
EVOLVING BAIL JURISPRUDENCE UNDER PMLA: A CRITICAL STUDY OF DELHI LIQUOR SCAM CASE

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ABSTRACT

Political controversies frequently dominate headlines, but for students of law, these disputes offer more than mere political spectacle they provide a valuable lens to examine judicial responses. The alleged Delhi liquor scam case, involving prominent political figures like the then Chief Minister of Delhi Shri Arvind Kejriwal and Home Minister Shri Manish Sisodia, has understandably captured widespread attention. Yet beyond the political narrative lies an intriguing opportunity: analyzing how courts respond when fundamental rights are at stake. Shri Kejriwal, Shri Sisodia along with various other political functionaries, were arrested in Liquor Scam case and were incarcerated for a substantial period. Ultimately, the Hon'ble Supreme Court through separate but comprehensive bail orders, granted them liberty.

This paper critically examines the bail jurisprudence evolved under the Prevention of Money Laundering Act (PMLA), with a central focus on its application in the alleged Delhi Excise Policy Scam case. It primarily contends that while the Supreme Court, in *Vijay Madanlal Choudhary v. Union of India*, upheld the constitutional validity of the twin test for bail under Article 21, courts have in contradiction, granted bail to accused individuals in the Delhi Excise Policy case under the same Article 21. This perceptible inconsistency creates what can be termed as a "bail paradox," raising serious doubts on judicial independence, the selective application of bail laws, and the potential of its misuse in future.

Additionally, this paper argues that the twin test under PMLA is not only a legal barrier but also a powerful tool in the hands of the government, enabling it to mold the bail outcomes as per the whims and fancies of the state and placing them beyond the reach of the courts, irrespective of the merits of the case. By reversing the burden of proof onto the accused, these laws restrict judicial intervention and turn bail into a privilege controlled by the prosecution rather than a fundamental right. This brings to light major concerns regarding the separation of powers, the rule of law, and the erosion of judicial discretion, where courts are often left unable to grant bail even in

deserving cases.

Keywords: PMLA, Bail, Twin Test, Liquor Scam, Delhi Excise Case

1. Introduction

“No one, however wealthy, should flatter themselves that they can act with impunity, for of such individuals, it is said: *‘the powerful shall suffer powerful torments.’*”

The principle of “presumed innocent until proven guilty” is a cornerstone of criminal law, aligned with the right to life and personal liberty enshrined in the Indian Constitution. However, in special statutes, legislators have created an exception to this standard by setting specific, stringent conditions for bail. Under these laws, courts must be convinced that

- (i) there are grounds to believe the accused is not guilty of the offense, and
- (ii) the accused is unlikely to commit any offense if released on bail.

These two requirements, known as the “twin conditions,” shift the burden of proof from the prosecution to the defence, effectively requiring the defence to prove the accused’s innocence, a significant departure from the presumption of innocence and a challenge to the right to life guaranteed under Article 21 of the Constitution. Previously, in *Nikesh Tarachand Shah v. Union of India*¹, the Supreme Court struck down these twin conditions in Section 45 of the PMLA as unconstitutional. However, in the landmark *Vijay Madanlal Choudhary*² case, they were reinstated to meet international standards established by the Financial Action Task Force (FATF).

Another foundational principle reversed in special statutes like the PMLA, UAPA, and NDPS is that “bail is the rule and jail is the exception.” This principle, a safeguard of personal liberty, has been modified by special statutes to “jail is the rule and bail is the exception.” The reasoning behind this shift includes the burden of proof being placed on the accused and the strict twin test conditions that the court must satisfy before granting bail.

The offenses under these special statutes mostly involve organized crimes, generally beyond the capability of ordinary individuals. It, however, requires resources of powerful and

¹ (2018) 11 SCC 1

² *Vijay Madanlal Choudhary v. Union of India*, 2022 SCC OnLine SC 929

influential people. This attempts to explain the legislators' intent to establish strict bail provisions, potentially to prevent powerful individuals from tampering with or influencing the trial. Nevertheless, recent Supreme Court judgments, reflecting a judicially activist approach, have emphasized the right to bail, upholding the principles of personal liberty and life. In doing so, they appear to contradict the *Vijay Madanlal* case, which reaffirmed the constitutional validity of the twin conditions.

The Supreme Court has taken the view in the cases of *State of Bihar v. Amit Kumar*³, *Nimmagadda Prasad v. CBI*⁴, *CBI v. Ramendu Chattopadhyay*⁵, *Serious Fraud Investigation Office v. Nittin Johari*⁶, *Y.S. Jagan Mohan Reddy v. CBI*⁷, and *State of Gujarat v. Mohanlal Jitmalji Porwal*⁸ has treated the economic offences as a greater degree of offence that have deep and pervasive effect on public interest and economic health of the nation, as such, in such cases the threshold to grant bail is higher than normal cases. The court in a way prioritizes public interest over individual liberty.

However, contradictory view has been taken by the court in the emerging cases particularly pertaining to Delhi Excise policy case where it prioritized individual liberty. There is inconsistency in judicial approach where court has not applied the same yardstick for everyone. It has also led to confusion leaving the law unsettled and with uncertainty. It also breaches the judicial convention of "golden rule of precedents" where the court contradicts judgements given by their brotherly judges itself through various judgments. It festers non uniformity. Law needs to be settled and backed by core principles of bail jurisprudence. Even if exceptions to bail jurisprudence is created, the court must back it with strong legal reasoning. Leaving the law unsettled creates ambiguity which allows the accused to escape law which is in breach of due process of law doctrine.

Therefore, in this paper, we will assess whether the recent judicial pronouncements, particularly those arising from the Delhi Excise Policy case, are consistent with constitutional principles and whether they challenge established precedents. We shall also examine whether the court's stance on Article 21 reflects a contradictory approach, particularly in light of the

³ *State of Bihar v. Amit Kumar* (2017) 13 Supreme Court Cases 751

⁴ *Nimmagadda Prasad v. CBI* (2013) 7 SCC 466 : (2013) 3 SCC (Cri) 575

⁵ *CBI v. Ramendu Chattopadhyay*, 2019 SCC OnLine SC 1491

⁶ *Serious Fraud Investigation Office v. Nittin Johari*, (2019) 9 SCC 165

⁷ *Y.S. Jagan Mohan Reddy v. CBI*, (2013) 7 SCC 439

⁸ *State of Gujarat v. Mohanlal Jitmalji Porwal*, (1987) 2 SCC 364

Vijay Madanlal decision, and how this impacts the coherence of legal precedent and the preservation of fundamental rights.

2. Bail Jurisprudence under PMLA

The jurisprudence of bail under the Prevention of Money Laundering Act, 2002 (PMLA) represents a significant deviation from fundamental criminal law principles, particularly regarding the presumption of innocence. Section 45 of the PMLA imposes stringent conditions for granting bail, wherein the burden of proof about the innocence of the accused in the pre-trial stage is on the accused itself. This chapter examines the bail framework under the PMLA, its conflict with constitutional principles, and the evolving judicial interpretations surrounding it.

Presumed guilt:

The requirement shifts the burden onto the accused to demonstrate innocence at a preliminary stage, effectively reversing the presumption of innocence. This shift reverses the general principle that “bail is the rule” and creates impediments on the accused on securing bail. Such provisions challenge the fundamental rights guaranteed under the Constitution, particularly right to life and personal liberty under Article 21.

The incorporation of these conditions raises concerns about balancing the interests of justice with individuals' fundamental rights, emphasizing the need for a more nuanced, rights-centric approach to bail jurisprudence. Bail granting to the accused is quintessential in ensuring them the right to defend themselves effectively and to prove their innocence. A person presumed innocent is entitled to freedom, enabling them to present their case optimally.

When the Prevention of Money Laundering Bill, 1999⁹, initially parliament featured less restrictive bail provisions. The stipulations indicated that the twin conditions for granting bail would apply solely to offences committed under the Act itself, rather than to the original offences constituting the basis for the money laundering charges. These twin conditions were more narrowly defined and aligned more closely with standard bail requirements.

However, Section 45 of the Prevention of Money Laundering Act (PMLA) imposes stringent

⁹ Prevention of Money-laundering Bill, 1999. (Consideration of the Amendments made by Rajya Sabha) (Amendments Agreed to)

conditions that reverse the principle of presumption of innocence. Unlike ordinary bail, where the presumption of innocence is a foundational principle, Section 45 effectively requires the accused to prove their innocence even before trial. The twin conditions laid down in *Amarmani Tripathi*¹⁰ must be met to secure bail under this provision.

The United States offers a contrasting approach, where pre-trial incarceration on the mere possibility of future crimes is deemed unconstitutional. Cases like *United States v. Salerno* (1987)¹¹, *Stack v. Boyle* (1951)¹², and *United States v. Rabinowitz* (1950)¹³ have upheld the importance of pre-trial bail to preserve the presumption of innocence. Without this protection, the hard-won principle of innocence until proven guilty would lose its significance.

The rights enshrined under article 21 of the Indian constitution with regard to the personal liberty have been undermined through the application of section 45 of PMLA which deviates from the principle of presumption of innocence. Such provisions should only be upheld if they address a compelling state interest, such as tackling crimes of an extremely heinous nature. In the absence of such valid justification, any indiscriminate application of these provisions risks violating fundamental rights, as highlighted in *Kartar Singh v. State of Punjab*.¹⁴

The Supreme Court, in *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra*,¹⁵ emphasized that restrictions on the power to grant bail should not be excessive. Courts must carefully evaluate the evidence and, if satisfied that the accused is unlikely to be convicted, bail can be granted. The likelihood of the accused committing another offence while on bail should be interpreted narrowly to mean offences under the Act itself and not minor or unrelated offences. Interpretation of statutes must be in a manner that avoids absurdity or excessive encroachment on personal liberty.

In *Nikesh Tarachand Shah v. Union of India*¹⁶, the Supreme Court held that the twin conditions of section 45 are unconstitutional, as they violated the principle of proportionality by placing an excessive burden on the accused. However, in *Vijay Madanlal Choudhary v. Union of*

¹⁰ (2005) 8 SCC 21

¹¹ 481 U.S. 739 (1987)

¹² *STACK v. BOYLE*, 342 U.S. 1 (1951)

¹³ *United States v. Rabinowitz* 339 U.S. 56 (1950)

¹⁴ (1994) 3 SCC 569

¹⁵ *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra*, (2005) 5 SCC 294

¹⁶ *Nikesh Tarachand Shah case*, (2018) 11 SCC 1

India,¹⁷ the Court upheld the amended Section 45, reasoning that the stringent conditions were necessary to address the transnational and organized nature of money laundering offenses.

The Supreme Court in *Shaheen Welfare Association v. Union of India*¹⁸ held that prolonged detention without trial violates the fundamental right to life and liberty under Article 21. This principle has been reaffirmed in cases involving UAPA, NDPS, and PMLA, where procedural delays and the lack of conclusive evidence have prompted courts to grant bail. The Delhi High Court's recent observation in *Prabir Purkayastha*¹⁹ noted that the twin test must be applied in a manner consistent with constitutional safeguards, signaling a departure from the earlier "bail is an exception" approach.

The shift from "bail is an exception" to "bail is a rule" under special statutes raises questions about balancing individual rights and societal interests. This liberal approach reflects a rights-oriented interpretation of the law but also concerns about uniform bail provision application.

For instance, inconsistencies in granting bail under UAPA, NDPS, and PMLA lead to perceptions of arbitrariness, especially when influential individuals are granted bail despite the twin test. The court acknowledged this concern in *Jalaludin Khan v. Union of India*²⁰, emphasizing the need for clear and consistent standards. Similarly, the grant of bail to high-profile individuals under PMLA despite grave economic offenses raises questions about judicial impartiality and equality before the law.

The twin test under UAPA, NDPS, and PMLA balances the gravity of offenses with accused rights. While the UAPA remains stringent, recent judicial trends under NDPS and PMLA reflect a shift toward a more liberal approach to bail. This evolution highlights the judiciary's emphasis on constitutional safeguards but underscores the need for consistent bail standards to prevent arbitrariness and ensure judicial credibility.

The soul of PMLA:

Vijay Madanlal Choudhary & Ors. v. Union of India & Ors.

The Supreme Court's ruling in *Vijay Madanlal Choudhary*²¹ marks a prominent moment in

¹⁷ *Vijay Madanlal Choudhary v. Union of India* 2022 SCC OnLine SC 929

¹⁸ *Shaheen Welfare Association v. Union of India*¹⁸ (1996) 2 SCC 616.

¹⁹ CRL.M.C.7278/2023

²⁰ 2024 INSC 604.

²¹ *Vijay Madanlal Choudhary & Ors. v. Union of India* (2022) 6 SCR 382

criminal jurisprudence concerning the Prevention of Money Laundering Act (PMLA), as it upheld the constitutional validity of the stringent "twin conditions" for bail in the amended Section 45. This decision led to make a complicated balance between the recognized need to combat the grave menace of money laundering, which affects national economic stability, and the imperative to protect fundamental rights, specifically the right to personal liberty under Article 21. Recalling the background where the original, harsher twin conditions were struck down in *Nikesh Tarachand Shah*²² for being arbitrary and violative of Article 21, the Court in *Vijay Madanlal* assessed the post 2018 amendment version. It concluded that Parliament possesses the authority to enact strict provisions for severe offenses like money laundering, that these conditions serve the PMLA's objectives of preventing evidence tampering and flight, align with India's international commitments (like FATF), and adequately addressed the flaws identified in the *Nikesh* judgment. Crucially, the Court emphasized the interplay between the strict bail conditions of Section 45 and the procedural safeguards present in Section 19 governing arrests, which require recorded "reasons to believe" and prompt judicial production, viewing these as complementary measures ensuring some procedural fairness within the stringent framework. Consequently, the *Vijay Madanlal* judgment has far-reaching implications: it significantly bolsters India's anti-money laundering regime, aligns it more closely with international standards, and provides a robust, albeit controversial, framework for evaluating PMLA bail applications. It sets a benchmark emphasizing judicial oversight and proportionality within this strict legal landscape, underscoring the judiciary's essential role in mediating the tension between state security interests and fundamental individual liberties.

Delhi Excise Policy Bail Decisions:

The recent bail decisions involving figures like K. Kavitha²³, Arvind Kejriwal, Manish Sisodia, and Vijay Nair in the Delhi Excise Policy case reveal a significant judicial grappling match. On one side stands the Prevention of Money Laundering Act (PMLA) with its exceptionally strict "twin test" for bail under Section 45, designed to keep those accused of serious economic crimes incarcerated pre-trial. On the other side stands the fundamental right to personal liberty and a speedy trial guaranteed by Article 21 of the Constitution.

²² *Nikesh Tarachand Shah v. Union of India* (2018) 11 SCC 1

²³ *Kalvakuntla Kavitha v. Directorate of Enforcement* 2024 SCC OnLine SC 2269

In granting bail to Kavitha, Sisodia²⁴, and Nair²⁵, the Supreme Court's primary rationale centered on Article 21. The Court repeatedly highlighted the *prolonged periods* these individuals had spent in custody ranging from five months to over 22 months without their trials making meaningful progress, let alone commencing. Faced with the sheer complexity of the case (vast evidence, numerous witnesses), the Court recognized that a timely trial was highly improbable. It stressed that indefinite pre-trial detention effectively becomes punishment before guilt is proven, violating the essence of Article 21. While specific factors played a role like considering the PMLA's proviso for women in Kavitha's case (interpreted broadly, not just for 'vulnerability') and noting issues with delayed approver testimony against Nair the dominant theme was that fundamental liberty cannot be indefinitely curtailed solely because a trial is complex or delayed.

Arvind Kejriwal's²⁶ case offered a slightly different angle. While his release (on interim bail) was also grounded in Article 21 liberty concerns after significant detention (over 90 days), the Court's *direct focus* was on scrutinizing the *legality of his arrest* under PMLA Section 19. It emphasized that arrests require concrete "reasons to believe," subject to judicial review and proportionality, not just suspicion or whim.

These decisions collectively raise a crucial question: Is the Supreme Court carving out exceptions to the PMLA's strict twin test based on Article 21, effectively applying a different standard than trial courts? While trial courts often deny bail by rigidly applying Section 45, the Supreme Court appears willing to prioritize prolonged detention and speedy trial rights. This divergence fuels debate about consistency and equality (Article 14). The argument persists that for serious economic offenses that harm the nation, the apex court should uphold the strict twin test uniformly to maintain deterrence and avoid perceptions of preferential treatment for high-profile individuals, as underscored in cases like *Y.S. Jagan Mohan Reddy*²⁷ and *State of Gujarat v. Porwal*.²⁸ The Delhi Excise bail orders thus exemplify the ongoing, difficult judicial effort to balance the PMLA's tough mandate against the fundamental human right to liberty enshrined in the Constitution.

²⁴ Manish Sisodia v. Directorate of Enforcement 2024 SCC OnLine SC 1920

²⁵ Vijay Nair v. Directorate of Enforcement 2024 LiveLaw (SC) 644

²⁶ Arvind Kejriwal v. Directorate Of Enforcement 2024 SCC OnLine SC 2550

²⁷ Y.S. Jagan Mohan Reddy v. CBI, (2013) 7 SCC 439

²⁸ State of Gujarat v. Mohanlal Jitmalji Porwal, (1987) 2 SCC 364

Mandate of the Twin Test in Bail Cases for trial courts only?

The twin test for bail, outlined in statutes such as the Prevention of Money Laundering Act, 2002 (PMLA) and the Unlawful Activities (Prevention) Act, 1967 (UAPA), mandates that courts assess (1) the absence of a prima facie case against the accused and (2) whether the accused is unlikely to tamper with evidence or influence witnesses. This test designed to ensure judicial caution in cases involving serious offenses and is critical for safeguarding public interest and maintaining the integrity of the judicial process. While trial courts are strictly bound by this test, a pertinent question arises: should the Supreme Court, as the apex judicial authority, also adhere to it rigorously when granting bail? This chapter posits that the Supreme Court must strictly follow the twin test mandate, as deviation undermines principles of equality before the law and judicial consistency, particularly in cases such as the Delhi Excise Policy Scam.

Inconsistent Bail Standards Under Special Statutes and Their Implications for Equality Before Law?

The recent bail orders in the Delhi Excise Policy Scam have illuminated critical inconsistencies in the judicial approach to granting bail under special like the Prevention of Laundering Act, 2002 (PMLA). A notable trend is the reliance on the accused's "deep roots in society" or their status as members of vulnerable communities to justify bail. While these considerations are relevant for assessing flight risk and societal factors, their application raises significant concerns about judicial consistency, particularly regarding economic offences. Such inconsistencies challenge the principle of equality before the law under Article 14 of the Constitution, especially when accused individuals without influence or connections are held to stricter standards.

The Supreme Court and other constitutional courts often regard an accused's "deep roots in society" as a crucial factor in determining bail eligibility. In cases like the Delhi Excise Policy Scam, the accused were granted bail on this basis, despite allegations of substantial involvement in money laundering, corruption, and bribery. For instance, the courts considered the societal standing and lack of flight risk of Vijay Nair and Abhishek Boinpally while granting bail. However, the nature of money laundering inherently connects the accused to individuals with substantial influence, financial power, and extensive networks, as these crimes frequently involve large-scale transactions. It is almost self-evident that individuals charged with such

offences are likely to possess deep societal roots due to their positions of power.

This approach raises a troubling question: what about those charged under the PMLA or similar statutes who lack societal influence or financial resources? Individuals from marginalized or economically disadvantaged groups accused of similar offences are unlikely to meet the standard of being "deeply rooted in society" and therefore face disadvantages when seeking bail. This creates a disparity that violates the equal protection of laws guaranteed under Article 14 of the Constitution. In *State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain*²⁹, the Supreme Court emphasized that bail conditions must not discriminate between individuals based on their socio-economic or political status, as such disparities undermine the fundamental principles of justice and equality.

Furthermore, the grant of bail to K. Kavitha³⁰, another accused in the Delhi Excise Policy Scam, on the ground that she belongs to a vulnerable community (women), adds another layer of complexity. While the judiciary has recognized women as a vulnerable category deserving of certain protections, it is important to differentiate between vulnerability due to societal oppression and the circumstances of individual cases. Kavitha, as per the chargesheet, was accused of significant involvement in the conspiracy, including the alleged payment of ₹50 crores in bribes. Her societal and political stature, coupled with her alleged role in a high-level conspiracy, raises serious questions about whether the label of "vulnerable" is appropriate in this context. Vulnerability as a legal principle is meant to protect those who are genuinely disadvantaged or marginalized, as recognized in *Saumya Chaurasia v. Enforcement Directorate*³¹. Applying this principle to individuals of influence involved in large-scale economic offences dilutes its meaning and purpose, undermining the intent behind such protections.

This disparity in bail jurisprudence poses significant challenges to the coherence of legal standards. The judiciary's inconsistent approach creates a dual standard: one for individuals with influence and societal connections, and another for those without such privileges. In *Maneka Gandhi v. Union of India* (1978)³², the Supreme Court held that any arbitrary or discriminatory treatment under the law violates Article 14. The current trend in bail decisions

²⁹ *State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain* (2008) 1 SCC 213

³⁰ *Kalvakuntla Kavitha v. Directorate of Enforcement* 2024 SCC OnLine SC 2269.

³¹ 2023 SCC OnLine SC 1674

³² *Maneka Gandhi v. Union of India* (1978) 1 SCC 248

under the PMLA and other special statutes risks creating such arbitrariness, as individuals without influence or societal standing are less likely to receive bail on grounds of vulnerability or societal roots, even if their circumstances otherwise merit it.

The reliance on societal roots or vulnerability as criteria for bail also risks undermining the legislative intent behind statutes like the PMLA, which are designed to combat serious financial crimes. Economic offences, as noted in *Y.S. Jagan Mohan Reddy v. CBI* (2013)³³, have a profound impact on public confidence and economic stability. Allowing individuals accused of such offences to obtain bail based on their societal connections or claims of vulnerability weakens the deterrent effect of these laws and creates a perception of bias in judicial decisions.

Additionally, in cases involving influential individuals, the argument of deep societal roots must be scrutinized carefully. The Supreme Court, in *CBI v. Ramendu Chattopadhyay* (2018)³⁴ cautioned against the misuse of judicial discretion in granting bail to powerful individuals who can potentially influence witnesses or manipulate evidence. The alleged involvement of K. Kavitha and other accused in the Delhi Excise Policy Scam demonstrates the potential risks of granting bail without adequate safeguards, as such individuals possess the resources and networks to obstruct the judicial process.

Lastly, the judicial reliance on "deep roots in society" and "vulnerability" as criteria for granting bail raises critical questions about consistency and fairness in bail jurisprudence. These criteria, while relevant in certain cases, must be applied judiciously to ensure that they do not create a dual standard of justice. Individuals accused under the PMLA or similar statutes, irrespective of their societal status, should be subject to the same rigorous scrutiny to uphold the principles of equality before the law and maintain public confidence in the judicial system. The judiciary must carefully evaluate the implications of its decisions, ensuring that bail orders reflect both the seriousness of the allegations and the broader interests of justice, as mandated by the Constitution.

The Supreme Court's Contradictory Stance on the Twin Test and Article 21

The Supreme Court has upheld the twin test for bail under specific statutes, such as the Prevention of Money Laundering Act, 2002 (PMLA), Unlawful Activities (Prevention) Act,

³³ *Y.S. Jagan Mohan Reddy v. CBI* (2013) 7 SCC 439

³⁴ *CBI v. Ramendu Chattopadhyay* (2018) 12 SCC 159

1967 (UAPA), and Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS), as constitutionally valid with specific reference to Article 21 of the Constitution. This twin test requires courts to evaluate the prima facie guilt of the accused and the likelihood of evidence tampering. Justified as a necessary limitation on personal liberty, it serves to protect larger public interests and maintain the integrity of the judicial process. However, an emerging trend indicates that the same Court is increasingly invoking Article 21 to grant bail based on factors such as prolonged incarceration and the right to a speedy trial. This dual application of Article 21 to both affirm and circumvent the twin test presents a considerable challenge to judicial consistency, adherence to precedents, and legal predictability.

Twin Test and Its Constitutional Validity

The twin test was introduced to address the gravity of offences under special statutes. These laws deal with complex crimes such as terrorism, large-scale drug trafficking, and money laundering, which pose threats to public safety and economic stability. The Supreme Court upheld the twin test as constitutionally valid in *Enforcement Directorate v. Rohit Tandon* (2018)³⁵, affirming that Article 21 permits reasonable restrictions on personal liberty when larger societal interests are at stake. Similarly, in *Narcotics Control Bureau v. Mohit Aggarwal*³⁶, the Court reinforced the stringent application of the twin test under Section 37 of the NDPS Act, holding that grave offences warrant higher thresholds for granting bail.

These decisions emphasize that the twin test is not arbitrary but a necessary safeguard tailored to the specific challenges posed by these offences. The Court reasoned that such rigorous conditions are vital to prevent influential accused persons from tampering with evidence, influencing witnesses, or fleeing the jurisdiction. This principle aligns with the golden rule of judicial precedents, which holds that established decisions must guide future rulings to ensure stability and predictability in the legal system.

Contradictions and Unpredictability

The Supreme Court's evolving stance on the twin test reveals inconsistencies that threaten the predictability of bail jurisprudence. On one hand, the Court has upheld the twin test as constitutionally valid, asserting that it serves as a reasonable restriction under Article 21 to

³⁵ *Enforcement Directorate v. Rohit Tandon* (2018) 11 SCC 46

³⁶ *Narcotics Control Bureau v. Mohit Aggarwal* (2022) SCC Online SC 891

prioritize societal interests. On the other hand, the same article is being invoked to bypass the twin test in cases involving prolonged incarceration or delays in trial.

This duality creates a lack of predictability in the legal framework, as observed in cases like *Prabir Purkayastha v. Directorate of Enforcement*³⁷, where the Court granted bail under the PMLA citing Article 21, despite earlier rulings emphasizing the twin test's indispensability. Similarly, in *Jalaludin Khan v. Union of India*³⁸, the Court granted bail under the UAPA on the ground of prolonged detention, effectively sidelining the strict requirements of Section 43D(5).

Such contradictions erode the credibility of judicial reasoning and make the law increasingly unpredictable. This unpredictability disproportionately benefits individuals with the resources to challenge judicial interpretations, often allowing perpetrators to escape justice by exploiting inconsistencies in rulings. For instance, influential accused persons can argue that their prolonged incarceration violates Article 21, even when their case otherwise fails the twin test. This creates an uneven playing field, undermining the principle of equality before the law under Article 14.

Role of Government & Public Prosecutor

It is imperative to revisit the role of the Public Prosecutor in the twin test framework. The requirement for mandatory opposition by the prosecution should be replaced with a more balanced approach, allowing the court to independently assess the merits of the case without being bound by the prosecution's stance. This reform would restore the judiciary's autonomy and ensure that bail decisions are based solely on legal principles, free from executive influence.

Additionally, courts must scrutinize the prosecution's opposition to bail more rigorously to prevent misuse of the twin test. In *Prabir Purkayastha Case*³⁹, the court emphasized the need for fairness and impartiality in applying the twin test. Such scrutiny would ensure that the prosecution's role remains consistent with its duty to uphold justice, rather than serving as a tool for the government's strategic interests.

³⁷ (2023) SCC Online SC 955

³⁸ (2023) SCC Online SC 982

³⁹ Supra Note 36

Conclusion

The jurisprudence surrounding bail under special statutes such as the PMLA, UAPA, and NDPS emphasizes the judiciary's complex role in balancing individual liberty with societal and national interests. These statutes address serious offenses like terrorism, money laundering, and drug trafficking and incorporate bail provisions, including the twin test, to protect public welfare and prevent the misuse of legal processes. The twin test, upheld as constitutionally valid under Article 21, is essential for ensuring that bail is granted judiciously in cases with significant public and economic consequences. However, the recent judicial trend of granting bail based on prolonged incarceration and the right to a speedy trial—also grounded in Article 21—has introduced inconsistency within the legal framework.

This contradiction arises from the judiciary's dual invocation of Article 21: first, to justify the twin test as a reasonable restriction on personal liberty, and then to grant bail by emphasizing individual rights under the same provision. While addressing prolonged detention or procedural delays is vital for protecting personal liberty, this shift risks undermining the legislative intent of special statutes that prioritize public safety and national security in exceptional circumstances. This dual approach weakens judicial consistency and creates ambiguity in bail jurisprudence, with far-reaching implications.

A clear stance is necessary to reconcile these competing principles. The judiciary must reaffirm the twin test's role as a safeguard against the misuse of bail provisions in serious offenses, ensuring it does not lead to excessive or arbitrary restrictions on personal liberty. This requires a nuanced approach that delineates specific situations where exceptions may apply, such as significant trial delays, evidence of prosecutorial malafide, or clear violations of due process. Additionally, these exceptions must be uniformly applied with detailed and reasoned judgments to prevent perceptions of preferential treatment, especially for influential individuals.

The Public Prosecutor's role in opposing bail applications, mandated by the twin test, adds another layer of complexity. As a government representative, the Public Prosecutor's position often reflects executive priorities, potentially influencing bail decisions in politically sensitive cases. This dynamic risks undermining judicial independence and the principle of separation of powers, raising significant concerns about the impartiality of the legal process. To address this, courts must exercise greater scrutiny over the prosecution's opposition to bail, ensuring it aligns with the principles of justice rather than serving as a tool for executive influence.

Inconsistencies and contradictions in bail jurisprudence have broader implications beyond individual cases. Ambiguity in judicial decisions creates opportunities for well-resourced defendants to exploit legal loopholes, undermining the purpose of special statutes aimed at combating serious offenses. Furthermore, such unpredictability weakens public trust in the judiciary, which relies on precedents to maintain stability and coherence in the legal system. The golden rule of judicial precedents, emphasized in Indian, UK, and US jurisprudence, is vital for ensuring legal standards are predictable and uniformly applied.

The judiciary must recognize that while adaptability is essential to address evolving legal challenges, it must not come at the expense of consistency and fairness. By reconciling the twin test with constitutional guarantees of personal liberty and equality, the judiciary can ensure that bail jurisprudence remains principled and predictable. This entails not only adhering to established precedents but also articulating clear and coherent reasoning when departing from them.

In conclusion, the judiciary's task is to strike a delicate balance between safeguarding public interest and protecting individual rights. Special statutes like the PMLA, UAPA, and NDPS were enacted to address exceptional societal threats, and their rigorous bail provisions reflect this intent. While these laws must be applied judiciously to prevent misuse, any deviation from established principles must be grounded in clear legal reasoning and applied uniformly across cases. By reinforcing the golden principle of precedents and ensuring greater judicial coherence, the judiciary can uphold the rule of law and strengthen public confidence in the legal system. This is essential not only for the credibility of the judiciary but also for ensuring that justice is administered fairly, impartially, and consistently, without creating room for arbitrariness or exploitation of legal ambiguities.