Mechanical Grant – Bail cannot be given casually, mechanically, or on speculative grounds like possible trial delay.

And, allowed the appeals by setting aside the order of the Hon'ble High Court of Karnataka granting bail to the accused therein.

(f) <u>The factors to be taken into consideration with respect to the offences under The Narcotic Drugs and Psychotropic Substances Act, 1985, The Prevention of Money-Laundering Act, 2002 and The Unlawful Activities (Prevention) Act, 1967:</u>

As the aspects to be taken into consideration while dealing with bails under the three special enactments, Narcotic Drugs and Psychotropic Substances Act (NDPS Act), Prevention of Money-Laundering Act (PMLA) and Unlawful Activities (Prevention) Act (UAPA), are similar in nature, they shall be dealt under common sub-heading. The relevant provisions under the respective special acts embodies the conditions to be taken into consideration

while considering the bail application, in addition to the aspects that are applicable with respect to other offences under IPC or BNS, as dealt above.

(i) As per the NDPS Act, Section 37 mandates that bail application of the person accused of the offences punishable under Sections 19 or 24 or 27A of NDPS Act opportunity has to be given to the Public Prosecutor to oppose the application for release of the accused and when the Public Prosecutor opposes the application, bail shall be granted when the court is satisfied that there is reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail.

(ii) Likewise, Section 45 of PMLA Act stipulates that all the offences under PMLA Act are non-bailable and imposes similar conditions in respect to all the offences under the PMLA Act. However, the Proviso relaxes the stringent conditions to the accused when the accused is under the age of sixteen years or is a woman or is sick or infirm and the amount of money involved in money-laundering is less than rupees one crore.

To comprehend the arena of Section 45 of PMLA, it is apt to refer to the judgment of Hon'ble Supreme Court of India in the case of **Prem Prakash Vs. Union Of India Through The Directorate of Enforcement** dated 28.08.2024 in Criminal Appeal No.5416 of 2024. The Hon'ble Apex Court held in the said judgment that the twin conditions under Section 45 of PMLA make the grant of bail more stringent, but not an absolute ban for grant of bail, and highlighted that the prosecution must establish that a criminal activity related to a scheduled offence has occurred, that the property in question has been derived or obtained from criminal activity and that the accused is involved in any process or activity connected with the proceeds of crime, to establish the case under PMLA and thereafter the burden shifts to the accused to disprove the presumption that the proceeds of crime are involved in money laundering, either by producing evidence or cross-examining prosecution witnesses to

demonstrate their lack of involvement, and if the accused succeeds, is entitled to bail.

(iii) Similarly, **(a)** Section 43D(5) of UAPA provides that any person accused of offence punishable under Chapters IV and VI of the UAPA i.e., punishment for Terrorist Activities and Terrorist Organizations respectively, be released on bail, unless the Public Prosecutor is given an opportunity of being heard and if on the perusal of the Case Diary or report under Section 173 of CrPC, if the court is of the opinion that there are reasonable grounds to believe that the accusation against the accused is prima facie true, the accused shall not be released,

(b) Section 43D(6) of UAPA specifies that the restrictions imposed on grant of bail under Section 43D(5), are in addition to the restrictions under CrPC and

(c) Section 43D(7) of UAPA stipulates that notwithstanding what is contained in Sections 43D(5) and 43D(6), if the accused is not an Indian citizen and has entered into the country unauthorizedly or illegally, bail shall not be granted except in exceptional circumstances for the reasons to be recorded in writing.

The reasons for imposing of stringent conditions with respect to the offences covered under the above special enactments, in addition to the general factors to be taken into consideration in grant or refusal of the bail to the accused, are the very nature of the offences and the seriousness of the offences involved in relation to their impact on the society and the security of the nation and citizens at large.

III. Cancellation of Bail by same court after bail is granted and when an Appellate/Revisional court may annul bail granted by the court at first instance:

Although the topics assigned do not include the concepts of cancellation of bail and when the appellate/revisional court may annul the bail granted by the court at first instance, however as such a situation falls under Section

437(5) and 439(2) of CrPC, corresponding to Sections 480(5) and 483(3) of BNSS, and the same issues arose for consideration before the Hon'ble Supreme Court in the very recent case of *State of Karnataka Vs. Sri Darshan,* cited supra, the same are included in this paper as they are also related to the topics assigned to me.

As per the said judgment of Hon'ble Supreme Court in the case of State of Karnataka Vs. Sri Darshan, cited supra, the principles to be taken into consideration for cancellation of bail are, if the accused,

(i) Misuses liberty granted by the Court,

(ii) Interferes with investigation or obstructs the judicial process,

(iii) Tampers with evidence or attempts to influence/intimidate witnesses,

(iv) Repeats similar offences or engages in further criminal activity,

(v) Violates bail conditions imposed by the Court and

(vi) Attempts to abscond or evade the judicial process.

Further, the Hon'ble Supreme Court in the said case of *State of Karnataka Vs. Sri Darshan,* has also laid down following principles for cancellation of bail by appellate/revisional courts.

(i) Perverse or Illegal Order – If the lower court granted bail mechanically, ignoring material facts, or based on irrelevant considerations (e.g., ignoring gravity of offence, strong evidence),

(ii) Non-application of Mind – If the bail order shows lack of judicial reasoning or casual approach,

(iii) Ignoring Settled Principles i.e., If the lower court failed to consider:

- seriousness of the crime,
- severity of punishment,

- likelihood of tampering with evidence,
- risk of absconding, or
- antecedents of the accused,

(iv) Violation of Legal Standards – For example, granting bail on vague medical grounds without proper medical board opinion,

(v) Misreading or Overlooking Evidence – If key materials like forensic reports, eyewitness testimony, or digital records are ignored at the bail stage and

(vi) Inconsistency with Law – If the order contradicts constitutional/statutory provisions or settled precedents on bail.

IV. <u>Is the provision under Section 437(6) CrPC, a mandate or a directory:</u>

With respect to the right of the accused to be released under Section 437(6) CrPC, when the case is triable by Magistrate for the offence non-bailable in nature and the trial is not concluded within six months, during the whole period of which the accused is in custody, to understand nature of the right to bail provided thereunder, it is quite appropriate to refer to the judgment of Hon'ble Apex Court in the case of **Subhelal @ Sushil Sahu Vs. The State Of Chhattisgarh,** dated 18.02.2025 in Criminal Appeal No.818/2025. The Hon'ble Apex Court held in the said judgment that Section 437(6) of CrPC cannot be considered as mandatory and does not confer an absolute and indefeasible right of bail in favour of the accused, but a liberal approach with sound and judicial exercise of discretion in favour of the accused should be given. So, it can be said that Section 437(6) CrPC is only directory in nature, but not a mandate.

V. <u>What is the binding force of the precedents on grant/rejection of bail:</u>

This is the culminating aspect which is very crucial and helps in understanding of the scope and arena of the judgments/orders of the

constitutional courts and their application to the cases on hand. Unlike other matters like suits etc., as very concept of bail philosophy is multi-folded, for the reason the facts of each case vary, and the the background from which the person accused of an offence hails from and the surrounding circumstances in which the person accused of an offence is placed, defers from person to person and are relative in nature, there cannot any straight jacket formula for application of the precedent. To understand it more vividly, it is just to refer the judgment of the Hon'ble Supreme Court in the case of **P. Chidambaram Vs. Directorate of Enforcement**, reported as (2020) 13 SCC 791. It is not out of place to extract the relevant portion at Paragraph No.23 of the said judgment, which is as follows:

> "23…….. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial."

Therefore, comprehending the philosophy of bail from the above precedents, as mere filing of the charge sheet or any isolated factor cannot be sole ground for grant/rejection of bail, the courts, taking into consideration the totality of the circumstances and to meet the object and purpose of pre-trial detention of the accused, have to exercise the discretionary power to grant or refuse bail to the accused, in judicious manner.

(iii) IMPOSITION OF CONDITIONS WHILE GRANTING BAIL

Section 437(3) of CrPC, the provision which deals with bail application, stipulates conditions to be imposed, however with respect to the offences punishable with imprisonment which may extend to seven years or more or

covered under Chapters VI, XVI or XVII of IPC, or abetment or conspiracy or attempt to commit any such offence. The conditions the court shall impose on the accused while granting bail with respect to the said offences covered under IPC, are as follows:

(a) that the accused shall attend in accordance with the conditions of the bond executed for his release,

(b) that the accused shall not commit an offence similar to the offence of which he is accused or suspected and

(c) that the accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

The conditions enumerated under Section 437(3) of CrPC are only illustrative, but not exhaustive and the Section also provides that the court may impose any such other conditions as it considers necessary, in the interests of justice.

Likewise, Section 480(3) of BNSS also embodies the conditions stipulated under Section 437(3) of CrPC, but for substitution of the offences under Chapters VI, VII and XVII of BNS in place of Chapters VI, XVI or XVII of IPC. In other words, it can be said that Section 480(3) of BNSS is replica of Section 437(3) of CrPC, but for the offences covered under the corresponding Chapters in BNS for the Chapters in IPC.

One of the common prerequisites for release of the accused is, execution of bond under Section 440 of CrPC, with or without sureties. The purport of insisting for execution of bond for release of the accused is, on assumption that the accused on threat of monetary loss he may suffer in the event of fleeing from the process of court, appears before the court to face the trial of the case.

On the aspect, what the amount of security should be and the factors to be taken into consideration in fixing the said amount, the judgment of Hon'ble Supreme Court in the case of **Hussainara Khatoon and others Vs. Home Secretary, State of Bihar,** reported as AIR 1979 SC 1360, is a guiding precedent. The Hon'ble Apex Court held in the said judgment that the object of executing security bond is to see that the accused does not flee or hide himself from trial and the Judicial Officer taking into consideration the nature of the offence, the weight of the evidence against the accused, the accused family ties, his employment, his financial resources, his character, his mental condition, his record of convictions, his length of residence in the community and his record of appearance at court proceedings, determine the amount of security bond to be executed for his due appearance before the court.

Further, to strike a balance between the power of the Magistrates/Special Courts/Sessions Courts to impose bail conditions and equally, to safeguard the rights of the persons accused of non-bailable offences lagging in prisons for the reason of imposing onerous and exorbitant conditions, it is just to refer to the judgment of the Hon'ble Supreme Court in **Re Policy strategy for grant of bail petitioner(s)** in Suo Moto Writ Petition (Criminal) No.4/2021, dated 31.01.2023, reported as 2023 LiveLaw (SC) 76. The Hon'ble court while evaluating the situations where the accused are lagging behind bars despite grant of bail, held that conditions for bail shall be imposed having regard to the economic and social status of the accused and in cases where delay would be caused for release of the accused/convict on the insisting upon local surety, it is suggested that in such cases, the courts may not impose the condition of local surety. For strict implementation of the directions of the Hon'ble Apex Court in the above cited judgment, Hon'ble High Court of Andhra Pradesh issued **Circular No.11/2023 vide ROC.No.503/SO/2021, dated 18.08.2023**.

Further, the Hon'ble Supreme Court in the case of **Munish Bhasin & Ors Vs. State (Government of N.C.T. of Delhi) & Anr.**, reported as (2009) 4 SCC 45, held that the court should not impose freakish or irrelevant conditions while granting bail and the conditions must be necessarily just and effective, but not harsh, onerous or excessive.

When the situation of the under trial prisoners/foreigners, with respect to the offences under NDPS Act, lagging in jails has come up before the Hon'ble Apex Court in the case of **Supreme Court Legal Aid Committee Vs. Union Of India (UOI) And Ors.,** reported as 1994(3) CRIMES 644 (SC), the Hon'ble Apex Court formulated conditions, which are neither mandatory nor derogatory of the powers of the Special Court to grant bail under Section 37 of NDPS Act. The said general conditions are also reiterated by the Hon'ble Supreme Court in the case of **Satender Kumar Antil**, cited supra. The relevant conditions are as follows:

> "15…….
>
> (i) the under trial accused entitled to be released on bail shall deposit his passport with the learned Judge of the concerned Special Court and if he does not hold a passport he shall file an affidavit to that effect in the form that may be prescribed by the learned Special Judge. In the latter case the learned Special Judge will, if he has reason to doubt the accuracy of the statement, write to the concerned Passport Officer to verify the statement and the Passport Officer shall verify his record and send a reply within three weeks. If he fails to reply within the said time, the learned Special Judge will be entitled to act on the statement of the under trial accused;
>
> (ii) the under trial accused shall on being released on bail present himself at the police station which has prosecuted him at least once in a month in the case of those covered under Clause (i), once in a fortnight in the case of those covered under Clause (ii) and once in a week in the case of those

covered by Clause (iii), unless leave of absence is obtained in advance from the concerned Special Judge;

(iii) the benefit of the direction in Clauses (ii) and (iii) shall not he available to those accused persons who are, in the opinion of the learned Special Judge, for reasons to be slated in writing, likely to tamper with evidence or influence the prosecution witnesses;

(iv) in the case of under trial accused who are foreigners, the Special Judge shall, besides impounding their passports, insist on a certificate of assurance from the Embassy/High Commission of the country to which the foreigner- accused belongs, that the said accused shall not leave the country and shall appear before the Special Court as and when required;

(v) the under trial accused shall not leave the area in relation to which the Special Court is constituted except with the permission of the learned Special Judge;

(vi) the under trial accused may furnish bail by depositing cash equal to the bail amount;

(vii) the Special Judge will be at liberty to cancel bail if any of the above conditions are violated or a cases for cancellation of bail is otherwise made out; and

(viii) after the release of the under trial accused pursuant to this order, the cases of those under trials who have not been released and are in jail will be accorded priority and the Special Court will proceed with them as provided in Section 309 of the Code."

With respect to imposition of conditions on the victim of a sexual offence while granting of bail to the person accused of sexual offence, the judgment of the Hon'ble Supreme Court in the case of **Aparna Bhat and Others Vs. The**

State Of Madhya Pradesh and Another, reported as AIR 2021 SC 1492, is a touch stone. The Hon'ble Apex Court after evaluating the plight of victim of a sexual offence, issued directions to be followed by the courts, while granting bail to the person accused of committing sexual offences against women. They are as follows:

> "44. Having regard to the foregoing discussion, it is hereby directed that henceforth:
>
> (a) Bail conditions should not mandate, require or permit contact between the accused and the victim. Such conditions should seek to protect the complainant from any further harassment by the accused;
>
> (b) Where circumstances exist for the court to believe that there might be a potential threat of harassment of the victim, or upon apprehension expressed, after calling for reports from the police, the nature of protection shall be separately considered and appropriate order made, in addition to a direction to the accused not to make any contact with the victim;
>
> (c) In all cases where bail is granted, the complainant should immediately be informed that the accused has been granted bail and copy of the bail order made over to him/her within two days;
>
> (d) Bail conditions and orders should avoid reflecting stereotypical or patriarchal notions about women and their place in society, and must strictly be in accordance with the requirements of the Cr.PC. In other words, discussion about the dress, behavior, or past "conduct" or "morals" of the prosecutrix, should not enter the verdict granting bail;
>
> (e) The courts while adjudicating cases involving gender related crimes, should not suggest or entertain any notions (or encourage any steps) towards compromises between the prosecutrix and the accused to get married, suggest or mandate mediation between the accused and the survivor, or any form of compromise as it is beyond their powers and jurisdiction;

(f) Sensitivity should be displayed at all times by judges, who should ensure that there is no traumatization of the prosecutrix, during the proceedings, or anything said during the arguments, and

(g) Judges especially should not use any words, spoken or written, that would undermine or shake the confidence of the survivor in the fairness or impartiality of the court."

Thus, the conditions as contemplated under Section 437(3) of CrPC/480(3) of BNSS and in the precedents referred above, are only illustrative, but not exhaustive and the court may impose conditions, however, just and reasonable, with the prime endeavour that the accused does not interfere with the investigation or tamper the witnesses or flee from the process of the court, hampering the very administration of the justice.

(IV) POWER TO MODIFY CONDITIONS OF BAIL

The relevant provision under CrPC which deals with modification or setting aside the conditions imposed while granting bail, is Section 439(1)(b) of CrPC. The same is as hereunder:

"439. Special powers of High Court or Court of Session regarding bail.
(1) A High Court or Court of Session may direct -

(a) …….

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified."

The corresponding provision in BNSS is Section 483(1)(b) and the content is replica of Section 439(1)(b) CrPC. On plain reading of Section 439(1)(b) of CrPC, it is understandable that the Sessions Court or the Hon'ble High Court is competent to modify or set aside the conditions imposed by the

Magistrate while granting bail to the accused. The analogy is that, the Magistrate cannot modify or set aside the conditions imposed while granting bail, however the Sessions Court is competent to set aside or modify or relax the conditions imposed by the Sessions Court and the accused need not necessarily approach the superior court i.e., the High Court to seek modification/relaxation of the conditions imposed by the Sessions Court. Further, the conspectus of the above is that the conditions imposed while granting bail by the superior court cannot be relaxed or modified or set aside by the court subordinate to it.

At this juncture, it is apposite to mention that the situation is different when it comes to violation of the conditions imposed by the superior courts and in the light of settled principles that the Magistrate/Special Court/Sessions Court is empowered to cancel the bail granted by the superior Courts, in supervening circumstances when the accused violates the bail conditions. The same is reinforced by the Hon'ble Supreme Court in its recent Order in Case of **State of Karnataka Vs. Vinay Rajasekharappa Kulakarni**, dated 06.06.2025 in SLP (Criminal) No.7865/2025.

Further, the Hon'ble Supreme Court in **Re Policy strategy for grant of bail petitioner(s)** in Suo Moto Writ Petition (Criminal) No.4/2021, dated 31.01.2023, reported as 2023 LiveLaw (SC) 76, while assessing the situations where the accused are not released despite grant of bail, issued directions to avoid delay in release of prisoners after getting bail, inter alia, that the Court which grants bail to an under trial prisoner/convict would be required to send a soft copy of the bail order by e-mail to the prisoner through the Jail Superintendent on the same day or the next day, if the accused is not released within a period of 7 days from the date of grant of bail, the Secretary, DLSA, with the help of the Probation Officers or the Para Legal Volunteers, prepare a report on the socio-economic conditions of the accused/convict to be placed

before the concerned Court with a request to relax the condition (s) of bail/surety, if the bail bonds are not furnished within one month from the date of grant bail, the concerned Court may suo moto take up the case and consider whether the conditions of bail require modification/relaxation and that in cases where delay would be caused for release of the accused/convict on the insisting upon local surety, it is suggested that in such cases, the courts may not impose the condition of local surety.

To ensure strict compliance of the directions of the Hon'ble Apex Court in the said judgment and for disposal of the applications for modification of bail conditions at the earliest, the Hon'ble High Court of Andhra Pradesh issued **Circular No.11/2023 vide ROC.No.503/SO/2021, dated 18.08.2023**.

Therefore, as the reasons for the mechanism that the order of the Magistrate with respect to modification/relaxation of the conditions imposed while granting bail shall be attended by the Sessions Court or the High Court and the conditions imposed by superior courts shall not be modified or set aside by courts inferior to it, is to maintain the hierarchy of courts, judicial propriety and discipline, and also that the orders of the Magistrate that deal with the Constitutional rights of the accused, are within the supervisory jurisdiction of High Court/Sessions Court, let the integrity and the propriety of the institution be held high to uphold the true functioning of the law of the land, the Constitution of India.

Xxx The End xxX