

[Home \(/\)](#) / [News Updates \(/news-updates\)](#) / [Indefeasible Right To 'Default...](#)

Indefeasible Right To 'Default Bail' U/S 167 (2) CrPC If Chargesheet Not Filed Within Stipulated Time: Allahabad High Court

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The **Allahabad High Court** has observed that an accused has an indefeasible right to 'default bail' under proviso to section 167(2) Cr.P.C. if the charge sheet isn't filed within the stipulated time.

This assertion came from the bench of **Justice Rajesh Singh Chauhan** while dealing with the bail application of a gang rape accused, against whom, the police failed to file a charge sheet before the Special Judge, POCSO Act, Lucknow within a

stipulated 90 days period.

Facts in brief

Significantly, he filed bail applications before the trial court (physically) and before the sessions court (online) indicating that after expiry of 90 days period no charge-sheet had been filed, therefore, it was prayed that the applicant may be granted bail under section 167(2) Cr.P.C. as 'default bail'.

It may be noted that the stipulated period of 90 days expired on April 14, 2021, and the abovesaid bail application was filed on April 22, 2021. Interestingly, on the same day, i.e., on April 22, the charge-sheet too, was filed before the trial court and the cognizance thereof had been taken.

Court's observations

At the outset, referring to the Apex Court's ruling in the case of *Bikramjit Singh vs The State Of Punjab* (Criminal Appeal No. 667 of 2020) (<https://www.livelaw.in/top-stories/subsequent-filing-of-chargesheet-does-not-extinguish-default-bail-right-164356>), the Court opined that the right of the accused under section 167(2), arises, if the charge-sheet has not been filed by the prosecution within stipulated period so indicated under section 167(1).

In *Bikramjit Singh* case (<https://www.livelaw.in/top-stories/subsequent-filing-of-chargesheet-does-not-extinguish-default-bail-right-164356>) (Supra), the Supreme Court had observed that the accused gets an indefeasible right to 'default bail' if he makes an application after the maximum period for investigation of an offence is over, and before a charge sheet is filed.

The right to default bail, Justice RF Nariman led bench said, is a fundamental right granted to an accused person to be released on bail once the conditions of the first proviso to Section 167(2) are fulfilled.

Also, in **Bikramjit Singh's case**, it was also observed that *even if the application for consideration of an order of being released on bail is posted before the court after some length of time, or even if the Magistrate refuses the application erroneously and the accused moves the higher forum for getting a formal order of being released on bail in the enforcement of his indefeasible right, then filing of challan at that stage will not take away the right of the accused.*

Further, the High Court also stressed that an application u/s 167(2) Cr.P.C. should be disposed of promptly and such application should have not been treated as if is a regular bail application filed by the applicant.

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"Had it been a regular bail application, such application should have been presented before the learned Sessions Court then it should be heard by the trial court which is a special court in the present case but so far as the issue of default bail is concerned, it should be decided by the learned trial court inasmuch as the charge-sheet is presented by the prosecution before the trial court," the Court further added.

Significantly, stressing that liberty guaranteed under chapter 3 of the Constitution of India may not be circumvented, ignored or violated by the learned trial court, the Court observed thus:

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"...if after the expiry of such mandatory period and till the filing of an appropriate application u/s 167(2) Cr.P.C. the charge-sheet has not been filed, even the learned trial court should not extend the remaining period and if any request on behalf of the accused applicant is made by his counsel even orally to the extent that he is ready to submit sureties/bail bonds as per the satisfaction of the court seeking default bail, the learned trial court may not refuse bail to the accused as the right of default bail emanates from Article 21 of the Constitution of India which guarantees right to life and personal liberty"

With this, the order dated June 7, 2021, passed by the Special Judge, POCSO Act / Additional Sessions Judge, Lucknow rejecting the bail application of the applicant u/s 167(2) Cr.P.C. was quashed and the trial court was directed to release the

present applicant on default bail u/s 167(2) Cr.P.C.

Case title- Varun Tiwari v. State of U.P.

Click Here To Download Order (https://www.livelaw.in/pdf_upload/default-bail-allahabad-hc-403737.pdf)

Read Order

Court No. - 14**Case :-** U/S 482/378/407 No. - 4064 of 2021**Applicant :-** Varun Tiwari**Opposite Party :-** State of U.P.**Counsel for Applicant :-** Arun Sinha, Ram Chandra Singh, Umang Agarwal**Counsel for Opposite Party :-** G.A.**Hon'ble Rajesh Singh Chauhan, J.**

1. Heard Sri Arun Sinha, learned counsel for the applicant and Sri Anurag Verma, learned AGA-I for the State.
2. The precise question for consideration in this petition is as to whether the accused has an indefeasible right to 'compulsive bail' i.e. 'default bail' under proviso to section 167(2) Cr.P.C. on the expiry of the period of 90 days, (or 60 days as the case may be), if the charge-sheet has not been filed within aforesaid stipulated time.
3. So as to answer this question some facts in brief of the case are required to be considered.
4. The present applicant is an accused in Sessions Trial No. 669/2021, Crime No. 23/2021, u/s 342, 376D, 372, 506 IPC, & section 5/6 POCSO Act, P.S. Mahanagar, District Lucknow. He was sent to judicial custody on 14.1.2021.
5. As per learned counsel for the applicant this is a case wherein the investigation s' and charge-sheet should have be, 167 Cr.P.C.

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Section 167(2) (<https://www.livelaw.in/tags/section-1672>)

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