

Police Remand, Judicial Remand & Default Bail

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Article 22 Constitution of India

- Article 22(2) of the constitution of India provides that any person arrested and detained in custody must be
 - produced before the nearest magistrate within 24 hours of his arrest and
 - no person can be detained beyond the period of 24 hours without the authority of the magistrate.

Sec. 57 Cr.P.C.

(Code of Criminal Procedure, 1973)

- No police officer shall detain in custody a person arrested
 - without warrant for a longer period than under all the circumstances of the case is reasonable, and
- such period shall not,
 - in the absence of a special order of a Magistrate under section 167, exceed twenty- four hours
 - exclusive of the time necessary for the journey from the place of arrest to the Magistrate' s Court.


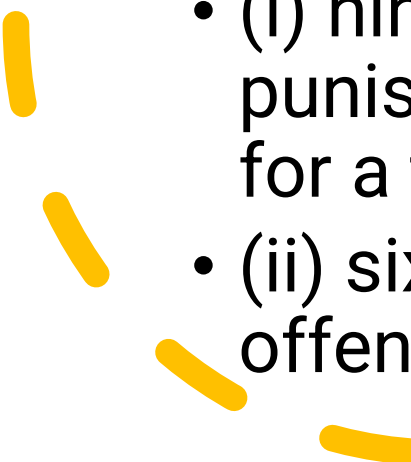
Sec. 167 Cr.P.C.

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

- Whenever any person is arrested and detained in custody, and
 - it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and
 - there are grounds for believing that the accusation or information is well founded,
 - the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall
 - forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary as prescribed relating to the case, and
 - shall at the same time forward the accused to such Magistrate.

Sec. 167 Cr.P.C.

- 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-**

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- the Magistrate may authorise the detention of the accused person,
 - otherwise than in 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 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,
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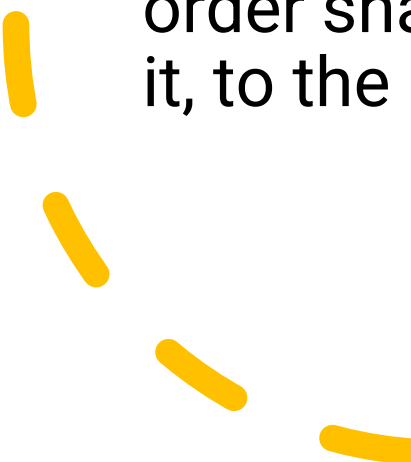
Default Bail

- On the expiry of the 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 subsection shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter.

Conditions for Detention

- No Magistrate shall authorise detention of the accused in custody of the police
 - 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.
- 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.

- 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.
- In case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution.]
- The officer in charge of the police station or the police officer making the investigation, if he is not below the rank of a sub-inspector, may, where a Judicial Magistrate is not available,
 - transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred,
 - a copy of the entry in the diary hereinafter prescribed relating to the case, and
 - shall, at the same time, forward the accused to such Executive Magistrate, and
 - thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where no order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub-section, shall be taken into account in computing the period.

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- Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or the police officer making the investigation, as the case may be.
 - A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.
 - Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.

Sec. 209 Cr.P.C.
Commitment of case to
Court of Session when
offence is triable
exclusively by it

Judicial Remand

- When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall--
 - commit, after complying with the provisions of section 207 or section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail,
 - remand the accused to custody until such commitment has been made;
- subject to the provisions of this Code relating to bail,
 - **remand the accused to custody during, and until the conclusion of, the trial.**

Sec.309 Cr.P.C.

Power to postpone or adjourn proceedings

- If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit,
 - **for such time as it considers reasonable, and may by a warrant remand the accused if in custody:**
- Provided that no Magistrate shall remand an accused person to custody under this section
 - **for a term exceeding fifteen days at a time:**

24 Hrs.: Purpose

- It was held in the case of Mohd. Suleman v King Emperor (1925-26) 30 CWN 985, 987
- that the right to be brought before a magistrate
- within a period of not more than 24 hours of arrest has been created with a view-
 1. To prevent arrest and detention for the purpose of extracting confessions or as a means of compelling people to give information.
 2. To prevent police stations being used as though they were prisons
 3. To afford an early recourse to a judicial officer independent of the police on all questions of bail or discharge.

State Rep. by
Inspector of
Police and Ors.
vs.
N.M.T. Joy
Immaculate

(05.05.2004 - SC) : MANU/SC/0448/2004

- Section 167 Cr.P.C. empowers a Judicial Magistrate to authorise the detention of an accused in the custody of police.
- Section 209 Cr.P.C. confers power upon a Magistrate to remand an accused to custody until the case has been committed to the Court of Sessions and also until the conclusion of the trial.
- Section 309 Cr.P.C. confers power upon a Court to remand all accused to custody after taking cognizance of an offence or during commencement of trial when it finds it necessary to adjourn the enquiry or trial.
- The order of remand has no bearing on the proceedings of the trial itself nor it can have any effect on the ultimate decision of the case.
- If an order of remand is found to be illegal, it cannot result in acquittal of the accused or in termination of proceedings.
- A remand order cannot affect the progress of the trial or its decision in any manner.
- Therefore, applying the test laid down in Madhu Limaye's case (supra), it cannot be categorised even as an "intermediate order".
- The order is, therefore, a pure and simple interlocutory order and in view of the bar created by Sub-section (2) of Section 397 Cr.P.C., a revision against the said order is not maintainable.

R.K. Nabachandra Singh
vs.
Manipur Administration
(01.08.1963 - GUHC) : MANU/GH/0013/1963

- When the petitioner was arrested the Police Officer knew that he cannot complete his investigation within 24 hours, in such a case, Section 167(1), Cr.P.C. provides for the transmission forthwith of a copy of the entries in the Police Diary relating to the case and for the production of the accused before such Magistrate.
 - Special emphasis has to be laid on the words "forthwith" in Section 167(1).
- The Criminal Procedure Code does not authorise detention by the police for 24 hours after the arrest.
 - A Police Officer making an arrest without warrant shall, without unnecessary delay take or send the person arrested before a Magistrate.
 - No Police Officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under Section 167, exceed twenty four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.
- Thus, the twenty-four hours prescribed is the outermost limit beyond which a person cannot be detained in Police custody.
- It is certainly not an authorization for the Police to detain him for twenty-four hours in their custody.
- It is only in a case where a Police Officer considers that the investigation can be completed within the period of twenty-four hours that such detention for twenty-four hours is permitted. This is clear from Section 167(1), Cr.P.C.

R.K. Nabachandra Singh vs. Manipur Administration

.....Continued.....

- The decision of State v. Ram Autar Chaudhry MANU/UP/0050/1955 : AIR 1955 All 138, in dealing with Section 61, Cri.P.C. states that Section 61 does not empower a Police Officer to keep an arrested person in custody
 - a minute longer than is necessary for the purpose of investigation and
 - it does not give him an absolute right to keep a person in custody till 24 hours.
 - On a construction of Sections 60, 61 and 167(1), Cri.P.C. it can be said that unless a Police Officer considers that he can complete the investigation within a period of 24 hours, it is his duty to produce the accused forthwith before the Magistrate.
- This is a matter relating to the liberty of the citizen and if no time is fixed by the Magistrate for the report, it means that the report must be submitted immediately.
- There seems to be a notion among the Police that it is their duty to prolong the detention of accused persons either in Police custody or in Jail custody and that in this matter the duty of the Police should always clash with the duty of the Court.
- It is better that Police disabuse themselves of this notion. It is time that the Police understood that citizens in independent India have a fundamental right of liberty and that it is as much the duty of the Police as that of the Courts to safeguard such right and that under no circumstances should the Police pray for detention of a person unless it is absolutely necessary for the purpose of the investigation of a case.

R.K. Nabachandra Singh vs. Manipur Administration

.....Continued.....

- When an arrested person is brought before a Magistrate, he has to decide whether
 - he should remand the person to Jail custody under Section 167(2) Cr.P.C. as requested by the Police and
 - at the same time he has to decide whether the request of the person for bail should be granted.
 - In order to decide the question of remand, he must be satisfied on a perusal of the entries in the Police Diary that there were grounds for believing that the accusation or information against the accused was well founded and
 - that the Police have exercised their right of arresting without warrant legally and further that it was necessary for the purpose of investigation that the accused should be remanded to custody.
 - Unless, the Magistrate is satisfied on all these points, he can- not remand the accused to Jail custody.
 - It. is for this purpose that Section 167(1) enjoins that a copy of the entries in the Police Diary should be transmitted to Court.
- The Court held that the Police and Magistrates shall
 - scrupulously observe the provisions of Section 167 Cr.P.C.,
 - that the copy of the Police Diary should be produced when the accused is brought to Court, and
 - that the Magistrate cannot remand the accused without satisfying himself that a remand was necessary on a perusal of the said diary.

Muhammad Suleman and
Ors.

vs.

Emperor

(11.08.1926 - CALHC) : MANU/WB/0282/1926

- The right to be taken out of Police custody by being brought before a Magistrate is a right given in the interest of, the accused.
- Arrest and detention can not be used to extract confession or as a means of compelling people to give information.
- It prevents Police Stations being used as though they were prisons - a purpose for which they are unsuitable.
- It affords an early recourse to a judicial officer independent of the Police on all questions of bail or discharge.

Sharifabai Mehmoob

vs.

Abdul Razak

(30.06.1960 - BOMHC) : MANU/MH/0008/1961

- The provisions of the Criminal Procedure Code, expressly require a police officer to produce the person whom he has arrested for commission of a cognizable offence before the Magistrate within 24 hours.
 - If he fails to do it, he will be certainly guilty of wrongful detention of the person whom he has arrested.
- But once he produces the arrested person before the Magistrate within 24 hours as required by law and the Magistrate after applying his mind to the application for remand, made by the police officer grants the application and extends the period of detention either for the full period applied for, or for any lesser time, the detention of the arrested person after the order of the remand made by the Magistrate would no longer be the detention by the police officer himself on his own.
- He would be merely carrying out the orders of the Magistrate and
 - the detention would be, in fact and in law, the detention under the Orders of the Magistrate.

State of Gujarat

vs.

Swami Amar Jyoti Shyam

(01.01.1988 - GUJHC) : MANU/GJ/0125/1988

- Every one accused of a crime should have free access to a Court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged,
- It is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry.
- In India as has been shown there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and
- It would be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court.
- The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function.

State of Gujarat vs. Swami Amar Jyoti ShyamContinued.....

- It is true that when the need for remand to police custody is made out. the Court should grant such remand and should facilitate proper and complete investigations.
 - But it cannot be said that an order of remand to police custody is to be granted as a matter of course.
- Section 167(3) makes it clear that Magistrate has to record reasons for granting remand to police custody.
 - It does not expressly provide that for refusing such custody, reasons shall be recorded.
- This is an indication that though investigating agency is to investigate into cognizable offence without any interference from judiciary,
 - it does not mean that whenever request for police remand is made, it is to be granted.
- The police has to make out a case that the custody of the accused with the police is necessary for further investigation.

Tarsem Kumar vs. The State

(21.04.1975 - DELHC) : MANU/DE/0250/1975

- Sub-section (2) deals with the period of detention which can be authorised by the Magistrate and has no concern with the period for which the accused can be detained by a Police-Officer without the authority of a Magistrate.
- Under Section 57 a Police Officer can detain an accused for a period of twenty-four hours as well as for the time which may be necessary for the journey from the place of arrest to the Magistrate's court.
 - This journey may in some cases, take a long time depending upon the circumstances. All this period of detention does not need any authorization by the Magistrate.
- It is only when the period for which a Police Officer can detain under Section 57 of the Code expires that he needs authorization of a Magistrate for further detention.
- The total authorization, which can be made for police custody by the Magistrate, is not to exceed fifteen days.
 - The words "in the whole" - have been used with reference to the context that the Magistrate may "from time to time" authorise the detention of the accused in police custody and they have no reference to the period of detention during which a police officer can detain the accused under Section 57 of the Code.
- Similarly when the proviso (a) to Sub-section (2) refers to "a total period of sixty days", it relates to the period of detention authorized by the Magistrate in police custody as well as the custody other than police custody,
- Thus, while computing the total period of sixty days, referred to in proviso (a) to Sub-section (2) of Section 167, the period of detention under Section 57 of the Code has to be excluded.

Chaganti Satyanarayana
and Ors.

vs.

State of Andhra Pradesh

(08.05.1986 - SC) : MANU/SC/0165/1986

- The right of bail granted to remand prisoners at the end of 90 days or 60 days as the case may be does not have the effect of rendering the subsequent period of detention ipso facto illegal or unlawful.
- This is evident from the fact that the right to bail conferred under the proviso is subject to the condition that the accused in custody should furnish bail.
- Explanation 1 has been expressly provided and the Explanation obligates the accused being detained in custody in spite of the expiry of the prescribed period of 90 days or 60 days as the case may be
 - so long as he does not furnish bail.
- It will thus be seen that the anxiety of the Legislature to secure to the remand prisoners their release from custody is circumscribed by its concern in equal measure to safeguard the interests of the State as well.

Chaganti Satyanarayana and Ors. vs. State of Andhra PradeshContinued.....

- On a reading of the Sub-sections (1) and (2) it may be seen that Sub-section (1) is a mandatory provision governing what a police officer should do when a person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of 24 hours fixed by Section 57.
- Sub-section (2) on the other hand pertains to the powers of remand available to a Magistrate and the manner in which such powers should be exercised.
- The terms of Sub-section (1) of Section 167 have to be read in conjunction with Section 57.
- Section 57 interdicts a police officer from keeping in custody a person without warrant for a longer period than 24 hours without production before a Magistrate, subject to the exception that the time taken for performing the journey from the place of arrest to the Magistrate's Court can be excluded from the prescribed period of 24 hours.
- Since Sub-section (1) provides that if that investigation cannot be completed within the period of 24 hours fixed by Section 57 the accused has to be forwarded to the Magistrate along with the entries in the Diary, it follows that a police officer is entitled to keep an arrested person in custody for a maximum period of 24 hours for purposes of investigation.
- The resultant position is that the initial period of custody of an arrested person till he is produced before a Magistrate is neither referable to nor in pursuance of an order of remand passed by a Magistrate.
- In fact the powers of remand given to a Magistrate become exercisable only after an accused is produced before him in terms of Sub-section (1) of Section 167.

Chaganti Satyanarayana and Ors. vs. State of Andhra PradeshContinued.....

- This sub-section empowers the Magistrate before whom an accused is produced for purpose of remand, whether he has jurisdiction or not to try the case, to order the detention of the accused, either in police custody or in judicial custody, for a term not exceeding 15 days in the whole.
- The initial order of remand is to be made with reference to the date of arrest then the order will have retrospective coverage for the period of custody prior to the production of the accused before the Magistrate, i.e. the period of 24 hours' custody which a police officer is entitled to have under Section 57 besides the time taken for the journey. Such a construction will not only be in discord with the terms of Section 57 but will also be at variance with the terms of Sub-section (2) itself.
- The operative words in Sub-section (2) viz. "authorise the detention of the accused ... for a term not exceeding 15 days in the whole" will have to be read differently in so far as the first order of remand is concerned so as to read as "for a term not exceeding 15 days in the whole from the date of arrest".
- This would necessitate the adding of more words to the section than what the Legislature has provided.
- Another anomaly that would occur is that while Sub-section (2) empowers the Magistrate to order the detention of an accused "in such custody as such Magistrate thinks fit, for a term not exceeding 15 days in the whole" the Magistrate will be disentitled to placing an accused in police custody for a full period of 15 days or in judicial custody for a full period of 15 days if the period of custody is to be reckoned from the date of arrest because the period of custody prior to the production of the accused will have to be excluded from the total period of 15 days.

Chaganti Satyanarayana and Ors. vs. State of Andhra PradeshContinued.....

- The words used in proviso (a) are "no Magistrate shall authorise the detention of the accused person in custody", "under this paragraph", "for a total period exceeding i.e. 90 days/60 days".
- Detention can be authorised by the Magistrate only from the time the order of remand is passed.
- The earlier period when the accused is in the custody of a police officer in exercise of his powers under Section 57 cannot constitute detention pursuant to an authorisation issued by the Magistrate.
- It, therefore, stands to reason that the total period of 90 days or 60 days can begin to run only from the date of order of remand.

Default Bail

Bikramjit Singh vs. The
State of Punjab

(12.10.2020 - SC) : MANU/SC/0749/2020

- Before the NIA Act was enacted, offences under the UAPA were of two kinds-those with a maximum imprisonment of over 7 years, and those with a maximum imprisonment of 7 years and under.
- Under the Code as applicable to offences against other laws, offences having a maximum sentence of 7 years and under are triable by the Magistrate's Courts, whereas offences having a maximum sentence of above 7 years are triable by Courts of Sessions.
- This Scheme has been completely done away with by the 2008 Act as all scheduled offences i.e. all offences under the UAPA, whether investigated by the National Investigation Agency or by the investigating agencies of the State Government, are to be tried exclusively by Special Courts set up under that Act.
- In the absence of any designated Court by notification issued by either the Central Government or the State Government, the fall back is upon the Court of Sessions alone.
- Thus, under the aforesaid Scheme what becomes clear is that so far as all offences under the UAPA are concerned, the Magistrate's jurisdiction to extend time under the first proviso in Section 43-D(2)(b) is non-existent, "the Court" being either a Sessions Court, in the absence of a notification specifying a Special Court, or the Special Court itself.

Default Bail

Bikramjit Singh vs. The State of Punjab

....Continued....

- Once the maximum period for investigation of an offence is over, under the first proviso (a) to Section 167(2), the Accused shall be released on bail, this being an indefeasible right granted by the Code.
- There is yet another obligation also which is cast on the court and that is to inform the Accused of his right of being released on bail and enable him to make an application in that behalf.
- The right to bail Under Section 167(2) proviso (a) thereto is absolute.
- It is a legislative command and not court's discretion.
- If the investigating agency fails to file charge-sheet before the expiry of 90/60 days, as the case may be, the Accused in custody should be released on bail.
- But at that stage, merits of the case are not to be examined. Not at all.
- In fact, the Magistrate has no power to remand a person beyond the stipulated period of 90/60 days. He must pass an order of bail and communicate the same to the Accused to furnish the requisite bail bonds.
 - (Aslam Babalal Desai v. State of Maharashtra [MANU/SC/0001/1993 : (1992) 4 SCC 272 : 1992 SCC (Cri.) 870 : AIR 1993 SC 1])
 - Rajnikant Jivanlal Patel v. Intelligence Officer, Narcotic Control Bureau, New Delhi [MANU/SC/0440/1989 : (1989) 3 SCC 532 : 1989 SCC (Cri.) 612 : AIR 1990 SC 71]
 - (Hussainara Khatoon case [Hussainara Khatoon v. Home Secy., State of Bihar, MANU/SC/0121/1979 : (1980) 1 SCC 98 : 1980 SCC (Cri.) 40 : AIR 1979 SC 1369]).

Default Bail

Bikramjit Singh vs. The State of Punjab

....Continued....

- On the expiry of the period during which investigation is required to be completed under Section 20(4) TADA read with Section 167 of the Code, the court must release the Accused on bail the application by accused.
- The court held that an Accused is required to make an application if he wishes to be released on bail on account of the 'default' of the investigating/prosecuting agency and
- Once such an application is made, the court should issue a notice to the public prosecutor
 - who may either show that the prosecution has obtained the order for extension for completion of investigation from the court or that the challan has been filed in the Designated Court before the expiry of the prescribed period or even that the prescribed period has actually not expired and thus resist the grant of bail on the alleged ground of 'default'.
 - The issuance of notice would avoid the possibility of an Accused obtaining an order of bail under the 'default' Clause by either deliberately or inadvertently concealing certain facts and would avoid multiplicity of proceedings.
 - It would, therefore, serve the ends of justice if both sides are heard on a petition for grant of bail on account of the prosecution's 'default'...
- No other condition like the gravity of the case, seriousness of the offence or character of the offender etc. can weigh with the court at that stage to refuse the grant of bail to an Accused Under Sub-section (4) of Section 20 TADA on account of the 'default' of the prosecution.

Default Bail

Bikramjit Singh vs. The State of Punjab
Uday Mohanlal Acharya v. State of Maharashtra
MANU/SC/0222/2001 : (2001) 5 SCC 453

- 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 enforcement of his indefeasible right,
- then filing of challan at that stage will not take away the right of the Accused.
- Personal liberty is one of the cherished objects of the Indian Constitution and deprivation of the same can only be 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 proviso to Sub-section (2) of Section 167, any further detention beyond the period without filing of a challan by the investigating agency 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.
- There is no provision in the Code of Criminal Procedure authorising detention of an Accused in custody after the expiry of the period indicated in proviso to Sub-section (2) of Section 167
 - excepting the contingency indicated in Explanation I, namely,
 - if the Accused does not furnish the bail.
- But so long as the Accused files an application and indicates in the application to offer bail on being released by appropriate orders of the court then the right of the Accused on being released on bail cannot be frustrated on the off chance of the Magistrate not being available and the matter not being moved, or that the Magistrate erroneously refuses to pass an order and the matter is moved to the higher forum and a challan is filed in interregnum.

Thank You!



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