
**FROM PRESUMPTION OF INNOCENCE TO PRESUMPTION
OF GUILT? A COMPARATIVE STUDY OF BAIL
JURISPRUDENCE UNDER NDPS, PMLA, MCOCA AND
UAPA**

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ABSTRACT

The law of bail in India has historically been based on the fundamental premise that the accused is deemed to be innocent till he or she is proved guilty and that imprisonment prior to conviction should continue to remain an exception rather than the rule. This is because under Article 21 of the Constitution of India, the presumption of personal liberty ensures that the criminal trial process cannot per se become punitive in nature. However, the passage of specific criminal laws like the Narcotic Drugs and Psychotropic Substances Act, 1985, the Prevention of Money Laundering Act, 2002, the Maharashtra Control of Organized Crime Act, 1999, and the Unlawful Activities (Prevention) Act, 1967 has changed this paradigm completely.

These criminal laws incorporate very strict bail provisions involving the “twin conditions” test and the “prima facie true” test, thus drastically limiting judicial discretion and placing the reverse onus on the accused in the pre-trial stage. The paper will provide an analysis on how these statutory provisions amount to a definite change in the presumption of innocence, especially at the bail stage, with special reference to the Indian Constitution. Thus, the study involves a comparative and doctrinal analysis of these laws.

INTRODUCTION -

The concept of bail in Indian legal jurisprudence is directly tied up with the constitutional right to personal liberty guaranteed under Article 21 of the Constitution. The criminal procedure in India is premised on the fundamental principle that every accused individual is considered innocent until he or she is proven to be guilty after undergoing a trial. It means that pretrial detention should not be seen as a punishment for an accused and it should be imposed only if there arises a necessity of keeping him/her present during the proceedings.

Over the course of the last few decades, however, the introduction of certain special laws related to grave criminal offences such as terrorism, drug trafficking, money laundering and organized crime has considerably altered the concept of bail. The laws are characterized by strict conditions that reduce judicial discretion and make it very challenging to grant bail to suspects. In addition, it means that courts are often required to carry out a preliminary judgment of guilt or innocence of an accused prior to a trial.

Such a development poses several significant constitutional issues about the viability of the presumption of innocence doctrine in relation to exceptional legislation. This would entail evaluating whether the strict terms of releasing offenders on bail, in line with such exceptional legislations, are adequately balanced, taking into consideration the needs of the state as well as the offender's own interests, or whether there is an undermining of basic principles of criminal law.

RESEARCH QUESTIONS AND OBJECTIVES -

This paper intends to investigate the issue of whether the severe bail provisions that have been laid down under special legislations like NDPS Act, PMLA, MCOCA, and UAPA are consistent with the concept of presumed innocence under the Constitution. Further, the research will try to explore whether there is any presumption of guilt created by such stringent bail provisions by virtue of twin conditions and prima facie true criteria. In addition, the issue of proportionality test under Article 21 of the Constitution shall be discussed in relation to such statutory bail provisions.

The main objective of the research is to conduct a comparative study of the bail provisions of such statutes and their effect on the liberty of individuals.

SCOPE AND METHODOLOGY -

The current study employs the research methodology of doctrinal research, which entails the analysis of statutory laws, case laws, and literature from secondary sources of law. In this study, judgments from the apex court of India, i.e., the Supreme Court of India, have been analysed for a deeper understanding of the application of provisions relating to bail under different special statutes.

The scope of the research is narrow: it compares the provisions on bail under the NDPS Act, PMLA, MCOCA, and UAPA, with a focus on their constitutionality.

THE EVOLUTION OF BAIL JURISPRUDENCE IN INDIA -

The law regarding bail in India is provided by the Code of Criminal Procedure, 1973. The law of bail in India is governed by judicial discretion based on well-settled principles of law. Factors like the nature of the offense, the chances of the accused running away, and tampering with the evidence can affect the granting of bail. It has always been the position of the Supreme Court that bail is the norm and imprisonment is the exception.

The constitutional framework for bail is rooted in the right to personal liberty guaranteed under Article 21 which the Supreme Court has interpreted broadly and generously since the transformative landmark ruling in *Maneka Gandhi v. Union of India* [AIR 1978 SC 597]. The court held that legal procedure for depriving someone of personal liberty must be fair, just and reasonable standard that demands substantive fairness throughout the criminal process.

In *Gudikanti Narasimhulu v. Public Prosecutor* [AIR 1978 SC 429], Justice V. R. Krishna Iyer expressed the guiding philosophy with his usual eloquence: “The issue of bail is one of liberty, justice, public safety and the burden of the public treasury, all of which insist that a developed jurisprudence of bail is essential to a judicial process attuned to social concerns.” His lordship further observed that “the human rights of the accused are not to be sacrificed on the altar of social order.”

Just like this, in *Moti Lal Saraf v. Union of India* [(2006)10 SCC 560], the Supreme Court reiterated the need for the fair trial as a significant part of Article 21. The court emphasized that any unnecessary delay in the process of hearing in criminal cases would adversely affect the reputation of the administration of justice and violate the rights of the accused persons.

In the case of *Hussainara Khatoon v. State of Bihar* [AIR 1979 SC 1360], it was ruled that the right to speedy trial is a basic feature of Article 21 of the Indian Constitution and any detention of the undertrial prisoner beyond a reasonable period violates this right. Thus, the State could not imprison the persons indefinitely without a trial.

The above decisions show the traditional stance of Indian courts towards the protection of the personal freedom of the citizens and ensuring that no pre-trial detention is done in a punitive manner. This means that the Supreme Court in India recognizes the basic principle that “bail is the rule while jail is the exception.”

EMERGENCE OF SPECIAL STATUTES AND RESTRICTIVE BAIL REGIME -

The passage of laws like NDPS Act, PMLA, MCOCA, and UAPA is a reaction of the State to crimes that threaten the safety and security of the nation. The primary purpose of these laws is to ensure that crimes are investigated thoroughly, and adequate punishment is provided through strict legal measures like imposing restrictions on bails.

In the landmark decision of *Kartar Singh v. State of Punjab* [(1994) 3 SCC 569], the Supreme Court conducted a thorough examination of the constitutionality of restrictive bail provisions in special statutes. In this pivotal decision, a constitution bench examined the validity of provisions of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA), particularly its strict bail provisions. The court upheld TADA’s general constitutional validity but imposed significant constitutional constraints stating that “the procedural safeguards available to the accused are not mere technicalities but constitute the very substance of the constitutional guarantee of personal liberty.” The court further held that the right to life and personal liberty guaranteed under article 21 of the constitution cannot be suspended even in respect of offences under special laws.

As opposed to the common law procedure in criminal cases, these laws impose restrictions on bail and make courts less discretionary while deciding whether to grant bail or not. The court must satisfy certain conditions for granting bail, and if it fails to do so, the accused cannot get bail despite any personal circumstances.

Despite the fact that the laws are valid for the intended purpose, there are concerns about whether these laws are consistent with the constitutional rights of citizens. The restrictions

imposed on bail may lead to pretrial detentions.

TWIN CONDITIONS IN BAIL JURISPRUDENCE -

An essential part of the bail provision in special criminal legislations such as the NDPS Act, the Prevention of Money Laundering Act, and the Maharashtra Control of Organized Crime Act is the inclusion of twin conditions. The twin conditions stipulate that before considering the request of granting bail, the court shall be convinced that there are reasonable grounds to conclude that the accused is innocent of the crime committed and also that the accused is not likely to commit any offense during his/her stay on bail. It should be noted that this is in stark contrast with the traditional bail principles of the Code of Criminal Procedure.

The twin conditions carry significant doctrinal implications. Under the traditional bail framework, the prosecution must justify pre-trial detention; in contrast, the twin condition framework shifts that burden to the accused who must prove they should be released. Shifting the burden of proof in this manner represents a legislative violation of the fundamental principle of the presumption of innocence. The bail hearing is effectively transformed into what the Supreme Court has described a “mini- trial”, a proceedings in which the court must evaluate the strength of the prosecution’s case even though the evidentiary record is incomplete, investigation may still be ongoing, witnesses have been questioned and the accused has had minimal opportunity to challenge the material placed before the court.

The Supreme Court, in *Union of India v. Shiv Shankar Kesari* [(2007) 7 SCC 798], provided the definition of the term “reasonable grounds” mentioned in Section 37 of the NDPS Act. According to the Supreme Court, “reasonable grounds” mean something much more than merely suspicion and should have considerable probable cause on the basis of the material on record. The Supreme Court reiterated that the requirement of satisfaction cannot be made out by mere lip service; rather it is supposed to be done after considering the evidence thoroughly. It signifies the stringent nature of the two prerequisites as well as sheds light on how much effort courts have to make for assessing the case.

The doctrine implication in such cases is that there is no difference between the bail hearing procedure and a “mini-trial.” The court has to decide whether there is a strong case made by the prosecution without having an evidentiary record before it. This clearly violates the rights of the accused.

NDPS ACT (SEC 37) -

The Narcotic Drugs and Psychotropic Substances Act, 1985 provides for one of the strictest bail provisions in Indian Criminal Law. According to Section 37 of the Act, bail shall not be allowed to the accused in certain serious offences, especially offences related to narcotics. This is evident from the negative language used in the Act where bail shall be provided only when both the conditions stated have been met. As such, bail becomes an exceptional case rather than a normal practice.

In *Toofan Singh v. State of Tamil Nadu [(2021) 4 SCC 1]*, one of the most important NDPS rulings in recent years, the Supreme Court again examined the constitutional validity of sec 37. Although the court mainly focused on the admissibility of confessions recorded by NCB officers, the decision carries broader significance as it reiterates that the NDPS act being a penal statute that restricts the fundamental right to personal liberty must be interpreted strictly in the favour of the accused.

As far as interpretation of Section 37 of the NDPS Act is concerned, it has always been considered mandatory in nature. The Court in *Union of India v. Shiv Shanker Kesari* has made it clear that both the conditions specified in the act should be strictly followed and the court must satisfy itself that the accused is not guilty of the crime before allowing him bail. This satisfaction should not depend upon any conjectures and the same should be established through some substantial material.

The strictness of Section 37 can be attributed to the fact that offenses in violation of the NDPS Act present a substantial danger to both public health and social order. Nevertheless, the real impact of the provision has been the detention of undertrials, who have not yet been convicted, for long periods of time. There arises the issue of whether the restriction is indeed proportionate to the goal of protecting society and if it violates fundamental rights.

PMLA (SEC 45) -

The Prevention of Money Laundering Act, 2002 also imposes similar restrictions on bail through the twin conditions as enshrined in Section 45. The constitutional validity of these provisions had been widely discussed in several judgments of the Supreme Court.

In *Nikesh Tarachand Shah v. Union of India [(2018) 11 SCC 1]*, the Supreme Court delivered

a landmark judgment holding that twin conditions laid down under sec 45 of the PMLA, as they existed at that time, were unconstitutional since they violated the provisions of Articles 14 and 21 of the Constitution. The court held that there was no rational connection between the conditions and the object of the said legislation and put unnecessary burden on the personal liberty of the individual. Crucially, the court held that requiring the accused to prove prima facie innocence as a bail condition was fundamentally incompatible with the presumption of innocence and crossed the constitutional standard of what is “just, fair and reasonable.”

But later, in *Vijay Madanlal Choudhary v. Union of India [(2022) SCC OnLine SC 929]*, the Supreme Court endorsed the amendments to Section 45. The twin conditions were again restored by the Court, which held that money laundering was an economic crime with grave repercussions on the economy of the nation, and that it was justified for the legislature to impose strict conditions in such cases. However, the judgement has been criticized by legal scholars and civil liberties advocates for showing excessive deference to executive and legislative power, blurring the distinction between the state’s interest in pushing offenders and its more limited interest in ensuring their presence at trial.

The method used by Vijay Madanlal indicates a movement toward increased respect for legislative intentions when dealing with offences related to economics. It should be noted that, based on the seriousness of the offense and the need to protect the economy, the court decided that the case should not follow regular procedures relating to bail. Nevertheless, this method has faced criticism because of the excessive attention paid to the seriousness of the crime rather than to the rights of the defendant.

MCOCA [SEC 21(4)] -

Section 21(4) of the Maharashtra Control of Organized Crime Act, 1999 also includes stringent bail conditions and stipulates that both of above mentioned twin conditions have to be satisfied. Moreover, the section mandates that the Public Prosecutor will be allowed to oppose the bail application of the accused. Thus, the section makes it even more restrictive for granting bail to an accused.

The term “reasonable grounds” used in Section 21(4) of MCOCA was elaborated upon by the Supreme Court of India in the case of *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra [(2005) 5 SCC 294]*. The Supreme Court ruled that the expression means much

more than prima facie satisfaction, but less than proof beyond reasonable doubt. The court further held that the standard requires taking an overall view of all the evidences on record and formation of an overall impression regarding the strength of the prosecution's case a process that must inherently be provisional and incomplete at the bail stage.

Despite such elaborate explanation of the term "reasonable grounds", the practical implementation of Section 21(4) led to highly restrictive policy towards bail. Cases under MCOCA frequently involved prolonged investigation incarceration, voluminous chargesheets and slow moving trials often causing accused persons to remain in custody for durations longer than any potential sentence they might eventually face.

UAPA SEC [43D (5)] -

Section 43D (5) of the Unlawful Activities (Prevention) Act, 1967 takes an entirely different perspective towards bail. It states that bail cannot be granted where the court feels that there are prima facie grounds to establish the truth behind the accusation against the accused. While, in case of twin conditions, the burden of proof is on the accused to prove himself innocent, the bail provision in the UAPA clearly focuses on the other side i.e. prosecution's side.

In *National Investigation Agency v. Zahoor Ahmad Shah Watali*, [(2019) 5 SCC 1], the Supreme Court analyzed the provision and stated that while granting bail, there was no need for the courts to go deep into the evidence; what was required from the courts was to look into the case of prosecution provided there is prima facie evidence against the crime committed by the accused. Thus, the courts should only consider general probabilities in the case before them without a mini-trial or an examination of evidence. This judgement has received considerable criticism owing to the fact that its scope has been very narrow, thereby limiting judicial intervention in the bail process.

The jurisprudence has evolved in *Union of India v. Vernon* [(2024) SCC OnLine SC]. The court in *Vernon* without altering the essential framework of *Watali*, introduced important limitations to its application. The court ruled that even under the UAPA framework, constitutional courts retain the authority to step in when prolonged detention breaches the constitutional right to personal liberty especially when trial is not moving forward at reasonable pace. *Vernon* also emphasized that Section 43D (5) must not be applied rigidly or by strict categories and that the court still holds discretion to consider specific factors such as the accused's health, the duration

of prior detention and likelihood of the trial concluding promptly.

In the case of *Union of India v. K.A. Najeeb [(2021) 3 SCC 713]*, the Supreme Court ruled that the constitutional courts still have the right to exercise discretion in granting bail on the grounds of fundamental rights violations, especially in cases where there is undue delay in the trial process. The court held that it would be unacceptable to allow statutory provisions that indefinitely deny bail when the trial whose purpose justifies such detention is itself indefinitely delayed. This decision makes clear the supremacy of Article 21 to serve as safeguard against the overreach of special legislation.

COMPARATIVE ANALYSIS –

Feature	NDPS (Sec. 37)	PMLA (Sec.45)	MCOCA (Sec 21)	UAPA (Sec 43D (5))
Standard	Twin Conditions: Court must be satisfied that the accused is innocent and unlikely to commit any offence.	Twin Conditions: Restored by Vijay Madanlal as a necessity for economic security.	Twin Conditions: Requires “reasonable grounds” (more than suspicion, less than proof)	Prima Facie True: Court only checks if the prosecution’s case is plausible on it’s face.
Burden	Reverse/Negative Burden: The accused must effectively prove a negative (non-guilt)	Reverse Onus: Justified due to the “grave” nature of money laundering crimes.	High Threshold: Places a heavy evidentiary burden on the applicant at the pre-trial stage.	Prosecution-Heavy: Limited scrutiny; the court largely accepts the prosecution’s version.
Judicial Role	Adjudicatory: Often involves a “mini-trial” to assess material on record.	Regulatory: Focuses on legislative intent to protect the national economy.	Discretionary but Limited: Bound by strict statutory satisfaction requirements.	Restricted: Judiciary is barred from detailed examination of evidence.
Article 21 “Safety Valve”	Delayed Trial: Bail may be granted if	Proportionality: Recent trends suggest Article	Right to Liberty: Delay in trial is a	Najeeb Doctrine: Constitutional

	detention becomes punitive rather than preventive.	21 can override Sec 45 in cases of extreme delay.	ground for bail despite the strictness of Sec 21.	courts can grant bail if trial delay violates the right to speedy trial.
Bail Nature	Statutory Exception	Regulatory Exception	Restrictive Exception	Constitutional Exception

The comparison of the above laws shows that though the doctrinal approach may be different, there is very little difference in the practical implications. According to NDPS Act, PMLA, and MCOCA, the application of the twin conditions results in reverse burden of proof which means that the onus of proving that the person is innocent lies on him during bail proceedings. However, in accordance with the provisions of UAPA, the prosecution-oriented approach implies that it is for the court to accept the prosecution’s case as presented without any further questions.

Though the two legal approaches are quite different, they both result in the restriction of bail and prolonged pretrial detention.

CONSTITUTIONAL AND THEORETICAL ANALYSIS -

It is important to analyse the strict bail terms laid down under the special statutes on the basis of the Constitutional right of personal liberty under Article 21 of the Constitution. It has been held time and again by the Supreme Court that the deprivation of liberty must be done in a manner that is reasonable and fair. By imposing twin conditions and the prima facie true standard, the process itself comes into question, as the accused will have to prove innocence even before he/she is found guilty.

The doctrine of proportionality, as developed by the Supreme Court of India in *K. S. Puttaswamy (Privacy) v. Union of India [(2017) 10 SCC 1]*, mandates that restrictions on fundamental rights pass a four-limbed test: (i) there must be a legitimate aim ; (ii) the measure must be logically linked to that objective ; (iii) the measure must be necessary that is the least restrictive means to achieve the objective ; (iv) the measure must be strictly proportionate meaning its benefits must clearly exceed its drawbacks in terms of the restriction it imposes on fundamental rights. When applying this framework to bail provisions under special statutes, there is no dispute that the legislative goal suppressing serious crimes validity; however, what remains open to debate is whether a blanket refusal of bail in every case involving specified

offenses irrespective of individual circumstances, is strictly necessary and proportionate.

In *Javed Gulam Nabi Shaikh v. State of Maharashtra [(2024) SCC OnLine SC]* the Supreme Court ruled that detention without trial amounts to violation of Article 21 of the Constitution, and merely on the ground of the seriousness of the case, bail can never be denied. The court held that if an accused has been detained for a duration equal to or longer than any possible sentence upon conviction, further imprisonment no longer serves a preventive purpose but turns punitive wholly contrary to Article 21.

The principle of proportionality states that any limitations placed upon fundamental rights have to be necessary and proportional to the desired aim. Although there is nothing wrong with the goal of fighting serious crimes, the method chosen should not violate individual rights in an excessive manner. A one-size-fits-all approach to setting strict conditions for release on bail may not meet this standard if it results in pre-trial detention that becomes punitive in character.

PRACTICAL IMPACT AND GROUND REALITY -

The abstract doctrinal analysis only gains its full significance when considered in the context of the actual human experience of pre-trial detention in India. Data from the National Crime Records Bureau (NCRB) consistently shows that undertrial prisoners make up the vast majority of India's prison population with range of 75 to 77 percent over successive years. Many of these undertrial prisoners are persons facing charges under special statutes, for whom the stringent bail conditions outlined in this paper effectively prevent or significantly restrict their release.

The application of bail conditions in practice poses serious issues in the criminal justice system. There have been instances where people are held in jail for several years before they are declared guilty because of long investigations and trials, which are common features of the Indian judicial system. Those accused under NDPS, PMLA MCOCA and UAPA routinely remain in custody for five, seven, ten or even longer years before their trial are concluded that often surpass the maximum punishment prescribed for their alleged offences.

This is basically a punishment being imposed on an individual despite the presumption of innocence until proven guilty. Prolonged pre-trial detention imposes severe consequences for the accused and his family including job loss, disruption of family life, social stigma and mental

strain of imprisonment all suffered by persons who's not yet proven guilty by law. In addition, the issue is complicated when those who are not financially able to defend their application for bail are involved, establishing a two-tier system in which liberty is reserved for those who can afford it.

THE INTERNATIONAL PERSPECTIVE -

From the comparative study of the bail system in different jurisdictions, it emerges that the presumption of innocence continues to play an integral part in the criminal justice process in all jurisdictions around the world.

In the United Kingdom, the Bail Act, 1976 sets a clear presumption in favour of granting bail to persons accused of offences subject to only specific and narrowly defined exceptions. Even in terrorism-related cases, strong judicial supervision of pre-trial detention continues to be enforced. In *A v. Secretary of State for the Home Department [2004] UKHL 56* commonly known as the "Belmarsh Case" the House of Lords held that indefinite detention of foreign nationals without trial under the Anti-terrorism, Crime and Security Act, 2001 was incompatible with Human Rights Act, 1998.

Under the Bail Reform Act of 1984 in the United States, federal criminal defendants may be held before trial if deemed a danger to community or flight risk or likely to flee but this requires strict procedural safeguards including detention hearing where government must prove the need for detention. In *United States v. Salerno [481 U.S. 739 (1987)]*, the Supreme Court of the United States affirmed the act's constitutionality while emphasizing that the act contains substantive safeguards. Comparing this with India's position under special statutes is enlightening while American system keeps the burden of proof on the government and demands individualized review, India's twin conditions essentially shift that burden to the accused.

Through its jurisprudence under the Article 5 concerning the right to liberty, the European Court of Human Right has established a detailed framework for assessing pre-trial detention. In *Neumeister v. Austria (1968)*, the court held that the right to liberty is fundamental and that detention before trial is permissible only under specific, concrete conditions not merely because the offence is serious. In *Castravet v. Moldova (2007)*, the court reaffirmed that after certain period of time, mere reasonable suspicion is no longer adequate and judicial authorities must

provide additional justification for maintaining detention. This standard is considerably more protective of individual liberty compared to the current frameworks under NDPS, PMLA, MCOCA and UAPA in India.

However, in the case of India and its special statute, there seems to be a deviation from the above principles of criminal law leading to the regime that is significantly more restrictive than what constitutional democracies consider acceptable.

CONCLUSION -

It can be concluded from the analysis conducted in this study that the bail law developed within the framework of these special statutes constitutes a marked departure from the presumption of innocence towards a system that is close to a presumption of guilt before trial.

Twin conditions under NDPS, PMLA, MCOCA and the prima facie true standard under UAPA, each in their own way, impose an evidentiary burden on the accused that cannot fairly be discharged before trial, restrict judicial discretion in a manner inconsistent with the proportionality principle and lead to prolonged pre-trial detention that constitutes a de facto punishment without the safeguards of a fair trial.

The Supreme Court of India through its landmark decisions in *Kartar Singh v. State of Punjab*, *National Investigation Agency v. Zahoor Ahmad Shah Watali*, *Union of India v. Vernon* and *Union of India v. K.A. Najeeb*, has aimed to impose constitutional limits on these provisions and to safeguard the residual jurisdiction of constitutional courts to protect or uphold fundamental rights. The Najeeb doctrine in particular serves as a significant endorsement of the supremacy of Article 21.

While the goals pursued by such legislation may be justified, their implications for the deprivation of personal freedoms should not be overlooked, and they pose major challenges for the Constitution. An appropriate compromise should be reached between law enforcement and individual liberties. The exercise of judicial discretion and proportionality in bail hearings should always take precedence over other considerations.

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