

Grant of Default Bail Under Section 187 (3) of BNSS | 20 Feb 2025

Mohammed Sajjid v. State of Kerela

“I am of the considered opinion that while interpreting Sec. 187(3), the interpretation which will favor the accused's liberty should be adopted by a court of law.”

Justice PV Kunhi Krishnan

Source: [Kerela High Court](#)

Why in News?

A bench of **Justice PV Kunhi Krishnan** held that when there is ambiguity in the statute whether actual or assumed the ambiguity must be resolved in favour of the accused person since liberty is at stake.

- The [Kerela High Court](#) held this in the case of **Mohammed Sajjid v. State of Kerela (2025)**.

What was the Background of Subhelal @ Sushil Sahu v. The State of Chattisgarh Case?

- The petitioner in the present facts is accused of offence under Section 22 (b) of **Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS)**.
- The police allegedly seized 2.28 grams of MDMA from Room No.304 at Noa's Arch Hotel on 11th November 2024.
- Thereafter the Petitioner was arrested.
- Petitioner's counsel argues he is entitled to statutory bail under Section 187(3) of [Bharatiya Nagarik Suraksha Sanhita, 2023 \(BNSS\)](#).
- Petitioner filed an application before the First Additional Sessions Judge, Ernakulam, which was allegedly not considered.
- The offence under Section 22(b) of NDPS Act carries **maximum punishment** of ten years, which counsel argues qualifies petitioner for Section 187(3) of BNSS benefit.
- The Public Prosecutor opposes bail application, arguing that the petitioner is not eligible for release under Section 187(3) of BNSS.
- Thus, the matter was before the Kerela High Court.

What were the Court's Observations?

- The Court observed that there is a difference between the phrases used in Section 167 of Criminal Procedure Code, 1973 (CrPC) and Section 187 of BNSS.
- Section 187 (3) (i) uses the phrase “for a term of 10 years or more” in contradistinction to Section 167 (2) (a) (i) which uses the phrase “not less than 10 years”.
- The Court observed that there is not much difference between the words “for a term of 10 years or more” mentioned in BNSS and “not less than 10 years” mentioned in CrPC.
- The Court took help of the rule of interpretation that when there is ambiguity in the statute whether actual or assumed the ambiguity must be resolved in favour of the accused person since liberty is at stake.
- Thus, an interpretation that favors the liberty of the accused should be adopted.
- The Court observed that in the present facts that the learned Sessions Judge was wrong in dismissing the application of the accused merely on the ground that the petitioner has antecedents.
- Simply because the petitioner has antecedents or he is a habitual offender the statutory bail under Section 187 (3) of BNSS cannot be rejected.
- The Court therefore allowed the bail application but imposed several conditions on the accused.

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What is Section 187 (3) of BNSS?

- Section 187 of BNSS provides for the procedure when the investigation cannot be completed within **24 hours**.
- It is to be noted that as per Section 187 (1) of BNSS whenever an accused person is arrested, and it appears that the investigation cannot be completed within 24 hours (and there are grounds for believing that the accusation is well founded) the police officer shall forthwith transmit the accused to the nearest Magistrate.
- It is to be noted that Section 187 (2) of BNSS is newly introduced and provides for the time period during which an accused can be

committed to police custody.

- Section 187 (2) provides that:
 - The Magistrate may authorize detention of an accused person for up to 15 days total (continuously or in parts) during the initial period of 40 or 60 days out of the total detention period of 60 or 90 days.
 - This authorization applies regardless of whether the Magistrate has jurisdiction to try the case.
 - The Magistrate must consider whether the accused has been denied bail or had bail cancelled before authorizing detention.
 - If the Magistrate lacks jurisdiction and considers further detention unnecessary, they may order the accused to be forwarded to a Magistrate with proper jurisdiction.
- Section 187 (3) of BNSS is the provision from which default bail emanates. A comparative analysis of Section 167(2) of CrPC and Section 187 (3) of BNSS is as follows:

Section 167 (2) of CrPC	Section 187 (3) of BNSS
<p>The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorize the detention of the accused in such custody as such Magistrate thinks fit, a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction;</p> <p>Provided that—</p> <p>(a) The Magistrate may authorize the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding—</p> <p style="padding-left: 40px;">(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;</p> <p style="padding-left: 40px;">(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this Sub-Section shall be deemed to be released under the provisions of Chapter XXXIII for the purposes of that Chapter;</p>	<p>The Magistrate may authorize the detention of the accused person, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorize the detention of the accused person in custody under this sub-section for a total period exceeding—</p> <p style="padding-left: 40px;">(i) Ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of ten years or more.</p> <p style="padding-left: 40px;">(ii) Sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXV for the purposes of that Chapter.</p>

- The Karnataka High Court recently gave an important interpretation with regard to Section 187 (3) of BNSS in the case of **State of Karnataka by Kavoore Police Station v. Kalandar Shafi (2024)**. The summary of the findings in this case are as follows:
 - A slight tweak in the new regime qua 187(3) of BNSS in juxtaposition to Section 167(2) of the earlier regime -the CrPC. has not changed the purpose of the provision.
 - The phraseology of the words 'ten years or more' found in sub-clause (i) of Section 187(3) of the BNSS would mean, the **minimum threshold punishment** imposable on an offence under the BNS should be ten years.
 - The offence in the case at hand, does not bear a minimum threshold sentence of ten years, but is extendable or to an extent of ten years, which would mean, discretion available to the concerned Court to impose punishment up to ten years. Therefore, the minimum threshold is not ten years.
 - Completion of investigation in a punishment which is up to ten years is undoubtedly 60 days. Rest of the other offences, be it death, life imprisonment of ten years and more, would be 90 days.
 - If the investigation is to be completed within 60 days, the period of police custody would run from day one day forty of registration of the crime. If it is 90 days, it would run from day one to day 60, maximum period in both the cases is 15 days of police custody.
 - In case the offence is punishable upto 10 years the police custody is only from day one to forty.