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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

DEFAULT BAIL ; AS A RIGHT TO BAIL IN INDIAN PERSPECTIVE

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Default Bail ; As a Right to Bail in Indian perspective

Concept of Bail: - Bail literally means security, bond, payment and financial guarantee. Bail though being a legal term, it is used by all the people of the society.

The word Bail has been taken from an old French verb *bailer*, which means to give or to deliver. although another view is that it is a Latin terms "**bajulare**" which means to "bear a burden". the bonds in the sureties, as referred to in the above. Bail is a conditional release on liberty to an accused who ensures that the accused who or on behalf of whom undertake, is present on the trial.

Definition of bail: - In blacks law dictionary, Bail has been defined as a security such as cash or bond especially security required by a court for the release of a prisoner who must appear at a future date. The law lexicon defined, bail as the security for the appearance of the accused person on giving which he is released pending trial or investigation. Webster law dictionary defined, Bail ,a temporary release of a person in exchange for security given for the original appearance at a later hearing.

Right to bail: - According to Article 21 of the Indian Constitution, no person can be deprived of his life and personal security except according to the process of law. Arresting or detaining someone is a serious restriction on personal liberty guaranteed by the Constitution. An arrested person may be detained under the authority of a law for the purpose of detaining or detaining him to answer a criminal charge or to prevent charges of an offence. Arrest technically refers to the deprivation of liberty of a person by legal authority. Article 21 of the Indian Constitution protects citizens from arbitrary arrest or illegal detention.

Article 21¹ of the Constitution of India aims at restraining the executive from infringing on personal liberty in accordance with law and in accordance with its provisions. When the personal liberty of a person is taken away or affected, the legal process must be strictly followed. In case of deprivation of liberty, it is the responsibility of the Court to ensure that all legal safeguards are strictly followed.

In the case of Golaknath Vs State of Punjab² it was determined that fundamental rights are natural rights. Bail is not included as a fundamental right in the Indian Constitution, but it is enshrined in Article 21 as part of individual liberty due to judicial activism. The focus of judicial discretion in bail matters has always been Article 14, It should be based on the aspects of personal liberty and equality provided by Articles 19 and 21.

Meaning and nature of default bail: - The code has not used the term "default bail" in any provision. Default bail is a term of convenience evolved by lawyers and judges engaged in the administration of bail jurisdiction. Default bail simply means statutorily mandated bail that an accused under arrest/ custody is entitled to get in the event of the failure of an investigating officer to complete the investigation within the time limit prescribed by law. Since this type of bail is granted for the reason of the default in filing a charge sheet within the stipulated time limit, it is popularly known as the default bail. It is also known as compulsory bail.

Object of Default Bail: - The object of enactment of such provision in section 167 Cr.P.C. is to have control over a lethargic and delayed investigation, especially keeping a person in custody. It is a specific direction to the police to collect material without any delay. If sufficient incriminating material is not collected against the accused with the crime alleged, it safeguard the interest of such accused person. If material is collected and reported to the magistrate within the stipulated period in the form of charge sheet, then the provision to section 167 extinguishes the right of being released on default bail and an accused can claim Bail only on merits. The right of bail granted to remanded prisoners at the end of 90 days or 60 days as the case may be doesn't have the effect of rendering the subsequent period of detention ipso facto illegal or unlawful.

Constitutional Provisions³: - The provisions of Article 22(2) of the Constitution of India are also relevant, according to Article 22(2) every person who is arrested and detained in custody shall be tried before the Magistrate's Court at the place of arrest. shall be produced before the nearest Magistrate within a period of 24 hours of such arrest, excluding the time necessary for

travel, and no such person shall be detained in custody for a period longer than the said period without the authority of the Magistrate.

Personal liberty is one of the cherished objects of the Indian constitution and deprivation of the same can be only in accordance with law and in conformity with the provisions thereof, as stipulated under Article 21 of the Constitution. When the law provides that the magistrate could authorise the detention of the accused in custody up to a maximum period as indicated in the provisions to sub-section 2 of section 167, any further detention beyond the period without filing of challan by the investigating Assistant gency would be a subterfuge and would not be in accordance with law and in conformity with the provisions of the criminal procedure code, and as such, could be violative of Article 21 of the constitution of India.

Rakesh Kumar Pal Vs State of Assam⁴ In this case Hon'ble Supreme Court said that when the investigation is not completed within 60 days or 90 days then the accused will be entitled to get default bail.

Hussainara Khatoon Vs Home Secretary State of Bihar⁵ In this case, the Supreme Court held that if an undertrial prisoner has been in prison for 90 days or 60 days, as the case may be, the trial by the Magistrate before making a judicial order for further custody The prisoner should be told that he is entitled to be released on bail.

Is entitled to be kept in custody for the purposes of investigation under section 57 for such time as is necessary for the purposes of the investigation and it may be for a maximum period of 24 hours. The combined effect of section 57 and section 167 is that the investigation under section 57 should be completed within a period of 24 hours. If the investigation is not completed within the said period, the officer-in-charge of the police station or the investigating officer, before a Magistrate having or without jurisdiction under section 167. The Magistrate may authorize the detention of the accused person otherwise than in police custody for a period beyond 15 days if he is satisfied that there are sufficient grounds for doing so, but such period shall not authorize custody for a period exceeding in the aggregate 60 days where the investigation relates to any other offence. is in It is illegal to keep the arrested person in custody in violation of the above provisions.

Right to default bail: - The provisions of bail are outlined in the Code of Criminal Procedure 1973. Bail protects the traditional right of liberty before the offense is determined, allowing unrestricted development of the defence. Bail is a type of trust that the court places in the accused, if it is found that the accused has broken that trust in any way or misused the liberty granted by the court, the beneficiary may lose the right to bail. When the investigation is not completed within the time limit of 24 hours prescribed by section 57 of the Code of Criminal Procedure 1973, the case is presented to the competent magistrate. The Magistrate has the power under Section 167(2) of the Code of Criminal Procedure to order the detention of an accused for a period not exceeding 15 days.

The Right to default bail under Section 167(2) of the Code of Criminal Procedure provides not only a statutory right but is also part of the procedure established by law under Article 21 of the Constitution of India.

The right to bail under proviso (a) to section 167(2) is absolute. It is a mandate of a legislature, not the discretion of a court. If the investigation does not take place before the period of 60 and 90 days prescribed under the Code of Criminal Procedure, 1973 i.e. the investigating agency fails to file the charge sheet, as the case may be, the accused from custody should be released on bail. But at that stage But if the merits of the case are not examined, then in fact the Magistrate has no power to remand the accused beyond the prescribed period of 90 and 60 days and he should be released on bail and after furnishing the necessary surety bond. For that he should be informed about it.

Special cases:- The limit of 60 or 90 days is only for ordinary criminal law. The special law gives more leeway to the police to complete the investigation.

A:- In the Narcotic Drugs and Psychotropic Substances Act, 1985 the period is 180 days which can be extended up to one year.

B:- In the Unlawful Activities (Prevention) Act 1967, the default limit is only 90 days which can be extended by another 90 days.

C :- This extension can be granted only on a report of the Public Prosecutor indicating the progress made in the investigation and the reasons for the continued detention of the accused.

D:- These provisions show that extension of time is not automatic but requires a judicial order.

Other types of bail in India are: -

- A- Regular bail:-** It is a direction given by the court (any court within the country) to release a person who is already arrested and in police custody. A person can apply for such bail under sections 437 and 439 of the Code of Criminal Procedure, 1973.
- B- Interim Bail:-** Bail granted by the court for a temporary and short period till the application seeking anticipatory bail or regular bail is pending before the court.
- C- Anticipatory Bail :-** An order issued to release a person on bail even before he is arrested. In such a situation, there is a possibility of arrest and the person cannot be arrested if he is granted bail. For such bail, a person can apply to the Sessions Court and the High Court under section 438 of the Code of Criminal Procedure.

Underlying principle;- Ordinarily the right to bail in case of default by the investigating agency is considered to be an irrevocable right, but it should be exercised at the appropriate time. Default bail irrespective of the nature of the offence:-

- A-** Bail is a right,
- B-** The prescribed period within which the charge sheet is to be filed, starts from the day the accused is taken on remand for the first time.
- C-** Under Section 173 of the Code of Criminal Procedure, the police officer after completion of investigation of an offence is bound to submit a report, this report is colloquially known as charge sheet.

Judicial outreach: -

In the case of Manju Mazumdar Vs State of Bihar⁷ the Hon'ble Supreme Court held that if the accused is ready to furnish bail and submits a bail application, he should be released on bail on expiry of the period.

In the case of Vikramjeet Singh v. State of Punjab⁸ the Supreme Court held that if the accused makes an application for bail after the maximum period for investigation of an offence has expired and before the charge sheet is filed, he gets an indispensable right of default bail.

Fakhre Alam vs. State of Uttar Pradesh⁹ In this case, a three-judge bench of the Hon'ble Supreme Court had made important remarks regarding the default bail. In which the Court said that it is not the only statutory right under the first proviso to Section 167(2) of the Code of Criminal Procedure, but it is also part of the legal process under Article 21 of the Constitution, the Court also said that Section 167(2) It is a fundamental right of the accused to be released on bail

Ritu chhabaria versus union of India¹⁰ In this matter a to judge bench of the supreme court held that default bail or statutory bail under the code of criminal procedure was " a fundamental right directly following from article 21 of the Constitution of India." The court went on to decry the practice of investigative agencies filling incomplete charge sheets purely with a view to defeating the right to default bail, and held in particular that "without completing the investigation of a case, a charge sheet or prosecution complaint cannot be filled by an investigating agency only to deprive and arrested accused of his right to default bail under section 167 (2) of the criminal procedure code. Such a charge sheet, if filled by an investigation authority without first completing the investigation, would not extinguish the right to default bail under section 167(2) Cr.p.c.

Conclusion: - Section 167(2) of the Code of Criminal Procedure, 1973 provides for "default bail" and allows an accused person to be released on bail, if the investigation against the accused fails within the prescribed time limit of 60 / 90 days as the case may be. Whatever it is, is not accomplished within. This section also ensures that the investigation should be completed within the prescribed period. Section 167(2) of the Code provides that the accused person should be released on bail, if he is ready for bail. Personal liberty is of utmost importance in our constitutional system and Article 21 of the Constitution. The law of the land and the Hon'ble Higher Courts have tried to intervene in various cases and have also laid down some guidelines to be followed regarding bail, but not much has happened regarding bail. The bail system should be reviewed keeping in view the socio-economic condition of the majority of the population of our country and the overcrowding of prisoners in the jails. While granting bail, the court should also take into account the socio-economic status of the accused and take a compassionate attitude towards them.

References:-

- (1) Constitution Of India (M.P.Jain).
- (2) AIR 1967 SC 1643.
- (3) Constitution (J.N.Panday)
- (4) SLP 2009/2017.
- (5) AIR 1979 SC 1196.
- (6) Cr.p.c,1973(N.V.Paranjapey).
- (7) AIR 1910 SC 847.
- (8) 2020.
- (9) March 15, 2023.
- (10) 26 April,2023