Default Bail

Why in news?

The Supreme Court directed lower courts to decide pending default bail applications without relying on its own judgment of Ritu Chhabaria case.

What is default bail?

- **Default bail -** The right to statutory bail, often known as default bail or compulsive bail, is granted because of the default of the investigating agency in not completing the investigation within the specified time.
- **CrPC** - Under ***Section 167(2) of CrPC***, a Magistrate can order an accused person to be detained in the custody of the police for 15 days.
- Beyond 15 days, the Magistrate can authorise the detention of the accused person in judicial custody (jail) if necessary.
- **Maximum period of detention** - However, the accused cannot be detained for more than
    - 90 days (when an authority is investigating an offence punishable with death, life imprisonment or imprisonment for at least 10 years)
    - 60 days (when the authority is investigating any other offence)
- **Right to bail -** After the period of 90/60 days, if the investigation has not been completed and charge-sheet not filed, the accused person has the right to be released on bail.
- **Judicial custody** - The default bail prevents the misuse of judicial custody by the investigation agency.
- **Article 21** - The court in multiple judgments have held that the default bail flows from the Article 21 of the Constitution which guarantees the right to life and personal liberty.

> *The Code of Criminal Procedure, 1973 regulates the procedural aspects of criminal law, including arrest, investigation and bail.*

What is *Ritu Chhabaria* case about?

- **Supplementary charge sheets** - Investigating authorities routinely file incomplete or supplementary charge sheets within the 60/90 day period, to prevent the accused from seeking default bail.
- **Ritu Chhabaria Case** - The Supreme Court, in *Ritu Chhabaria*, delegitimised such illegal practices and held that incomplete charge sheets filed by police would not prevent an accused from applying for default bail.
- It held that the right of default bail under Section 167(2) of CrPC is not merely a

statutory right, but a fundamental right that flows from ***Article 21*** of the Constitution.

What is the Supreme Court's (SC) interim order about?

Article 141 of the Constitution provides that the law declared by the Supreme Court shall be binding on all courts within India.

- **Arguments of ED** - The government, through the Enforcement Directorate (ED), moved an application in SC to recall the *Ritu Chhabaria* judgment.
- The ED argued that the judgment contradicted the Supreme Court's own past verdicts.
- The ED also argued that the judgment would not apply to special laws like the Prevention of Money Laundering Act (PMLA).
- **SC's interim order** - The Supreme Court in its interim order directed courts to postpone any decision on default bail pleas filed on the strength of the *Ritu Chhabaria* judgment.

What are the concerns with the order?

- The Supreme Court's interim order is said to curtail the rights of undertrial prisoners seeking default bail.
- The Court's decision to suspend the rights of defendants in criminal cases would lead to erosion of constitutional rights of the accused and deviate from fundamental principles of criminal procedure.

References

1. The Hindu | Issues Of The Default Bail
2. Live Law | Ritu Chhabaria Case
3. The Hindu | Previous Cases Regarding Default Bail

