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Case Comment: Gautam Navlakha vs. National Investigation

Agency: A Jurisprudential Analysis

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INTRODUCTION

A well-known human rights activist and journalist was as of late denied default bail by the Supreme Court. While Gautam Navlakha confronted rout for his situation, the Apex Court in its judgment added another aspect in the arrest provisions, giving a triumphant jump of help towards the insurance of human rights. This is a judgment that not exclusively would alleviate the difficulties looked at in police or the judicial custody yet would likewise smother the States weight in a plethora of viewpoints. The judgment is indistinct, the outcome is arduous of 206-pages practice that judges, legal counsellors, and law students will battle with for quite a while.

The root cause of the case dates back to the year 2018 when Gautam Navlakha was arrested in the month of August 2018 and a travel remand was conceded to the police to take him from Delhi to PS Vishrambaug. The arrest and remand of the accused were tested in a habeas corpus request recorded around the same time under the steady gaze of the Delhi High Court.

Since it couldn't hear the request on a similar date, the High Court decided that he be confined under "house arrest" till the decision of the Apex Court. Afterward, in a different public interest litigation case known as the Romila Thappar Case¹, the Apex Court broadened the time of house arrest of the Appellant till it could conclude the hearing.

In this case, the Supreme Court passed the judgment affirming the decision of the Bombay High Court. Navlakha was arrested and remanded to authority by the Court and the provisions of his guardianship were altered by the High Court till it heard the habeas corpus request. In June, the Navlakha raised a request for default bail under the steady gaze of the NIA Court (Special Court) in Maharashtra. When custodial detainment during examination crosses certain periods and the examination is yet to be finished up, it triggers an option to bail for the wrongdoer under Section 167 of the Code of Criminal Procedure (CrPc), 1973.²

The time period of the house arrest of 34 days was not included in the time period of being in custody. Navlakha had argued to include that period of 34 days as "duration of custody" but the Special Court (NIA) rejected the same and following such rejection he approached the Bombay High Court for the same but the High Court rejected the plea by stating that there was no reason to interfere with the decision of the Special Court (NIA). Thereafter, Navlakha approached the Supreme Court. The impugned "house arrest" was due to the Bhima Koregaon case in which many social activists were held guilty. Navlakha was one of them.³ But now, house arrest was being termed as illegal and not being included in the conviction period. This is leading to illegality in the right of default bail and after being denied such right, Navlakha approached the Supreme Court. Previously in High Court, the house arrest of the appellant was found to be illegal. Based on the illegality of the remand and house arrest, the appellant was not granted bail as per section 167(2) of CrPC.⁴

¹ *Romila Thapar v Union of India* (2018) 10 SCC 802

² Code of Criminal Procedure Act 1973, s 167

³ Legal Correspondent, 'Bhima Koregaon case: SC dismisses bail plea of Gautam Navlakha' (*The Hindu*, 12 May 2021) <<https://www.thehindu.com/news/national/bhima-koregaon-case-sc-dismisses-bail-plea-of-gautam-navlakha/article34539998.ece>> accessed 15 May 2021

⁴ CrPC Act (n 2), s 167(2)

On 12th May 2021, the Hon'ble Supreme Court while delivering the Judgment in the case of Navlakha, accorded the freedom to all sub-ordinate and higher courts to interpret house arrests in suitable cases as a substitute type of detainment under Section 167 of the CrPC. The Supreme Court was considering an appeal filed by Gautam Navlakha in which the issue, whether the time of 34 days spent under house arrest will count while considering the time of 90 days under Section 167 CrPC?

WHAT WAS THE REASONING BEHIND THE SUPREME COURT JUDGMENT?

The Supreme Court while considering the Appeal saw that since the request for house arrest was not explicitly passed by the Magistrate in the instant case and therefore, it could not be said that the required time of 90 days would incorporate 34 days of house arrest. While choosing this issue, the Supreme Court likewise examined the issue as to whether a request for house arrest, other than police remand and judicial custody, as given under Section 167 of CrPc could be passed by the Magistrate? Or then again, to lay it out plainly whether the concept of house arrest will frame as a part of custody under the Section 167 Cr.P.C.?

Addressing the above question, the Supreme Court saw that in suitable cases, it will be available to Courts to provide for house arrest under Section 167 of CrPc. Notwithstanding, rules like age, medical issue, precursors of denounced, nature of wrongdoing will be fundamental terms to implement the request for house arrest.

The main issue that Supreme Court pointed out was not against “the legality of house arrest” but “interpretation of house arrest under section 167 of CrPC”. It was also stated that the right to Default Bail is a Fundamental right and the decisions passed in this matter cannot be without reasoning. However, in the present case, the Supreme Court did not deem it appropriate to grant Navlakha the relief of default bail under Section 167 of the Code of Criminal Procedure.

HOUSE ARREST AND DEFAULT BAIL UNDER CRIMINAL PROCEDURE CODE

The concept of House Arrest is not distinctively mentioned under the Code of Criminal Procedure Act, 1973. Further for understanding the concept of default bail, we should first know a portion of the fundamental guidelines and systems identified with making an arrest, custody, and the authority.

Firstly, Police Custody refers to care in which the actual care of the denounced is with the Police and the accused is held up in a lock-up of a police station. Secondly, under Judicial the denounced is stopped in the focal prison and is under the authority of the Court.

Provisions of making an arrest are stated under Chapter 5 whereas systems identifying with FIR and police examination have been provided under Chapter 12 of the Code of Criminal Procedure Act, 1973. Under Section 57 (Chapter 5) of CrPC⁵, an individual can't be kept in police guardianship for more than 24 hours without producing him before the Magistrate or the Designated Court as the case may be. Thereafter, the Police/Investigating Agency has to seek remand for police custody. But, imagine a scenario in which the examination couldn't be finished within 24 hours. Here, Section 167 (Chapter 12) comes for salvage. It gives a few techniques when an examination by the police isn't finished within 24 hours of arrest. Under Section 167(2)⁶, the Magistrate has the power to further expand the confinement of blamed for a period of 15 days so the researching officials could profit more opportunity to ask and explore working on this issue. Here, it is critical to recollect that for such multi-day period confinement, the Magistrate can approve to keep the accused either in the police or the judicial custody.

If the examination couldn't be finished even in the span of 15 days. In such cases, the Magistrate is additionally empowered to approve the confinement for a time of two after sets. Firstly- A time of 90 days, if the offence carried out is to such an extent that it is culpable with death, detainment forever, or detainment for more than 10 years. Secondly- A time of 60 days, if some other offence (aside from the above provision) is submitted.

⁵ CrPC Act (n 2), s 57

⁶ CrPC Act (n 2), s 167(2)

In the case of Activist Gautam Navlakha in the Bhima Koregaon case claimed in his petition for default bail as the National Investigation Agency (NIA) did not file the charge sheet within 90 days. This acted as a ground for non-grant of default bail to the appellant.

CAN REMAND POWER UNDER SECTION 167 CRPC ALSO BE EXERCISED BY COURTS SUPERIOR TO THE MAGISTRATE?

Let us take a case where-After the remand is ordered, for a time frame of 15 days out of which 10 days is spent via the police custody and 5 days via judicial custody, but further, the magistrate increases an accused on bail. Then the High Court in this case meddles with the order of giving bail on the basis that bail should not have been allowed. Resultantly, the person who based on the order of bail has come out of jail custody, is put back into custody (Police or Judicial).

This order granting custody is the one passed by the High Court thus it cannot be looked upon as one which isn't moored under Section 167 of the Cr.P.C. In this manner, we would believe that however the power is vested with the Magistrate to arrange remand by way, of suitable jurisdiction practiced by the superior Courts, (incorporating the Court of Sessions acting under Section 439) ⁷the power under Section 167 could likewise be practiced by Courts which are superior to the Magistrate.

The Supreme Court interpreted thus -"*Consequently, while normally, the Magistrate is the first Court which would practice the power to order the remand under Section 167, the use of the power done by the Superior Courts which would bring about the custody (police or judicial) being ordered ordinarily by the predominant Courts which includes the High Court, would surely be the custody to ascertain the period inside which the charge sheet should be documented, fizzling with the blamed secures the legal option to default bail. We have additionally seen the perceptions of this Court. In such conditions, broken times of the custody can be checked whether authority is endured by the request for the Magistrate or unrivalled courts. If the examination stays inadequate after the care, regardless of whether nonstop or broken periods sorted out arrives at the imperative time frame; default bail turns into the*

⁷ CrPC Act (n 2), s 439

privilege of the confined individual. Similarly, when a request in bail application is placed in issue, orders passed bringing about keeping the denounced would whenever passed by a prevalent court will be under Section 167 of CrPC."

DOES THE RIGHT TO DEFAULT BAIL REQUIRE A WIDER MEANING UNDER "FUNDAMENTAL RIGHTS"?

In the case of *Fakhrey Alam v. the State of UP*⁸, it was held by the Supreme Court that the right to Default bail under the first proviso of Section 167(2) of CrPC is not just a mere statutory right but a fundamental right too.

The right to Default Bail has been enshrined as a fundamental right under Article 21 of the Constitution. It protects people from being jailed on offences that they may have not committed or any other such situation. Looking at the present scenario in the *Gautam Navlakha* case, default bail has not been granted to him because of the illegality of remand and house arrest. However, this does not constitute any of the mistakes committed by *Gautam Navlakha* himself.

In the case of *Bikramjit Singh v. the State of Punjab*,⁹ a 3-judge bench of the Hon'ble Supreme Court has held that the option to default bail is definitely not a simple statutory right under the primary stipulation to Section 167(2) CrPC. However, is essential for the procedure set up by law under Article 21 of the Constitution of India, which is, thusly, a crucial right allowed to a blamed individual to be granted bail once the conditions of the main stipulation to Section 167(2) are satisfied. Further, in the case of *S. Kashi v. State*,¹⁰ it was held by the Supreme Court that the right to default bail is indefensible right.

This paves a way for a wider perspective of default bail as a fundamental right. As *Gautam Navlakha* at the time of house arrest was unaware that the process of remand was not legal, it created a fuss for him. For dealing with such complicated situations, the fundamental rights of

⁸ *Fakhrey Alam v State of UP* (2008) 6 ALL WC 5724

⁹ *Bikramjit Singh v State of Punjab* (2020) 10 SCC 616

¹⁰ *S Kashi v State* (2018) 59 GSTR 346 (ALL)

people should be looked at by the way of their actions and not people associated with them. As this fails a person from construing to his rights.

HOUSE ARREST - A WAY AHEAD?

Through this case, the Supreme Court has opened up doors to the legislature to "consider" putting convicts under house arrest and to try not to overpack the prisons.

The Court in its judgment has noticed the jurisprudential part of the arrest. The concept of arrest in India is established on laws giving preventive detainment and since preventive confinement is a type of constrained confinement, house arrest is additionally an authority and constrained confinement.

However, confinement in police or judicial custody is simple and helpful to screen, the equivalent isn't with the concept of house arrest. Extra powers of police and steady observing frameworks will be needed for appropriate oversight of charges under house arrest. Comparable concerns have likewise been seen by Supreme Court.

The Court nonetheless, in its judgment, has cited few benefits of advancing home arrest. It has additionally referred to different measurements to feature issues identified with congestion and support expenses of penitentiaries and how the concept of house arrest can beat them. According to Supreme Court's perception, in India, there is a huge measure of congestion in prisons and by advancing house arrest, this overcrowding can be kept away from. The Court additionally referenced that a financial plan of Rs. 6,818 Crores is allotted towards the support of such detainment facilities and it further observed that subsequently, house arrest could help in diminishing the financial burden of the State.

CONCLUSION

Gautam Navlakha's case has convinced the Court to look into the concept of House Arrest. It would doubtlessly alleviate the shortfall of opportunity under police or legal custody for some and particularly for individuals who are not in-your-face crooks. Even though there could be a few intricacies in the concept of house arrests like inappropriate checking or non-dutifulness

terms of the arrest of a person, there are additional benefits that the State should anticipate. The judgment also mentions that the root of house arrest in India lies in “preventive detention” laws too. Therefore, in such cases, reference to both criminal as well as preventive detention laws have to be made.

It has also depicted that all the legal processes are interrelated to each other. The illegality of a process affects the other processes too. As in the present case, illegality in the house arrest led to the rejection of default bail. That is why a person himself must be well aware of it. This led to suppression of the fundamental rights of citizens too. The case has been decided in a long 206 pages judgement.

This case has not only opened the doors for the concept of house arrest but also has moved the focus towards the use of “ankle bracelets” as it is being used in other countries too. Compliance has been made to foreign laws where house arrest has gained importance

Through house arrests, the maintenance cost can get reduced further decreasing the burden of expenditure. The overcrowding of individuals in jails which is the biggest threat at this time of the coronavirus pandemic can also contribute as a solution further contributing to the wellbeing and mental health of the prisoners. In case of medical help, house arrest will be much faster. The terms of house arrest are adaptable and have space for any progressions that Courts may consider fit on a case-to-case premise.