



# “Consequences of non-filing of Final Report to grant Default Bail: A Critical Study”

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## ARTICLE INFO ABSTRACT

The right to liberty is the natural right and also the fundamental right of an individual. However, a person has to respect the rights of others recognized by law like the inviolability of their body and their property. When a person is reasonably suspected to have committed an offence, the machinery of law is set in motion to arrest him and to bring him to trial and punish him, if found guilty. The act of arrest deprives a man of his liberty. Bail sets him free on securing his promise to take trial at a future date and to undergo punishment, if found guilty.

Order for release on bail under proviso to S. 187 (2) of Bharatiya Nagrik Suraksha Sanhita, 2023 (*hereinafter referred to as ‘BNSS, 2023’*) may appropriately be termed as, an **order-on-default or Default Bail**. Indeed, it is release on bail, on the default of the prosecution in filing charge- sheet within the prescribed period. The right to bail under S. 187(2) proviso (a) thereto is absolute. If the investigating agency failed to file charge-sheet before the expiry of 90 / 60 days, as the case may be, the accused in custody should be released on bail, irrespective of the order of bail passed by the Sessions Court.<sup>1</sup>

## 1. INTRODUCTION AND STATEMENT OF THE PROBLEM:

The purpose behind the enactment of section 187 of BNSS, 2023 is to see that the detention of the accused should not be permitted in custody for any unreasonably longer period. The Parliament has introduced the proviso to section 187 (2) prescribing the outer limit within which the investigation must be completed. If the same is not completed, the accused would acquire a right to be released on bail and if he is prepared to and does furnish bail, the Magistrate shall release him on bail and such release shall be deemed to be granted of bail under Chapter 32 of the BNSS, 2023<sup>2</sup>

## 2. LIMITATIONS OF STUDY:

### Lack of previous research studies on the topic;

The relevant provisions of law as provided under Criminal Procedure Code, 1898, Criminal Procedure Code, 1973, Bharatiya Nagrik Suraksha Sanhita, 2023 and judgments based interpretations of the said provisions provide the theoretical foundations for the research paper prepared. However, depending on the scope of the research topic, prior research studies that are relevant to the thesis might be limited.

When there is very little or no prior research on a specific topic, one may need to develop an entirely new research typology. In this case, discovering a limitation can be considered an important opportunity to identify literature gaps and to present the need for further development in the area of study. Empirical research is sole mode applied in the given situation that is based on observation and measurement of phenomena, as directly experienced by the researcher. The data thus gathered may be compared against a theory or hypothesis, but the results are still based on theoretical experience gathered.

<sup>1</sup>Jayendragiri Anandgiri Goswami vs. Narcotics Control Bureau, reported in 2005 CrLJ 3190 (Bom).

<sup>2</sup>Hirendra Vishnu Thakur Vs. State of Maharashtra AIR 1994 SC 2623.

### 3. LITERATURE REVIEW:

Almost every research article includes a review of the literature. In other words, before this article/paper is prepared get into our methodology and research questions, systematic effort has been made to ascertain and assess what's been done previously and how the variables we want to investigate fit into the theories and frameworks of our research field.

By way of empirical literature review, the relevant provisions of Criminal Procedure Code, 1973, Bharatiya Nagrik Suraksha Sanhita, 2023 as well as judgments of the Hon'ble Supreme Court and Hon'ble High Courts have been accessed. The theoretical literature review serves primarily to place the research within a broader framework. A theoretical review will be included in systematic empirical reviews to help researchers understand why a specific research topic is worth investigating.

An effort is made to summarize and discuss previous publications on a topic.

### 4. VARIOUS ASPECTS OF DEFAULT BAIL UNDER BHARATIYA NAGRIK SURAKSHA SANHITA, 2023:

#### 4.1 PROVISION RELATING TO 'DEFAULT BAIL' UNDER BNSS, 2023.

**Section 187 of BNSS, 2023 talks about the provision relating to grant of Default Bail, it says that –**

187. (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 58, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter specified relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, irrespective of whether he has or has no jurisdiction to try the case, after taking into consideration whether such person has not been released on bail or his bail has been cancelled, authorise, from time to time, the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole, or in parts, at any time during the initial forty days or sixty days out of detention period of sixty days or ninety days, as the case may be, as provided in sub-section (3), 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.

(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, 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.

(4) No Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the audio-video electronic means.

(5) No Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

Explanation I.—For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in sub-section (3), the accused shall be detained in custody so long as he does not furnish bail.

Explanation II.—If any question arises whether an accused person was produced before the Magistrate as required under sub-section (4), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the audio-video electronic means, as the case may be:

Provided that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution:

Provided further that no person shall be detained otherwise than in police station under police custody or in prison under judicial custody or a place declared as prison by the Central Government or the State Government.

(6) Notwithstanding anything contained in sub-section (1) to sub-section (5), the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of a sub-inspector, may, where a Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Magistrate have been conferred, a copy of the entry in the diary hereinafter specified relating to the case,

and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub-section, shall be taken into account in computing the period specified in sub-section (3):

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or the police officer making the investigation, as the case may be.

(7) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

(8) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.

(9) If in any case triable by a Magistrate as a summons-case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.

(10) Where any order stopping further investigation into an offence has been made under sub-section (9), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under sub-section (9) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify

#### **4.2 BAIL U/S 187(2) OF BNSS, 2023 - WHEN CAN BE GRANTED:**

Where final report is not filed within a period of 60 or 90 days and the accused moves application for being released on bail u/s 187(2), Proviso (a) of the BNSS, 2023 and offers to furnish bail, he can be said to have availed of indefeasible right for being released on bail. If the application of the accused moved u/s 187(2) of BNSS, 2023 is erroneously rejected by the Magistrate and the accused then approaches higher forum for bail and the charge sheet is filed in the meantime, it does not extinguish the accrued right of the accused to be released on bail u/s 187(2) of BNSS, 2023. <sup>3</sup> It is well settled that when an application for default bail is filed u/s 187(2) of BNSS, 2023, the merits of the matter are not to be gone into. <sup>4</sup>

#### **4.3 PRESENTATION OF FINAL REPORT & BAIL U/S 187(2) OF BNSS, 2023:**

Right to bail u/s 187(2) of BNSS, 2023 is available only till investigation is pending and no police report u/s 173(2) of BNSS, 2023 is submitted within the statutory period of 60/90 days. But this right is lost once charge sheet is filed. Such right to bail u/s 187(2) of BNSS, 2023 does not get revived only because further investigation u/s 173(8) is pending. <sup>5</sup>

#### **4.4 SUBMISSION OF CHARGE SHEET BEFORE FILING OF BAIL BONDS AFTER BAIL U/S 187(2) OF BNSS 2023**

An order for release on bail granted u/s 187(2) of BNSS, 2023 is not defeated by lapse of time, the filing of charge sheet or by remand to custody u/s 346(2) of BNSS, 2023. There is no limit of time within which the bond may be executed after the order for release on bail u/s 187(2) of BNSS, 2023 is made. <sup>6</sup>

#### **4.5 MAGISTRATE TO INFORM THE ACCUSED OF HIS ACCRUED RIGHT TO BAIL U/S 187(2) BNSS, 2023:**

It is the duty of Magistrate to inform the accused of his accrued right to be released on bail u/s 187(2) of BNSS, 2023. <sup>7</sup>

<sup>3</sup>Uday Mohanlal Acharya Vs. State of Maharashtra, AIR 2001 SC 1910, Dinesh Kumar Jain Vs. State of U.P., 2001 Cr.L.J. 2847 (All)

<sup>4</sup>Pragyna Singh Thakur Vs. State of Maharashtra, (2011) 10 SCC 445, Union of India Vs. Thamisharasi, (1995) 4 SCC 190

<sup>5</sup>Dinesh Dalmia Vs. CBI, AIR 2008 SC 78

<sup>6</sup>Raghubir Singh Vs. State of Bihar, (1986) 4 SCC 481

<sup>7</sup>Sudhakar Vs. State of U.P., 1985(1) Crimes 582 (All), Hussainara Khatoon Vs. Home Secretary, State of Bihar, AIR 1979 SC 1377 (Three Judge Bench)

#### **4.6 SUBMISSION OF CHARGE SHEET AFTER GRANT OF BAIL U/S 187(2) OF BNSS, 2023 BUT BEFORE FURNISHING OF BAIL BONDS:**

If the accused is unable to furnish the bail as directed by the Magistrate, then on a conjoint reading of Explanation I and the proviso to sub-sec. (2) of Sec. 187 of BNSS, 2023., the continued custody of the accused even beyond the specified period in para (a) will not be unauthorized, and therefore, if during that period the investigation is complete and the charge-sheet is filed then the so called indefeasible right of the accused would stand extinguished.<sup>8</sup>

#### **4.7 FIRST DAY TO BE EXCLUDED IN COMPUTING PERIOD OF TIME FOR LEGAL PURPOSES:**

The Section 9 of General Clause Act says that in any Central Act or Regulation made after the commencement of the General Clauses Act, 1897, it shall be sufficient for the purpose of excluding the first in a series of days or any other period of time, to use the word 'from', and, for the purpose of including the last in a series of days or any period of time, to use the word 'to'. The principle is that when a period is delimited by statute or rule, which has both a beginning and an end and the word 'from' is used indicating the beginning, the opening day is to be excluded and if the last day is to be excluded the word 'to' is to be used, In order to exclude the first day of the period, the crucial thing to be noted is whether the period of limitation delimited by a series of days or by any fixed period. This is intended to obviate the difficulties or inconvenience that may be caused to some parties.<sup>9</sup>

#### **4.8 ACCUSED NOT ENTITLED TO BAIL U/S 187(2) OF BNSS, 2023 WHEN CHARGE-SHEET FILED ON THE LAST DAY (90TH DAY) WITHOUT FULL SET OF DOCUMENTS:**

Where the police report i.e. charge-sheet u/s 193(2) of BNSS, 2023 was filed by the Io before the court on the last day i.e. 90<sup>th</sup> day and the accused claimed bail u/s 187(2) of BNSS, 2023 on the ground that the Io had not filed the complete documents with the police report u/s 193(2) of BNSS, 2023, it has been held by the Hon'ble Supreme Court that on the said grounds the accused was not entitled to bail u/s 193(2) of BNSS, 2023 particularly when the cognizance taking order on such police report was not challenged by the accused. The provisions of Section 193(5) of BNSS, 2023 requiring filing of full set of documents with the police report/charge-sheet is only directory and not mandatory.<sup>10</sup>

#### **4.9. BAIL U/S 187(2) BNSS, 2023 AFTER FILING OF CHARGE SHEET:**

The Supreme Court has held that the statutory rights of accused to bail u/s 187(2) of BNSS, 2023 should not be defeated by keeping the application for bail pending till the charge-sheet is submitted. The Magistrate has to dispose of such application forthwith. Once charge sheet is filed and cognizance of the offence is taken, the court cannot exercise its power u/s 187(2) of BNSS, 2023.<sup>11</sup>

#### **4.10 NO BAIL U/S 187 (2)(A)(II) OF BNSS, 2023 WHEN BAIL APPLICATION AND CHARGE- SHEET ARE FILED THE SAME DAY:**

When charge-sheet and the bail application are filed on the same day and the charge-sheet was filed within 90 days from the date of remand and cognizance on charge-sheet had been taken, right of accused to be released on bail u/s 187(2) of BNSS, 2023 stood extinguished.<sup>12</sup>

#### **4.11 CANCELLATION OF BAIL GRANTED U/S 187(2) BNSS, 2023:**

Grant of bail to an accused u/s 187(2) of BNSS, 2023 is different from bail granted on merits u/s 480 or 483 of BNSS, 2023. Cancellation of bail u/s 480(5) or 483(2) of BNSS, 2023 is different from refusal to grant bail. Cancellation involves review on merits of the decision granting bail. Therefore, unless there are strong grounds for cancellation of bail once granted u/s 187(2) of BNSS, 2023., the same cannot be canceled on mere production of charge-sheet.

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<sup>8</sup>Sanjay Dutt Vs. State through CBI. (1994) 5 SCC 410 should be understood in that sense. See Uday Mohanlal Acharya Vs. State of Maharashtra, (2001) 5 SCC 453 (Three Judge Bench)  
<sup>9</sup>Tarun Prasad Chatterjee Vs. Dinanath Sharma, AIR 2001 SC 36 (Three-Judge Bench), Manmohan Anand Vs. State of UP, (2008) 3 ADJ 106 (All).

<sup>10</sup>Narendra Kumar Amin Vs. CBI, (2015) 3 SCC 417.

<sup>11</sup>Mithabhai Pashabhai Patel Vs. State of Gujarat, 2009 (4) Supreme 368, Uday Mohanlal Acharya Vs. State of Maharashtra, (2001) 5 SCC 453 (Three-Judge Bench), Mohamed Iqbal Madar Sheikh Vs. State of Maharashtra, 1996(1) Crimes 4 (SC-Three-Judge Bench).

<sup>12</sup>Pravin Kasana Vs. State of UP, 2013 CrLl (NOC) 427 (All).



The ratio of **Rajnikant Jivanlal Patel Vs. Intelligence Officer, NCB, New Delhi**,<sup>13</sup> to the extent it was inconsistent with the law laid down in Aslam Babalal Desai Case have been held not to state the correct law and has been overruled.<sup>14</sup>

#### **4.12 BAIL GRANTED U/S 187(2) OF BNSS, 2023 NOT TO BE CANCELLED AFTER SUBMISSION OF CHARGE SHEET:**

Bail granted u/s 187(2) of BNSS, 2023 is to be deemed to have been granted under chapter XXXII of the BNSS, 2023. Bail granted u/s 440 or 483 of BNSS, 2023 and the same will remain valid till it is canceled u/s 440(5) or 483(2) BNSS, 2023. The receipt of charge sheet in court after grant of bail u/s 187(2) BNSS, 2023 can by itself be no ground for cancellation of bail. Bail once granted u/s 187(2) BNSS, 2023 cannot be canceled merely on subsequent filing of charge sheet and the same can be canceled only u/s 440(5) & 483(2) BNSS, 2023 for the reasons like abuse etc. of the bail. <sup>15</sup>

### **5. RECENT JUDICIAL TRENDS**

In the case of **M. Ravindran v. The Intelligence Directorate of Revenue Intelligence**<sup>16</sup>, decided by Hon'ble Apex Court of India, the principles laid down in **Uday Mohan Lal Acharya** were discussed again and the following questions were raised. (a) Whether the indefeasible right accruing to the appellant under Section 167(2), CrPC gets extinguished by subsequent filing of an additional complaint by the investigating agency; (b) Whether the Court should take into consideration the time of filing of the application for bail, based on default of the investigating agency or the time of disposal of the application for bail while answering (a).

It was held that:

18.1 Once the accused files an application for bail under the Proviso to Section 167(2) he is deemed to have 'availed of' or enforced his right to be released on default bail, accruing after expiry of the stipulated time limit for investigation. Thus, if the accused applies for bail under Section 167(2), CrPC read with Section 36A (4), NDPS Act upon expiry of 180 days or the extended period, as the case may be, the Court must release him on bail forthwith without any unnecessary delay after getting necessary information from the public prosecutor, as mentioned supra. Such prompt action will restrict the prosecution from frustrating the legislative mandate to release the accused on bail in case of default by the investigative agency.

18.2 The right to be released on default bail continues to remain enforceable if the accused has applied for such bail, notwithstanding pendency of the bail application; or subsequent filing of the chargesheet or a report seeking extension of time by the prosecution before the Court; or filing of the chargesheet during the interregnum when challenge to the rejection of the bail application is pending before a higher Court.

18.3 However, where the accused fails to apply for default bail when the right accrues to him, and subsequently a chargesheet, additional complaint or a report seeking extension of time is preferred before the Magistrate, the right to default bail would be extinguished. The Magistrate would be at liberty to take cognizance of the case or grant further time for completion of the investigation, as the case may be, though the accused may still be released on bail under other provisions of the CrPC.

18.4 Notwithstanding the order of default bail passed by the Court, by virtue of Explanation I to Section 167(2), the actual release of the accused from custody is contingent on the directions passed by the competent Court granting bail. If the accused fails to furnish bail and/or comply with the terms and conditions of the bail order within the time stipulated by the Court, his continued detention in custody is valid.

In **Bikramjit Singh vs The State Of Punjab**<sup>17</sup>, it was concluded that "A conspectus of the aforesaid decisions would show that so long as an application for grant of default bail is made on expiry of the period of 90 days (which application need not even be in writing) before a charge sheet is filed, the right to default bail becomes complete. It is of no moment that the

<sup>13</sup>(1989) 3 SCC 532

<sup>14</sup>Dr. Bipin Shantilal Panchal Vs. State of Gujarat, (1996) 1 SCC 718 (Three Judge Bench), Aslam Babalal Desai Vs. State of Maharashtra, (1992) 4 SCC 272 (Three Judge Bench), Ram Murti Vs. State of U.P., 1976 Cr.L...J. 211 (All)

<sup>15</sup>Dr. Bipin Shantilal Panchal Vs. State of Gujarat, (1996) 1 SCC 718 (Three Judge Bench), Aslam Babalal Desai Vs. State of Maharashtra, (1992) 4 SCC 272 (Three Judge Bench), Ram Pal Singh Vs. State of U.P., 1976 Cr.L.J. 288 (All).

<sup>16</sup>AIR 2020 SUPREME COURT 5245

<sup>17</sup>AIR ONLINE 2020 SC 865

Criminal Court in question either does not dispose of such application before the charge sheet is filed or disposes of such application wrongly before such charge sheet is filed. So long as an application has been made for default bail on expiry of the stated period before time is further extended to the maximum period of 180 days, default bail, being an indefeasible right of the accused under the first proviso to Section 167(2), kicks in and must be granted.”

In **CBI v. Kapil Wadahawan & Anr.**<sup>18</sup> decided by Hon’ble Apex Court of India on 24.01.2024, it was observed that “In view of the afore-stated legal position, we have no hesitation in holding that the chargesheet having been filed against the respondents-accused within the prescribed time limit and the cognizance having been taken by the Special Court of the offences allegedly committed by them, the respondents could not have claimed the statutory right of default bail under Section 167(2) on the ground that the investigation against other accused was pending.

The statutory scheme does not lead to a conclusion in regard to an investigation leading to filing of final form under sub-section (2) of Section 173 and further investigation contemplated under sub-section (8) thereof. Whereas only when a charge-sheet is not filed and investigation is kept pending, benefit of proviso appended to sub-section (2) of Section 167 of the Code would be available to an offender; once, however, a charge-sheet is filed, the said right ceases. Such a right does not revive only because a further investigation remains pending within the meaning of sub-section (8) of Section 173 of the Code.

Hon’ble Supreme Court of India in **Jigar @ Jimmy Pravinchandra Adatiya vs State Of Gujarat** decided on 23 September, 2022, it was observed that “The logical and legal consequence of the grant of extension of time is the deprivation of the indefeasible right available to the accused to claim a default bail. If we accept the argument that the failure of the prosecution to produce CrI.A.@SLP(CrI.)No.7696 of 2021 etc. The accused before the Court and to inform him that the application of extension is being considered by the Court is a mere procedural irregularity, it will negate the proviso added by subsection (2) of Section 20 of the 2015 Act and that may amount to violation of rights conferred by Article 21 of the Constitution. The reason is the grant of the extension of time takes away the right of the accused to get default bail which is intrinsically connected with the fundamental rights guaranteed under Article 21 of the Constitution. The procedure contemplated by Article 21 of the Constitution which is required to be followed before the liberty of a person is taken away has to be a fair and reasonable procedure. In fact, procedural safeguards play an important role in protecting the liberty guaranteed by Article 21. The failure to procure the presence of the accused either physically or virtually before the Court and the failure to inform him that the application made by the Public Prosecutor for the extension of time is being considered, is not a mere procedural irregularity. It is gross illegality that violates the rights of the accused under Article 21.

Once we hold that the orders granting extension to complete investigation are illegal and stand vitiated, it follows that the appellants are entitled to default bail.

37. When they applied for bail, the appellants had no notice of the extension of time granted by the Court. Moreover, the applications were made before the filing of charge sheet. Hence, the appellants are entitled to default bail. At this stage, we may note here that in the case of **Sanjay Dutt** as well as in the case of **Bikramjit Singh**, this Court held that grant of default bail does not prevent re-arrest of the petitioners on cogent grounds after filing of chargesheet. Thereafter, the accused can always apply for regular bail. However, as held by this Court in the case of **Mohamed Iqbal Madar Sheikh & Ors. v. State of Maharashtra**, re-arrest cannot be made only on the ground of filing of charge sheet. It all depends on the facts of each case.

38. Accordingly, the impugned orders passed by the Special Court granting extension to complete investigation and impugned judgment of the High Court are hereby quashed and set aside. The appellants shall be enlarged on default bail under subsection (2) of Section 167 of CrPC upon conditions imposed.”

## 6. CONCLUSION

The idea of bail is noble idea in criminal jurisprudence. Bail can be granted to the accused in case of non bailable offences subject to some limitation and conditions. The idea of bail conveys the meaning that the accused cannot be presumed to be guilty until his guilt is proved. Provision of bail also brings the noble idea of personal liberty into existence. The Magistrate have to inform the right which had accused in favour of accused, well within time, so that

accused will not continue to remain in custody despite the right of bail available to them.

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