

Courts Should Inform Accused About Their Right To 'Default Bail' Once It Accrues: SC

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"Such knowledges-sharing by magistrates will thwart any dilatory tactics by the prosecution"

The Supreme Court has observed that Courts should inform the accused of the availability of their indefeasible right to avail of 'default bail' once it accrues to them.

The objects of Section 167(2) of the Code of Criminal Procedure are subsets of the overarching fundamental right guaranteed under Article 21, the bench comprising **Justices UU Lalit, Mohan M. Shantanagoudar and Vineet Saran** said in a judgment delivered on Monday. The bench also observed that if the Court deliberately does not decide the bail application but adjourns the case by granting time to the prosecution, it would be in violation of the legislative mandate.

The court said that provision of 'default bail' is for ensuring a fair trial, expeditious investigation and trial, and setting down a rationalized procedure that protects the interests of indigent sections of society. Referring to the decision in *Rakesh Kumar Paul v. State of Assam*, (2017) 15 SCC 67, the court observed:

"As a cautionary measure, the counsel for the accused as well as the magistrate ought to inform the accused of the availability of the indefeasible right under Section 167(2) once it accrues to him,

without any delay. This is especially where the accused is from an underprivileged section of society and is unlikely to have access to information about his legal rights. Such knowledge-sharing by magistrates will thwart any dilatory tactics by the prosecution and also ensure that the obligations spelled out under Article 21 of the Constitution and the Statement of Objects and Reasons of the CrPC are upheld."

The court also reiterated that the issuance of notice to the State on the application for default bail filed is only so that the Public Prosecutor can satisfy the Court that the prosecution has already obtained an order of extension of time from the Court; or that the challan has been filed in the designated Court before the expiry of the prescribed period; or that the prescribed period has actually not expired. The prosecution can accordingly urge the Court to refuse to grant bail on the alleged ground of default. The court said:

"Such issuance of notice would avoid the possibility of the accused obtaining default bail by deliberate or inadvertent suppression of certain facts and also guard against a multiplicity of proceedings. However, Public Prosecutors cannot be permitted to misuse the limited notice issued to them by the Court on bail applications filed under Section 167(2) by dragging on proceedings and filing subsequent applications/reports for the purpose of 'buying extra time' and facilitating filling up of lacunae in the investigation by the investigating agency."

The court also deprecated the practice of prosecutors filing additional complaint before the concerned court defeat the indefeasible right of the accused to be released on bail.

"If such a practice is allowed, the right under Section 167(2) would be rendered nugatory as the investigating officers could drag their heels till the time the accused exercises his right and conveniently files an additional complaint including the name of the accused as soon as the application for bail is taken up for disposal. Such complaint may be on flimsy grounds or motivated merely to keep the accused detained in custody....Irrespective of the seriousness of the offence and the reliability of the evidence available, filing additional complaints merely to circumvent the application for default bail is, in our view, an improper strategy."

Case: M. Ravindran vs. The Intelligence Officer, CRIMINAL APPEAL NO. 699 OF 2020

Coram: Justices Uday Umesh Lalit, Mohan M. Shantanagoudar and Vineet Saran

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