



## DEFAULT BAIL JURISPRUDENCE: A CRITICAL COMMENT ON *MOHAMMED SAJJID V. STATE OF KERALA*

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### ABSTRACT

This case comment offers a comprehensive review of the recent Kerala High Court's decision in *Mohammed Sajjid v. State of Kerala* (2025), one of the first cases to grapple with Section 187(3)(i) of the Bharatiya Nagarik Suraksha Sanhita, 2023. The key question was whether an accused charged under the Narcotic Drugs and Psychotropic Substances Act for an offence carrying a ten-year maximum could secure default bail. The Court answered in the affirmative, interpreting the phrase "ten years or more" as excluding offences capped at exactly ten years, and therefore allowed statutory bail after the statutory sixty-day period. By placing reliance upon the landmark 3-judge bench pronouncement of *Rakesh Kumar Paul v. State of Assam* (2017), the Bench restated its pro-liberty principle, noting that the shift from "not less than ten years" in the former Code to "ten years or more" in the new law had not altered the default bail regime. The comment then delves into whether this reading is legally harmonious or fails to acknowledge a deliberate, albeit subtle, change that Parliament might have intended. It also revisits the earlier split in *Rakesh Kumar Paul*, especially Justice Pant's minority view, which favoured a more expansive interpretation of statutes punishable with ten years. This comment examines the relevant statutes, landmark court rulings, and accepted rules of statutory interpretation and argues for a much-needed clarification by the Hon'ble Supreme Court before different High Courts interpret the same provision differently. An interpretation by the Supreme Court would help courts across India apply the new bail framework consistently and protect individual liberty during the shift to the BNSS.

**Keywords:** Default bail, Narcotic Drugs, Criminal Law, NDPS Act.

### I. Introduction

The Kerala High Court examined in *Mohammed Sajjid v. State of Kerala*<sup>1</sup> (Bail Appl. No. 910 of 2025, Kerala HC, delivered Feb. 10, 2025) the interaction between Section 167(2)(a)(i)<sup>2</sup> of

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<sup>1</sup> *Mohammed Sajjid v State of Kerala*, 2025 LiveLaw (Ker) 119.

<sup>2</sup> The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 167(2)(a)(i).

"167. Procedure when investigation cannot be completed in twenty-four hours.— (2) 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, authorise the detention of the accused in such custody as he thinks fit, for 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: Provided that—(a) the Magistrate may authorise 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—

the old CrPC (1973) and Section 187(3)(i)<sup>3</sup> of the new Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. The main question was whether the offence registered against the accused in the FIR fit the 90-day rule of detention in custody before being eligible for a default bail (offence punished with "*ten years or more*") or whether the accused was entitled to default (statutory) bail under s.187(3) of BNSS after the 60th day (as an offence punishable up to ten years) because of the FIR being registered u/s 22(b) of the NDPS Act, for which the maximum punishment imposed can be 10 years of imprisonment. As per the judgement pronounced by the Hon'ble Kerala High Court, 187(3)(i) did not apply since the maximum sentence for the offence was ten years (and no more); thus, the petitioner qualified for statutory bail after the expiry of 60<sup>th</sup> day.<sup>4</sup>

Reaching this decision, the court mostly drew on *Rakesh Kumar Paul v. State of Assam*,<sup>5</sup> whose jurisprudence on this specific issue is the settled law which is reflected in the slightly changed phraseology in s.187(3)(i) of the new BNSS ("*ten years or more*" vs. CrPC's "*not less than ten years*").

This case comment analyses the interpretation by the Hon'ble Kerala High Court in *Mohammed Sajjid* on Section 187(3)(i) of the BNSS which aligns with the judgment of *Rakesh Kumar Paul* where the Supreme Court had unfurled the scope of Section 167(2)(a)(i) CrPC. Justice Prafulla C. Pant's remarkable dissenting reasoning, along with the majority opinion in *Rakesh Kumar Paul*, will be especially noted. The intent is to see the consequences of change in legislative phraseology, as in this case, the shift from CrPC to BNSS, and the corresponding evolving judicial response after *Mohammed Sajjid*. The change brought by the new BNSS, even the seemingly small change when compared to the older legislation, demands fresh judicial interpretation. As witnessed in the preliminary High Court judgements like *Mohammed Sajjid*

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(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;

(ii) sixty days, where the investigation relates to any other offence..."

<sup>3</sup> The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 45 of 2023), s. 187(3)(i).

"(3) The Magistrate may authorise 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 authorise the detention of the accused person in custody under this sub-section for a total period exceeding— (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;

(ii) sixty days, where the investigation relates to any other offence,"

<sup>4</sup> *Supra* note 1 at 22 and *State of Karnataka by Kavoov Police Station v. Kalandar Shafi* [2024 KHC Online 5417] at 14.

<sup>5</sup> *Rakesh Kumar Paul v. State of Assam*, (2017) 15 SCC 67: (2018) 1 Supreme Court Cases (Cri) 401: 2017 SCC OnLine SC 924.

and *State of Karnataka by Kavoor Police Station v. Kalandar Shafi*,<sup>6</sup> there is potential to greatly influence understanding and application of this new legislative change or even set authoritative precedents for other jurisdictions or future Supreme Court adjudications. This comment will go into great detail on *Rakesh Kumar Paul*, provide a critical analysis of the legislative change in the BNSS, and lastly, analyse other possible interpretations.

## II. Factual Background and Judicial Determination in Mohammed Sajjid

In *Mohammed Sajjid v. State of Kerala*, the Kerala High Court, through J. P.V. Kunhikrishnan, examined the default bail provisions in the new Bharatiya Nagarik\_Suraksha Sanhita, 2023. The charges against the petitioner pertained to possession of 2.28 grams of MDMA, also referred to as ‘ecstasy’. This falls under the provisions of the NDPS Act’s Section 22(b),<sup>7</sup> which provides for a maximum of ten years’ imprisonment.

The petitioner filed for an application under Section 187(3)(i) of the BNSS i.e. default bail, which mandates bail if the investigation is not concluded within 90 days. Default bail will be granted automatically if the offence is punishable with death, life imprisonment, or **ten years or more**. This used to be section 167(2)(a)(i) of the Code of Criminal Procedure, which was worded as “**for a term not less than 10 years**”.

The Hon’ble Kerala High Court decided that the differences in phrasing did not greatly determine the range of the provision between the CrPC and BNSS. Thus, deciding to grant the petitioner a default.

Aligning with a pro-liberty view, the court invoked the principle that ambiguities in penal statutes are to be interpreted in favour of the accused. It also clarified that for regular bail, criminal antecedents are relevant; however, for statutory bail, which is a right after the statutory period expire, they are irrelevant. The decision illustrates the continuity of constitutional

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<sup>6</sup> *State of Karnataka by Kavoor Police Station v. Kalandar Shafi*, 2024 KHC Online 5417.

<sup>7</sup> The Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985), s. 22(b).

Section 22 – Punishment for contravention in relation to psychotropic substances: Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any psychotropic substance shall be punishable,— (b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;

significance provided to personal liberty and that default bail is an entitlement which the accused has, irrespective of their criminal history and the prosecution's position.<sup>8</sup>

### III. Dissecting Rakesh Kumar Paul: A Watershed Moment for S.167(2)(a)(i) CrPC

*Rakesh Kumar Paul* is a landmark 3 JB pronouncement on the jurisprudence of default bail and especially regarding the interpretation of Section 167(2)(a)(i) of the CrPC. The foremost concern of the Supreme Court came down to the interpretation of “*an offence punishable with... imprisonment for a term of not less than ten years*” as it appeared in Section 167(2)(a)(i). The answer to this question determined whether the investigating agency had 60 days or 90 days to complete the investigation before the accused's right to default bail would accrue.<sup>9</sup>

Justices Lokur and J. Gupta (concurring) held that “*imprisonment for a term not less than ten years*” means that the minimum punishment for the offence in question shall be a decade of imprisonment. The decision rendered by the bench with a ratio of 2:1 has altered the computation of remand periods significantly. It was made clear that this category excludes offences in which the minimum is less than 10 years or in which the punishment is defined as “may extend to ten years”, which is the maximum punishment.<sup>10</sup> For such cases, the period to complete the investigation and file the chargesheet is 60 days, as stated in Section 167(2)(a)(ii) CrPC. The majority of the judges emphasised that the use of words must be given their natural meaning, in accordance with the golden rule of interpretation.<sup>11</sup> In addition, it was stated that where a legal provision can be interpreted in two ways, the approach that favours an individual's personal freedom should be chosen.<sup>12</sup>

Arriving at this conclusion, most of them drew mostly on the earlier ruling in *Rajeev Chaudhary v. State (NCT) of Delhi*.<sup>13</sup> The court in *Rajeev Chaudhary* observed that “*not less than ten years*” signifies a mandatory minimum of 10 years' imprisonment for an offence to fall within the 90-day detention period.<sup>14</sup> The majority decided that the decision of *Bhupinder*

<sup>8</sup> *Supra* note 1 at 23.

<sup>9</sup> *Supra* note 5 at 54 and 58.

<sup>10</sup> (2017) 15 SCC 68.

<sup>11</sup> (2017) 15 SCC 72.

<sup>12</sup> (2017) 15 SCC 71.

<sup>13</sup> *Rajeev Chaudhary v. State (NCT) of Delhi*, (2001) 5 SCC 34.

<sup>14</sup> *Supra* note 5 at 25-26.

*Singh v. Jarnail Singh*<sup>15</sup> had an erroneous understanding and application of *Rajeev Chaudhary*. *Bhupinder Singh* had proposed a more expansive reading whereby "punishable" may refer to both the minimum and maximum terms, so perhaps bringing offences liable "up to ten years" inside the 90-day ambit.<sup>16</sup> Citing *Union of India v. Nirala Yadav*<sup>17</sup> underscored the notion that the right to default bail cannot be undermined by prosecutorial practices.<sup>18</sup> The majority in *Rakesh Kumar Paul* gave natural and obvious meaning to the words in the statute, narrowed the range of offences that would fit the longer 90-day period for completion of the investigation. This view might be argued to be, in essence, pro-liberty since more offences would fall under the shorter 60-day restriction, therefore enabling a quicker accrual of the right to default bail for the accused in such circumstances.

In his dissenting view, Justice Prafulla C. Pant presented another interpretation. According to him, the legislative intent behind Section 167(2)(a)(i) CrPC was to include all offences for which imprisonment of up to ten years could be awarded (i.e., where ten years is the maximum permissible sentence, even if not the minimum) within the 90-day investigation period.<sup>19</sup> Justice Pant reasoned that the legislature would have used more explicit language, such as "**imprisonment for a term more than ten years**" or specified a minimum term, if it had intended to restrict this clause to offences mandating at least ten years' imprisonment.<sup>20</sup> Referring to parliamentary discussions on the clause, he sought to support his construction by implying that these discussions implied a more general inclusion of offences liable to imprisonment lasting 10 years.<sup>21</sup> He observed in his minority judgment that the wording "**not less than ten years**" was vague and should be understood deliberately to embrace any offence where a ten-year sentence could be awarded. *Bhupinder Singh's* reasoning became the backbone of Justice Pant's interpretation that "punishable" refers to the penalty that can be given, spanning minimum and maximum limitations.<sup>22</sup> Although appreciating *Rajeev Chaudhary*, he made hints about a possible lack of clarity in its final observation.<sup>23</sup> His criticism thus supported a

<sup>15</sup> *Bhupinder Singh v. Jarnail Singh*, (2006) 6 SCC 277.

<sup>16</sup> *Supra* note 5, Lokur, J., 21–26.

<sup>17</sup> *Union of India v. Nirala Yadav*, (2014) 9 SCC 457.

<sup>18</sup> [2017] 8 S.C.R. 785, Lokur, J., 37–38; Gupta, J., 25.

<sup>19</sup> [2017] 8 S.C.R. 785, Pant, J., 20.

<sup>20</sup> *Supra* note 19 at 15.

<sup>21</sup> *Id.* at 17-19.

<sup>22</sup> *Id.* at 16.

<sup>23</sup> *Id.* at 14-15.

perspective whereby the weight of the possible maximum punishment should be the deciding criterion, so giving investigators more time for a more general category of major offences.

#### IV. The Legislative Transition: From S. 167(2) (a)(i) CrPC to S.187(3)(i) BNSS

Following the replacement of the Code of Criminal Procedure, 1973, with the Bharatiya Nagarik Suraksha Sanhita, 2023, various textual modifications were made, including to the clause governing the term of custody undergone before applying for default bail. Through a direct comparison of the pertinent clauses, one finds a minor but maybe important change in phraseology.

Section 167(2)(a)(i) of the CrPC read as:

*"...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;"*

In contrast, Section 187(3)(i) of the BNSS now reads:

*"...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;"*

When interpreting this new change, the Kerala High Court in *Mohammed Sajjid* observed "**ten years or more**" (BNSS) and "**not less than ten years**" (CrPC) do not have much difference.<sup>24</sup> The court then moved to apply the idea of clearing any apparent uncertainty in favour of the accused's liberty. The court in *Mohammed Sajjid*, while granting default bail for an offence under Section 22(b) NDPS Act punishable with a maximum of ten years, implied that such an offence was regarded as falling within the 60-day investigative period. This result aligns with the pragmatic outcome of the majority decision in *Rakesh Kumar Paul*.<sup>25</sup>

The Kerala High Court adopted and endorsed the interpretative reasoning of the Karnataka High Court in *State of Karnataka by Kavour Police Station v. Kalandar Shafi* concerning Section 187(3)(i). The Karnataka High Court has made clear that the term "**ten years or more**" under Section 187(3)(i) BNSS must be understood to signify that only those offences which

<sup>24</sup> *Supra* note 1 at 18.

<sup>25</sup> *Id.*

provide a minimum threshold punishment of ten years or more would fall within its jurisdiction. Conversely, offences that just offer a maximum punishment stretchable up to 10 years, without specifying a statutory minimum, fall under Section 187(3)(ii), therefore drawing a sixty-day time for completion of investigation before the accused gains the right to default bail.<sup>26</sup>

Observing that the “slight tweak” in phrasing from Section 167(2)(a)(i) CrPC (“*not less than ten years*”) to Section 187(3)(i) BNSS (“*ten years or more*”) does not change the substantial purpose or underlying legislative intent of the provision, the Kerala High Court upheld this conclusion. Based on the when the Karnataka High Court's conclusions, the Kerala High Court observed that the BNSS must be interpreted to protect the personal liberty of the accused, particularly in cases where penal clauses are vague. Particularly in para 14 and the summary of findings, the Karnataka High Court ruling underscored that where an offence involves a punishment of up to 10 years, it does not satisfy the criterion of "*ten years or more*," and so, the statutory bail period of sixty days applies. This interpretative clarity supports the idea that, in cases involving the curtailment of personal liberty under Article 21 of the Constitution, interpretations front and centre stage.<sup>27</sup>

### V. A Critical Analysis of *Mohammed Sajjid*

This ruling in *Mohammed Sajjid* provides early, therefore important, judicial interaction with the BNSS's default bail provision. Its reading of Section 187(3)(i) BNSS calls for rigorous scholarly examination, especially in light of the Supreme Court's thorough examination of the relevant CrPC provision in *Rakesh Kumar Paul*'s pronouncement.

One important point of criticism is the High Court's central claim that the BNSS phrase ("*ten years or more*") is "not much different" from the CrPC's "*not less than ten years*".<sup>28</sup> Although this comment seems harmless, it might underplay a legislative modification meant to produce a subtle shift. One wonders: if the legislators changed the wording, was it done with a deliberate goal, or merely for a cosmetic change? As said, "*ten years or more*" could be taken to cover offences where ten years is a probable maximum sentence, therefore aligning with Justice Pant's dissent in *Rakesh Kumar Paul*. Given that a sentence of "ten years" is really awardable, such an interpretation would entail that an offence punishable with imprisonment "may extend

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<sup>26</sup> *Supra* note 6 at 14.

<sup>27</sup> *Id.*

<sup>28</sup> *Supra* note 24.

to ten years" might fall within the 90-day investigation category. This is contrary to the reading of "not less than ten years," which required a minimum term of ten years, adopted by the *Rakesh Kumar Paul* majority. Should the Kerala High Court's interpretation of *Mohammed Sajjid* finally result in the same outcome as the *Rakesh Kumar Paul* majority, then the legislative amendment in the BNSS, in this particular context, may seem to have had little practical relevance and raises issues regarding the intent of the textual change.

Unquestionably, the High Court's reliance on the pro-liberty canon that ambiguity in penal statutes, particularly those affecting liberty, should be decided in favour of the accused, is a commendable and well-founded notion. Still, its application depends on real uncertainty. One could contend whether the word "*ten years or more*" is intrinsically vague or if it has a meaning different from "*not less than ten years*". Although the textual journey under BNSS might have provided other paths, it is possible that the court aimed to achieve an outcome consistent with the protective effect of the *Rakesh Kumar Paul* majority by stating "not much difference" and then applying the pro-liberty principle, thus ensuring continuity in safeguarding liberty.

Alternatively, if "*not much difference*" is taken to mean that the pro-liberty outcome for offences punished "up to 10 years" (i.e., a 60-day limit) is to be maintained, then the court might be giving that outcome top priority over a thorough interpretation of the new phraseology that could have led elsewhere. Especially with a new code, this nuanced interaction between textual interpretation and outcome-oriented thinking makes *Mohammed Sajjid* an interesting judgment for future legal debate. The strategy might also indicate a court leaning toward interpretative stability during the transition to a new criminal procedural system, thereby reducing the disturbance of accepted values regarding the fundamental right protecting personal liberty. But depending on the specific legislative language used, this strategy could also overlook opportunities to improve or simplify the law.

## VI. CONCLUSION

Understanding the interpretation given by the Hon'ble Kerala High Court on Section 187(3)(i) of the BNSS is legally very sound. The Court sided with the majority opinion in *Rakesh Kumar Paul* that in construing penal statutes, the ambiguities, if any, should be resolved in favour of the accused, particularly when personal liberty is curtailed. While I also support this approach, it is the subtly differing terminology used in the BNSS that allows for other interpretations discussed above. Therefore, the Hon'ble Supreme Court must provide its interpretation on the

introduced change under Section187(3)(i) of BNSS to ensure a uniform application of the provision throughout the country.