

No. U4-159235/2020/PHQ

Police Headquarters, Kerala
Thiruvananthapuram – 695010

Phone: 0471-2721547

Email: phq.pol@kerala.gov.in

Dated: 02/02/2021

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

the time allowed (60 days or 90 days or 180 days, as the case may be). The said right is enforceable by the remanded accused only from the date of default till the date of filing of Final Report / Chargesheet and it cannot be enforced if the Final Report / Chargesheet has been filed before the remanded accused has made his default bail plea, even though the said Final Report has been filed after the default period. In other words, even if the Investigating Agency has not filed the Final Report / Chargesheet within the default period prescribed in Sec.167 CrPC (60 days or 90 days or 180 days as the case may be, from the day of remand) so long as the Investigating Agency, thereafter, files the Final Report but before the remanded accused has made his plea to be released on statutory default bail, then the said right which would have accrued after the default period, would get extinguished at the time when the Final Report is filed, and in view of the said extinguishment, the belated plea of the remanded accused to be released on default bail, which is made after the filing of Final Report will not be of any benefit to him. [Rakesh Kumar Paul v. State of Assam [(2017) 15 SCC 67], Sanjay Dutt v. State Through C.B.I. [(1994) 5 SCC 410].

04. In view of the order of the Hon'ble High Court vide 1st cited, it is instructed that in cases where the Final Report is filed, wherein the remanded accused is likely to put up the claim for default bail in terms of Sec.167 (2) of the Cr.PC., the Investigating Agency may immediately alert the officials of the criminal court concerned where the final report is so filed, that the accused is likely to raise the claim for default bail and that the top priority should be accorded to ensure that the officials of the court examines the Final Report so filed to ascertain as to whether it is defect free or whether it contains any defect, etc. and to return the defective Final Report to the Investigating Agency for curing of defects. Such a plea may be specifically made by the Investigating Agency by submitting a "**specific letter**" in that regard addressed to the criminal court concerned. Thereupon, the officials of the criminal court concerned are bound to take expeditious and diligent steps to ascertain as to whether the Final Report / Chargesheet is defective or defect-free and defects, if any, should be immediately notified to the Investigating Agency for curing it.

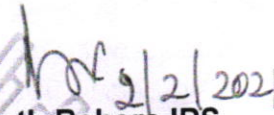
05. The above directions have been issued to take care of situations where it may be really possible to ascertain the defects and notify the same to the Investigating Agency, immediately. There could be few cases where the materials contained in the Final Report may be too voluminous and it may not be physically possible to the limited number of staff in the court to immediately notify all the defects. In such instances also, the Investigating Agency shall undertake follow up at frequent intervals.

06. The following legal requirements shall be fulfilled for complying with the above Court verdict by all concerned, namely:-

1. Investigation shall be duly completed and Final Report filed before the Court concerned complying with the time limit, if any, as per statutory requirements.
2. A defect free Final Report shall be filed in all cases by the Investigating Agency. (For this SHO/SDPO may read chargesheet 2/3 times before it is filed).
3. If the accused/s are in remand, special care shall be taken by the Investigating Agency to file the Final Report within the default period prescribed in Sec.167 CrPC. (60 days or 90 days or 180 days as the case may be, from the day of remand). It is desirable that the I.O. files it at least one week (60 days cases), two weeks (90 days cases) and three weeks (180 days cases) rather than rushing the Chargesheet on the last day.
4. Where the remanded accused is likely to raise the claim for default bail, the Investigating Agency shall, along with the Final Report, also submit a specific letter addressed to the criminal court concerned, specifically alerting the officials that top priority should be accorded to ensure that the officials of the court examines the Final Report so filed to ascertain as to whether it is defect free or whether it contains any defects, etc. and to return the defective Final Report to the Investigating Agency for curing of defects. The Court duty Police Official must follow up with the concerned Officers of the Court.
5. Acknowledgment regarding acceptance of letter referred above has to be obtained by the Investigating Agency from the Office of the Court concerned.
6. Where the materials contained in the Final Report are too voluminous and delay is occasioned in the return of the Final Report after examination by the criminal court concerned, it shall be the duty of the Investigating Agency (means I.O.) to undertake follow up at frequent intervals.
7. If the Final Report is returned by the criminal court concerned for curing of defects, the defects shall be cured within the shortest time span and the defect free Final Report shall be filed within three days positively. Collective effort of SHO/SDPO is required.
8. While a defective Final Report is taken back, there should be proper notings by the Office of the court concerned, regarding the defect and the date on which the Final Report was returned. SHO must ensure this by interacting with the Court official(s) concerned.

9. If the defects cannot be cured within three days, then superior officers shall be intimated and the defect free Final Report shall be filed within one week positively.
10. After curing the defect when the Final Report is represented, proper acknowledgement should be obtained by the Investigating Officer from the Court.

07. All Officers are directed to strictly comply with the above instructions.


Loknath Behera IPS
Director General of Police &
State Police Chief, Kerala

Distribution:-

All Officers in List A, B, C, D.

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