

Default Bail as an Indefeasible Right: The Unresolved Chhabaria–Wadhwan Conflict across NDPS, PMLA and UAPA in the BNSS Era.

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ABSTRACT

Bail, in its ordinary sense, is a mechanism that balances the liberty of an accused person against the State's interest in ensuring a fair and effective investigation and trial. Indian Criminal Law recognizes several types of bail, including regular bail, anticipatory bail and interim bail, each governed by distinct considerations. Default bail is one such legal safeguard designed to protect individuals from remaining in detention for an extended period before the investigation is completed. This article analyses the conflicting judicial interpretations provided by the Supreme Court of India in *Ritu Chhabaria v. Union of India* and *Kapil Wadhwan v. Central Bureau of Investigation* which extends to NDPS Act, 1985, PMLA, 2002 and UAPA, 1967. The judgment of the *Chhabaria* case states that an incomplete charge sheet will never defeat the statutory right of default bail under Article 21 of the Constitution. However, the judgment of the *Wadhwan* case restricted the right of default bail by holding that investigation pending against other accused will not be relevant from a legal point of view. This resulted in a lot of confusion in trials and high courts of India. This article critically analyses judicial decisions, statutory provisions to examine the evolving jurisprudence on default bail and the conflicting interpretations adopted by the Supreme Court of India. The issue is partially clarified due to the decisions made by three-judge benches, but there is still ambiguity in this case. The issue of default bail has become confusing in India because of the divergent decisions in the cases of *Ritu Chhabaria* and *Kapil Wadhwan*. Even though the case of *Chhabaria* gives protection to liberty based on incomplete charge sheets, the decision in the case of *Wadhwan* limits this protection.

Keywords

Bail, Default Bail, Ritu Chhabaria, Kapil Wadhwan, Section 187 BNSS

Introduction

The doctrine of default bail under Section 187 of Bharatiya Nagarik Suraksha Sanhita, 2023 (Section 167 of the Code of Criminal Procedure) guarantees that citizens should not be placed under any unnecessary detention till their investigation is over. This right of the citizens is based on Article 21 of the Constitution, which does not allow any form of arbitrary arrest and detention of its citizens. The Bharatiya Nagarik Suraksha Sanhita, 2023 has taken the place of this provision under Section 187 of the Act. There are various special legislations like NDPS Act, 1985, PMLA, 2002 and UAPA, 1967 which have increased the duration of investigation as per

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the provisions of the legislation³. In the case of special legislations like this one, the investigating authorities find themselves unable to complete the process of investigation during the prescribed period. In such cases, courts have been repeatedly faced with the problem of the non-completion of the chargesheet, which prevents the statutory rights of the accused. The conflict of these two aspects has been brought out through two landmark judgments of the Supreme Court which were given quite close to each other.

According to the government, the judgment ignored a previous binding precedent decided by a co-equal Bench⁴. The Central government pointed out that there were serious practical difficulties due to this liberal interpretation of the rights of an accused. The Solicitor General Tushar Mehta said that this judgment has made a complete statement regarding the default bail rule. The Union government sought recall of this judgment through a case before a larger bench under the Constitution. A Bench presided over by Chief Justice Chandrachud, ordered the courts to decide the bail applications in their respective courts without considering *Chhabaria*. This decision brought confusion in the trial courts and High Courts all over the country. The Enforcement Directorate took a separate challenge against Kapil Wadhawan of DHFL fame⁵. A Bench ordered the Registry to present the papers before the Chief Justice for setting up a larger Bench.

On another separate bench, the matter was deliberated on whether the ongoing investigation into the accused persons precludes any claims of granting bail. Justices Trivedi and Mithal held that investigation pursuant to section 193 (9) of Bharatiya Nagari Suraksha Sanhita 2023 (section 173 (8) of Code of Criminal Procedure) does not have any bearing on the matter. Moreover, they clarified that once the chargesheets have been laid against the accused person, the statutory right to bail gets extinguished. It means that the scope of protection granted through the *Chhabaria* judgment is narrowed down due to the above verdict⁶. The said judgments can be cited as instances of varied judicial philosophies of freedom. Indeed, it seems that the opinions of the Supreme Court differ when it comes to granting default bail if there is a pending investigation. The above contradiction is particularly relevant for cases pertaining to NDPS Act 1985, PMLA, 2002 and UAPA, 1967. These particular statutes make the conditions more difficult for the grant of bail under sections 37 and 45, respectively. Thus, this additional hurdle created by chargesheets becomes another one for accused under such special laws. The advent of Bharatiya Nagarik Suraksha Sanhita, 2023, Section 187 has given hope for future judicial guidelines. The courts will be required to reconcile the contradictory judgments while granting default bail in renumbered provisions.

Objective

The main objective of this article is to focus on two conflicting Supreme Court judgments such as *Ritu Chhabaria* and *Kapil Wadhwan*. The article analyses the situations in which an accused person gets "default bail" (bail granted because the police took too long to file a chargesheet), especially in NDPS Act, 1985, PMLA, 2002, and UAPA, 1967, cases. It aims to discuss the confusion these two rulings caused and how courts should sort it out under the new Section 187 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

³ Varshney M. The Indian Journal for Research in Law and Management.

⁴ *Kapil Wadhawan v Central Bureau of Investigation* (Delhi High Court, 4 August 2025) BAIL APPLN 3640/2024.

⁵ DHFL case: Supreme Court dismisses ED appeal, says grant of default bail duration to include remand period' *The Hindu* (2023)

⁶ *Ritu Chhabaria v Union of India* (2023) Writ Petition (Criminal) No 60 of 2023 (SC)

Methodology

The research adopts a doctrinal method for examining the legal issue under investigation. Data gathering will include the use of reports of judgments available on the websites of SCC Online and the Manupatra database⁷. The other source of data collection will be current case studies on the websites of Live Law, Bar and Bench and India Legal. Governmental sources will include the text of Bharatiya Nagarik Suraksha Sanhita, 2023. Provisions of the NDPS Act, 1985, PMLA, 2002, and UAPA, 1967, have been studied with the help of the bare act and amendments thereof.

Default Bail as an Indefeasible Right under Article 21

The Indian courts have consistently held that the right to default bail as given under the article, emerged from Article 21 of the Constitution⁸. The Supreme Court has stated that the time limits set by statute were justiciable extensions of the right to liberty and not procedural niceties as was evident from the several judgments over decades aimed at preventing prolonged detention of citizens. The filing of the chargesheet under Section 187 of Bharatiya Nagarik Suraksha Sanhita, 2023 (Section 167 of the Code of Criminal Procedure) had to be done within a period of sixty or ninety days based on the gravity of the offence⁹. A failure to do so resulted in the accused person's indefeasible right to be released on bail. The right to liberty against arbitrary detention as enshrined in Article 21 of the Constitution has been the guiding light for the judiciary in several such cases concerning special laws. However, invoking this right has not been so simple where the investigating agencies filed chargesheets with incomplete or tentative provisions.

The Ritu Chabaria Verdict and Incomplete Chargesheets

Justices Krishna Murari and CT Ravikumar dealt with the issue of abuse of preliminary chargesheets that resulted in indefinite detention of the accused¹⁰. The court ruled that incomplete chargesheets would not be able to affect the default bail right of the accused. The use of incomplete chargesheets was viewed as the manipulation of the process whereby the constitutional rights of the accused are being bypassed. The court stated in its ruling that in order for the chargesheets to have cognizance, they need to be complete and not only procedural. This means that the investigating agency cannot just file incomplete chargesheets on time to deny the right to default bail to the accused. The interpretation of the case law offered a significant safeguard for the accused. Nevertheless, central agencies quickly raised their doubts regarding the feasibility of the ruling.

The Kapil Wadhawan Ruling and Narrowing of Default Bail

The question of whether pending investigation with regard to co-accused persons barred individual application for bail was considered by Justices Trivedi and Mithal. The Central Bureau of Investigation had filed an appeal against the orders made by the Delhi High Court

⁷ O P Jindal Global University, 'SCC Online' (JGU Global Library).

⁸ Avinash Krishna Goswami and Ritu Gautam, 'Right of Default Bail under Article 21'.

⁹ Pritha Lahiri, 'Computing the Time Period u/s 167(2)(a) CrPC'.

¹⁰ V Venkatesan, 'On Bail, Supreme Court's Recent Orders Point to a Distinct Lack of Clarity' *The Wire* (16 May 2023).

allowing the default bail of the Wadhawan brothers. The Bench decided that pending investigation under Section 193 (9) of Bharatiya Nagarik Suraksha Sanhita, 2023 (section 173 (8) of Code of Criminal Procedure) is irrelevant under law¹¹. Once cognizance is taken by the court of a case on the basis of the contents of the chargesheets, default bail automatically comes to an end from then on. The Bench held that the legal rights would come to an end immediately upon filing of any chargesheets without considering whether such chargesheets were complete or not. This judgment is in direct conflict with the broader interpretation of law laid down in the *Ritu Chhabaria* case. The Bench disallowed default bail of Kapil and Dheeraj Wadhawan, as provided by the lower courts in the DHFL case. The case was that of a massive fraud against many banks¹². Thirty-four thousand crores had been wrongly lost due to the accused persons.

Judicial Conflict and the Reference to a Larger Bench

The Court ordered the Registry to place the papers before the Chief Justice to create a larger Bench to overcome the differences in views between different judges with respect to default bail. At the same time, the central government started steps to withdraw the case of *Ritu Chhabaria* by way of judicial review. It was argued by the Solicitor General Tushar Mehta that there were serious operational difficulties for central government departments due to this decision. A Bench presided over by the Chief Justice Chandrachud ordered that any application for bail that depends upon the decision of *Chhabaria* would be put on hold¹³. This interim order caused confusion among the lower courts which were hearing bail applications. Later on, it was decided by the court that bail can be given even without considering the decision of *Chhabaria*.

Default Bail under the NDPS Act, 1985, and Section 37 Restrictions

Where the case of Narcotic Drugs and Psychotropic Substances Act, 1985 is concerned, the criteria for granting regular bail is very strict. As per Section 37 of the NDPS Act, 1985, there has to be a reason why courts should be convinced that there are some grounds on which the accused persons are not guilty of the crime committed. Also, it has to be convinced that accused persons will not commit any further offences if bail is granted. However, the above two conditions apply to regular bail and not to default bail as per Section 187 of Bharatiya Nagarik Suraksha Sanhita, 2023 (Section 167 of Code of Criminal Procedure). In the case of *M. Ravindran v. Intelligence Officer, Directorate of Revenue Intelligence*, the Supreme Court ruled that default bail is an indefeasible right that accrues once statutory investigation period expires and cannot be defeated by filing chargesheet after the accused applies for default bail. It further strengthens the principles laid down in *Sanjay Dutt v. State* where default bail is an indefeasible right but can be exercised before filing of a valid chargesheet. Therefore, in *M. Ravindran*, the protection against late investigation gets strengthened. It is correct to say that in NDPS cases, a lot of time is required to conduct forensic and chemical test¹⁴. The necessity of default bail increases as investigation time exceeds statutory time limit. In this respect, the principle established in the case of *Ritu Chhabaria v. Union of India* helps avoid manipulation of incomplete chargesheet in NDPS cases. Contrarily, the principle established in the case of *Kapil Wadhwan v. Central Bureau of Investigation* minimizes the possibility of this after filing

¹¹ CaseMine, 'Court Clarifies Limits of Default Bail under Section 167(2) CrPC in CBI v Kapil Wadhawan'

¹² *Kapil Wadhawan v Central Bureau of Investigation*, 2024 INSC 58

¹³ 'Default Bail, Personal Liberty and the Master of the Roster' *Indian Constitutional Law and Philosophy*

¹⁴ *Baljeet Singh @ Aman v. State* (Delhi High Court, 27 March 2024), CRL. REV. P. 312/2024

of the chargesheet.

Default Bail under the PMLA, 2002 and section 45 Restrictions

In the same way, double conditions are imposed even by the Prevention of Money Laundering Act, thereby restricting regular bail greatly. As per Section 45 of the Act, reasonable grounds for belief in innocence must be established by the court prior to granting bail to the accused¹⁵. The investigations carried out by the Enforcement Directorate, as per this Act, generally involve complex financial connections, and documentation becomes necessary to a large extent in such cases. Complaints filed under Section 44 require the completion of the process of investigation before courts can take cognizance¹⁶. The complaint was registered against Wadhawan through emails initially, and then physical submission took place later. In the end, it was concluded by the courts that the infeasible right to bail becomes applicable once the remand period ends. Prevention of Money Laundering Act, 2002 (PMLA) has also provided strict conditions for granting routine bail by virtue of Section 45 of the PMLA, 2002. However, such conditions do not supersede the right to default bail in accordance with Section 187 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (Section 167 of Code of Criminal Procedure). In *Vijay Madanlal Choudhary v. Union of India*, the Supreme Court declared that the strict provisions of the PMLA, 2002, with regard to bail are constitutionally valid, but an accused continues to have a right to default bail in cases where the investigation does not take place within the statutory period¹⁷. Consequently, even in the case of PMLA, 2002, investigative delays cannot affect the right to default bail of the accused person. This decision is consistent with the reasoning in *Ritu Chhabaria*, while the more restrictive approach taken in *Kapil Wadhwan* poses a threat to default bail on the basis of an incomplete chargesheet. In the *Vijay Madanlal Choudhary* case, the strict special legislation like PMLA, 2002, does not override the statutory right of default bail enshrined in Section 187 of Bharatiya Nagarik Suraksha Sanhita, 2023 (Section 167 of Code of Criminal Procedure). The case in conjunction with *M. Ravindran* makes the case stronger that default bail is a separate remedy even if regular bail is restrictive. The cases of *M. Ravindran* and *Vijay Madanlal Choudhary* clearly prove that the Supreme Court has always acknowledged that default bail is a statutory protection, even under the stringent provisions of NDPS Act, 1985 and the PMLA, 2002. This is how one can understand Section 187 of Bharatiya Nagarik Suraksha Sanhita, 2023 (Section 167 Code of Criminal Procedure) from the point of view of personal liberty and prevention of unnecessary delays.

Default Bail under UAPA, 1967, and Section 43D(5) Restrictions

Amongst all the special legislations in India, the Unlawful Activities (Prevention) Act, 1967, is considered to have the most stringent provisions regarding bail. Section 43D sub-section 5 makes it clear that in no circumstances shall bail be given if there is reason to believe that the prima facie accusations have been proved¹⁸. Depending on certain situations, this section increases the time period within which the default bail can be granted up to one hundred and eighty days. It becomes imperative for the investigating agencies to ask for an extension in this regard and prove in front of the court that genuine efforts have been made in the process of

¹⁵ AMSS Hardul, 'Bail under PMLA: A Judicial Perspective'.

¹⁶ Supreme Court Observer, 'Parvinder Singh v Directorate of Enforcement: Cognizance of Complaint under PMLA'.

¹⁷ *Vijay Madanlal Choudhary v. Union of India* (2022) 10 SCC 1

¹⁸ Unlawful Activities (Prevention) Act 1967, s 43D(5).

investigation of the pending cases. In the case of UAPA, 1967, cases, the courts have always displayed greater strictness before granting any bail relief¹⁹. It has utmost importance in connection with the already stringent law because of the *Ritu Chhabria* Rule on incomplete chargesheet. Section 43D(5) of the UAPA, 1967 makes provision for stiff conditions of regular bail. However, the statutory right to default bail still subsists under Section 187 of Bharatiya Nagarik Suraksha Sanhita, 2023 (Section 167 of Code of Criminal Procedure) provided the investigation does not end within the statutory time limit. The Supreme Court in *Jasbir Singh @ Judgebir Singh v. National Investigation Agency*²⁰, has made it clear that once an investigation is completed and the requisite details required under Section 193 Bharatiya Nagarik Suraksha Sanhita, 2023 (Section 173(2) of Code of Criminal Procedure) are contained in the report of investigation and the report of investigation filed within the statutory time limit, there can be no question of a right to default bail. In reliance on *Dinesh Dalmia v. CBI*²¹, the Court has held that the right to default bail exists only when the investigation remains incomplete. Absence of sanction, defective procedure of filing or delay in taking cognizance cannot revive the right to default bail once the report of investigation is filed within the statutory time limit.

Further clarification on this principle was provided in *Fakhrey Alam v. State of U.P.* In this case, the Supreme Court ruled that a chargesheet filed without the sanction that was mandatory under Section 45 of the UAPA, 1967 is not a complete report for the purposes of taking cognizance of the case²². Thus, the lack of the mandatory sanction might provide grounds for a claim to default bail. Taking into account the above-mentioned judgments, one can conclude that there are two essential conditions for granting default bail under the UAPA, 1967. Firstly, the report should be filed in the prescribed statutory period. Secondly, it must be a complete report, that is, a report containing the necessary mandatory sanction.

Bharatiya Nagarik Suraksha Sanhita, 2023, Section 187 and the Future of Default Bail

Section 167 was restated as Section 187 of the Bharatiya Nagarik Suraksha Sanhita, 2023, in the new code²³. The restatement presents new chances for overcoming the outstanding doctrinal differences of opinion between the *Chhabaria* and the *Wadhwan* views. The Parliament has kept the important 60-day and 90 days' timelines unchanged but introduced some changes in procedure for electronically held proceedings. Courts will have to decide whether the Bharatiya Nagarik Suraksha Sanhita, 2023, view follows the *Chhabaria* freedom-based view in future. The other possibility is that courts may adopt the narrow *Wadhwan* test, which accepts the charge sheet filed even if it is not completed. Practicing lawyers do not have any clear instructions about what precedent is controlling in the present situation of renumbered statutes. There are other special statutes, namely NDPS Act, 1985, PMLA, 2002, and UAPA, 1967, which continue functioning along with Bharatiya Nagarik Suraksha Sanhita, 2023, ordinary statutes, making the situation more complex²⁴.

¹⁹ Ayushi Saraogi, 'Bail Under UAPA: Court in Review' *Supreme Court Observer*

²⁰ 2023 INSC 472 (CrI. A. No. 1011/2023)

²¹ (2007) 8 SCC 770

²² 2021 SCC On line SC 532.

²³ CrPC to BNSS Converter, 'CrPC Section 167 is now BNSS Section 187'

²⁴ Unified Chambers and Associates, 'Indian Criminal Law — A Working Reference'

Conclusion

It has been seen from the findings made in this paper that the matter regarding default bail being an indefeasible right remains highly uncertain. For the case of *Ritu Chhabaria*, statute timelines were seen as guaranteeing the liberty rights of the accused. This was done in order to protect the accused from any agencies filing chargesheets which adhere to the time limit only. However, on the other hand, it has been seen through the *Kapil Wadhawan* bench that pending investigation becomes irrelevant once the chargesheet is filed²⁵. It can thus be understood that these two decisions caused confusion in trial courts and in other high courts in the country. Moreover, even the Supreme Court admitted that these conflicting judgments need to be reconciled by means of a larger constitutional bench. Decisions become all the more important as far as statutes like NDPS Act, 1985, PMLA, 2002, and UAPA, 1967, are concerned because of their restrictive nature. Sections 37, 45 and 43D (5) restrict regular bail in various manners. Thus, default bail seems to be the easiest option available for the accused.

The above partial clarification was helpful for answering the procedural timings but lacked clarity on the matter of charge sheets in its totality. In certain cases where investigations have been carried out in sophisticated financial crimes or narcotics offences, extra time could become necessary for these agencies in excess of the period provided under law. It would not be an easy task to strike a proper balance between proper investigation and the liberty of the individual in this case. The emergence of Bharatiya Nagarik Suraksha Sanhita, 2023, Section 187 now presents an opportunity for creating clear judicial precedents²⁶. However, by simply renaming it cannot resolve the basic conflict which prevails philosophically between liberty and enforcement as discussed above. Sometime or the other, the courts would need to decide between the *Chhabaria* and *Wadhwan* models. Until then, there can be no clear decision in this regard.

There is uncertainty regarding the legal provisions relating to default bail in India due to the inconsistent stand taken by the courts in two landmark cases: *Ritu Chhabaria v. Union of India*, and *Kapil Wadhwan v. Central Bureau of Investigation*. Although *Ritu Chhabaria* safeguards the rights of the accused from being in jail due to any defective chargesheets, *Kapil Wadhwan* allows further inquiry despite the filing of a chargesheet, which leads to a question as to when default bail can be claimed. It is pertinent to note that this dilemma has a direct impact on the NDPS Act, 1985, PMLA, 2002, and UAPA, 1967. In the Supreme Court case of *M. Ravindran v. Intelligence Officer, DRI*, it was held that default bail becomes an indefeasible right when the statutory period of investigation lapses and the accused makes a request for it before filing a proper chargesheet. Such a right is very significant in NDPS cases since the forensic and chemical analysis of the seized material generally causes delay in completing the investigation process. The cases of *Jasbir Singh @ Judgebir Singh & Ors. v. State of U.P. & Ors.* and *Fakhrey Alam v. State of U.P.* state that the filing of chargesheet without the required sanction under the UAPA is not necessarily an entire report for taking cognizance. Section 187 of the Bharatiya Nagarik Suraksha Sanhita, 2023 allows creating a uniform yardstick for bail by default. It is important that the courts look into the timely submission and legal adequacy of the investigation report. The matter in *Ritu Chhabaria & Ors. v. Kapil Wadhwan* needs to be heard by a Constitution Bench.

²⁵ *Central Bureau of Investigation v Kapil Wadhawan and another* 2024 INSC 58, Criminal Appeal No 391 of 2024.

²⁶ Sakal Bhushan, 'Section 187 of BNSS: A glaring example of bad drafting and a missed opportunity' *The Leaflet*

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