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# Default Bail : State Cannot Take Advantage Of Filing One Charge Sheet First And Seeking Time To File Supplementary Charge-sheets To Extend The Time Limit U/S 167(2)

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The Supreme Court observed that the time period for investigation specified under Section 167 of the Code of Criminal Procedure cannot be extended by seeking to file supplementary charge sheet qua UAPA offences.

The bench comprising **Justices Sanjay Kishan Kaul and R. Subhash Reddy**, while granting default bail to Fakhrey Alam, a person accused under Section 18 of the UAPA Act, reiterated that default bail under first proviso of Section 167(2) of the

Cr.P.C. is a fundamental right and not merely a statutory right.

The court noted that in this case, even within the 180 days period, the charge sheet/supplementary charge sheet under the UAPA Act was not filed and it was after a lapse of 211 days that this charge sheet had been filed.

“

***"We do not think that the State can take advantage of the fact that in one case there is one charge sheet and supplementary charge sheets are used to extend the time period in this manner by seeking to file the supplementary charge sheet qua the offences under the UAPA Act even beyond the period specified under Section 167 of the Cr.P.C beyond which default bail will be admissible, i.e., the period of 180 days. That period having expired and the charge sheet not having been filed qua those offences (albeit a supplementary charge sheet), we are of the view the appellant would be entitled to default bail in the aforesaid facts and circumstances."***, the court said.

The court added that since the consequences of the UAPA Act are drastic in punishment and in that context, default bail is held not to be a mere statutory right but part of the procedure established by law under Article 21 of the Constitution of India.

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***"We cannot lose sight of the fact that what was envisaged by the Legislature was that the investigation should be completed in 24 hours but practically that was never found feasible. It is in these circumstances that Section 167 of the Cr.P.C. provided for time period within which the investigation should be completed, depending upon the nature of offences. Since, liberty is a Constitutional right, time periods were specified in the default of which the accused will have a right to default bail, a valuable right,"*** the court added.

Referring to *Bikramjit Singh vs. State of Punjab* (2020) 10 SCC 616 (<https://www.livelaw.in/top-stories/subsequent-filing-of-chargesheet-does-not-extinguish-default-bail-right-164356>), the court observed:



***"We need only emphasize what is already observed in Bikramjit Singh case (supra) that default bail under first proviso of Section 167(2) of the Cr.P.C. is a fundamental right and not merely a statutory right as it is, a procedure established by law under Article 21 of the Constitution. Thus a fundamental right is granted to an accused person to be released on bail once the conditions of the first proviso to Section 167(2) of the Cr.P.C. are fulfilled. In fact in the majority judgment of this Court it has been held that an oral application for grant of default bail would suffice. "***

Yet another contention raised by the accused in this case was that the Chief Judicial Magistrate, Lucknow could not have granted 180 days for filing of the charge sheet as the jurisdiction in respect of offences under the UAPA Act, which cases are entrusted to NIA, vests only with the special courts and this aspect was no more res integra in view of judgment of this Court in the case of Bikramjit Singh vs. State of Punjab. The state, contended that the judgment in Bikramjit Singh's case (supra) was in the given situation prevalent in the State of Punjab, but on the other hand in State of Uttar Pradesh the competent Court was of the special Chief Judicial Magistrate and it is only recently now about a month back that special Courts had been notified. The court, agreed with the state's contention on this aspect and observed that the situation in the State of Uttar Pradesh is different and it is not as if there were any notified special courts in existence.



**Case: Fakhrey Alam vs. State of Uttar Pradesh [CrA 319 OF 2021]**

**Coram: Justices Sanjay Kishan Kaul and R. Subhash Reddy**

**Counsel: Sr. Adv S. Wasim A. Qadri, Md. Ali, Mohit Mishra , Sr. Adv V.K. Shukla**

**Citation: LL 2021 SC 165**

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([https://www.livelaw.in/pdf\\_upload/fakhrey-alam-vs-state-of-uttar-pradesh-ll-2021-sc-165-390633.pdf](https://www.livelaw.in/pdf_upload/fakhrey-alam-vs-state-of-uttar-pradesh-ll-2021-sc-165-390633.pdf))

REPORTABLE

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTIONCRIMINAL APPEAL NO. 319 OF 2021  
(arising out of SLP(CrI.) No. 6181/2020)

FAKHREY ALAM

Appellant(s)

VERSUS

THE STATE OF UTTAR PRADESH

Respondent(s)

## O R D E R

Leave granted.

An FIR bearing No. 04/2017 has been registered against the appellant-accused Fakhrey Alam under Section 420, 467, 468, 471 and 120-B, IPC and 3/25/30 of the Arms Act and under Section 18 of the UAPA Act, 1967.

The appellant was arrested on 08.03.2017 and on 03.06.2017, learned Court of Chief Judicial Magistrate, Lucknow granted a total of 180 days to the police for filing the charge sheet. The police filed charge sheet on 04.09.2017 under the aforesaid provisions, except under the UAPA Act as it was mandatory to obtain prosecution sanction from the State Government which had not been forthcoming till the date of filing of the charge sheet. Thus, the charge sheet states as under :

" That the accused are in Judicial Custody and the remand period of the accused Fakhrey Alam is completing today. Therefore, the Charge Sheet Page 1 / 7 .B IPC

Signature Not Verified  
Digitally signed by  
Charandeep Kaur  
Date: 2021.03.16  
19:02:45+05'30  
Reason: I am a judge

Tags

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Section 167 Cr.PC (<https://www.livelaw.in/tags/section-167-crpc>)

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