

IN THE SUPREME COURT OF INDIA

APPELLATE JURISDICTION / LANDMARK PRECEDENT

Sanjay Dutt v. State through CBI

Registry Status : REPORTED PRECEDENT -- OFFICIAL RECORD

1. EXECUTIVE SUMMARY & KEY HIGHLIGHTS

In this landmark 5-Judge Constitution Bench verdict authored by Justice J.S. Verma, the Supreme Court authoritatively resolved the procedural rules governing default bail under Section 167(2) proviso (a) CrPC (now Section 187 BNSS, 2023) and Section 20(4)(bb) of TADA. The Court held that the 'indefeasible right' to default bail accrues immediately upon the expiry of the statutory period for investigation if the charge-sheet is not filed. However, this right is not self-executing in perpetuity; it must be actively 'availed of' by filing an application and expressing readiness to furnish bail prior to the actual filing of the charge-sheet. Once the charge-sheet is filed before the accused has availed of the right, the indefeasible right lapses. The Court also held that Section 5 of TADA requires conscious, unauthorized possession of arms in a notified area.

- * **Indefeasible Right Accrual:** Right to default bail accrues immediately upon expiry of the statutory investigation timeline (60/90/180 days).
- * **Active Availing Required:** Accused must actively avail of default bail by moving an application and offering sureties before the charge-sheet is submitted.
- * **Filing of Charge-Sheet Extinguishes Unavailed Right:** If the charge-sheet is filed before the accused exercises the right, default bail cannot be claimed.
- * **Subsequent Charge-Sheet Cannot Defeat Availed Right:** If the accused has already filed for default bail, subsequent filing of the challan cannot defeat the application.
- * **Conscious Possession Under Section 5 TADA:** Possession of unauthorized arms in a notified area requires conscious physical control and knowledge.

2. FACTUAL MATRIX & IMPUGNED PROCEEDINGS

In the aftermath of the 1993 Bombay serial bomb blasts, several accused, including film actor Sanjay Dutt, were arrested under TADA, the IPC, and the Arms Act.

Sanjay Dutt was arrested on 19 April 1993 for unauthorized possession of an AK-56 assault rifle and ammunition in a notified area under Section 5 of TADA.

The statutory investigation period of 180 days expired, leading to conflicting claims regarding default bail under Section 20(4)(bb) TADA read with Section 167(2) CrPC.

Discrepancies between 2-Judge and 3-Judge Bench decisions (including Hitendra Vishnu Thakur) had created intense confusion regarding when default bail must be granted, whether notice is required for investigation extensions, and whether filing a challan defeats an unexercised bail plea.

A 5-Judge Constitution Bench was constituted to settle the law definitively.

5. POINTS OF LAW FRAMED & ANSWERED

Legal Issue Framed	Supreme Court's Holding
When does the indefeasible right to default bail under Section 167(2) CrPC accrue and expire?	It accrues immediately upon expiry of the statutory period (60/90/180 days) and remains enforceable until the charge-sheet is filed; it must be availed of before the charge-sheet is filed.
Can a default bail application already filed by the accused be defeated by the subsequent filing of a charge-sheet?	No. Once the accused files an application and expresses readiness to furnish bail, the right cannot be defeated by the prosecution filing a charge-sheet thereafter.
What does 'possession' signify under Section 5 of TADA?	It requires conscious, unauthorized physical possession and knowledge of arms or ammunition in a notified area.

6. STATUTORY FRAMEWORK & MODERN LEGISLATIVE ALIGNMENT

Precedent Reference / Former Statute	Modern Act (BNSS / BNS / BSA / CPA)	Doctrinal & Procedural Analysis
CrPC Section 167(2) (Default Bail)	BNSS Section 187	Remand and default bail upon expiry of 60/90 days; Sanjay Dutt established the definitive procedural rules governing accrual and availing of default bail.
TADA Section 20(4) / UAPA Section 43-D(2)	UAPA Section 43-D(2)	Extension of investigation period up to 180 days; requires Public Prosecutor's independent report and production of the accused.
TADA Section 5 / Arms Act Section 25	Arms Act Section 25 / BNS	Unauthorized arms possession; requires conscious physical possession and knowledge.

7. SUBSEQUENT JUDICIAL TREATMENT & LINEAGE

- * Uday Mohanlal Acharya v. State of Maharashtra (2001) 5 SCC 453:Interpreted 'availed of' to mean filing of application offering to furnish bail.
- * Bikramjit Singh v. State of Punjab (2020) 10 SCC 616:Reaffirmed Sanjay Dutt, holding default bail is an infeasible Article 21 fundamental right.
- * M. Ravindran v. Directorate of Revenue Intelligence (2021) 2 SCC 485:Confirmed that subsequent charge-sheets cannot defeat accrued default bail rights.
- * CBI v. Kapil Wadhawan (2024) 3 SCC 734:Clarified that filing of a preliminary or substantive charge-sheet within time stops default bail.

8. PRACTICAL LITIGATION PLAYBOOK & STRATEGIC CHECKLIST

- * File Charge-Sheet Before Defense Moves Bail:On Day 60/90/180, ensure the charge-sheet is physically filed and registered before the court opens or before the defense moves its default bail plea.
- * Move Extension Reports Well in Advance:In UAPA/NDPS cases, submit the Public Prosecutor's extension report before the primary statutory period expires; produce the accused in court.
- * Scrutinize Default Bail Applications for Surety Offers:Verify whether the accused's application explicitly stated readiness to furnish bail bonds.
- * File Application on Day 91 at 10:00 AM Sharp: Compute statutory days strictly; file Section 187 BNSS / 167(2) CrPC application the very morning following expiry.
- * Include Explicit Bond Readiness Recital:State unequivocally in the application: 'The applicant is ready and willing to furnish bail bonds and sureties as directed.'
- * Insist on Immediate Hearing:Press for disposal before the prosecution can tender a supplementary or incomplete charge-sheet.