

**No. U4-159235/2020/PHQ**  
Police Headquarters, Kerala  
Thiruvananthapuram – 695010  
Phone: 0471-2721547  
Email: [phq.pol@kerala.gov.in](mailto:phq.pol@kerala.gov.in)  
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**Circular No. 03/2021**

**Sub: Code of Criminal Procedure, 1973 - Claim for default bail by the remanded accused u/s. 167 (2) of the CrPC - Duties of Investigating Officer - Instructions - Reg.**

- Read: 1) Order of the Hon'ble High Court of Kerala in CrI.M.C.No.4004/2020 dtd 28/10/2020.  
2) Letter No.CrI.MC.No.4004/2020-A dtd 26/11/2020 from the Registrar (Judicial), High Court of Kerala.  
3) Lr.No. 26/2021/DGPSPP dtd 29/01/2021 from the Director General of Prosecutions, Kerala.

Under Section 167 (2) of the Code of Criminal Procedure (CrPC), 1973, the maximum period for which the Judicial Magistrate can grant custody of an accused in the course of investigation is 90 days for offences punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and 60 days for offences punishable with less than 10 years. In cases under UA(P)A, it is 180 days. Thus, if the investigation is not completed within the stipulated period of time, the Magistrate will have to grant bail to the accused. Since such bail is granted by default due to non-completion of investigation, it is called "default bail".

**02.** Once the Final Report in a case is filed by the Police in time, the accused loses his right to default bail. However, the Final Report / Chargesheet should be a "completed" Chargesheet. If the Magistrate finds that the Final Report in a case was incomplete or defective, then he can return it and deem it not to have been filed. Therefore, the right of the accused to default bail will exist. It is, hence, very clear that the filing of a time bound and defect free Final Report is highly relevant & important in resisting default bail of the accused.

**03.** Hon'ble High Court, vide Order 1st cited, going by the dictum laid down in CrI.M.C.No.4826/2019 [*State of Kerala V. Ajin Reji Mathew*], had confirmed the settled position that the indefeasible right of a remanded accused to be released on bail by the operation of proviso to Sec 167(2) of the Cr.P.C. is on the occurrence of default on the part of the Investigating Agency to complete the investigation and file Final Report within