THE TWIN TEST UNDER SECTION 45 OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002: A CONSTITUTIONAL AND JURISPRUDENTIAL STUDY OF BAIL RESTRICTIONS IN ECONOMIC OFFENCES LEGISLATION, 2017–2026

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ABSTRACT

Section 45 of the Prevention of Money Laundering Act, 2002 (“PMLA”) imposes what has come to be known as the ‘twin test’ or ‘twin conditions’ for the grant of bail: a court must be satisfied, first, that there are reasonable grounds for believing the accused is not guilty of the offence, and second, that the accused is not likely to commit any offence while on bail. This reverses the ordinary presumption of innocence at the pre trial stage and has generated one of the most contested constitutional debates in contemporary Indian criminal procedure. This paper traces the doctrinal life of the twin test from its origins in earlier special statutes, through its invalidation in Nikesh Tarachand Shah v. Union of India (2018), its legislative revival, its constitutional vindication in Vijay Madanlal Choudhary v. Union of India (2022), its judicial recalibration through the 2024 quartet of decisions, and its reaffirmation and further refinement between 2025 and 2026. It argues that the twin test now operates less as a rigid statutory bar and more as a structured, liberty sensitive threshold whose content is supplied as much by Article 21 jurisprudence on prolonged incarceration as by the bare text of Section 45. The paper concludes with a critical assessment of the test’s continuing tension with Articles 14 and 21 of the Constitution and offers observations on the direction of future reform.

I. Introduction

Money laundering, by its structural nature, is a derivative offence: it presupposes the commission of some antecedent 'scheduled' or 'predicate' offence generating proceeds of crime that are subsequently projected as untainted. The PMLA was enacted in 2002, pursuant to India's international commitments under the Vienna Convention and the Financial Action Task Force framework, to combat this laundering of proceeds. Because economic offences are frequently characterised by the state as posing a distinct and graver threat to society diffuse in their victims, sophisticated in execution, and corrosive of financial systems the PMLA, like several special statutes before it, departs from the ordinary bail jurisprudence codified in the Code of Criminal Procedure (now the Bharatiya Nagarik Suraksha Sanhita).

Section 45 of the PMLA is the principal mechanism of this departure. It does not merely add procedural hurdles; it inverts, at the threshold, the presumption of innocence that ordinarily governs pre conviction liberty. A constitutional court asked to grant bail under Section 45 must, before it can do so, form a prima facie view that the accused is probably innocent an inquiry that in ordinary criminal law is reserved for trial. This paper examines the twin test that Section 45 erects: its text, its constitutional history, the case law that has alternately invalidated, revived, tightened and softened it, and the doctrinal questions that remain unresolved as of 2026.

II. The Statutory Architecture of Section 45

Section 45(1) of the PMLA provides, in substance, that notwithstanding anything contained in the Code of Criminal Procedure, no person accused of an offence under the Act shall be released on bail unless (a) the Public Prosecutor has been given an opportunity to oppose the application, and (b) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail. These two conjunctive conditions, probable innocence and non-recidivism, constitute the 'twin conditions' or 'twin test'.

The provision carries a proviso relaxing the twin conditions for certain categories of accused: persons who are sick or infirm, and persons under the age of sixteen, together with women accused, may be released on bail on general principles without being subjected to the full rigour of the test, at the discretion of the court. Section 45 further operates in conjunction with Section 24 of the Act, which places a statutory presumption against the accused in proceedings connected with proceeds of crime, so that the burden of proving the absence of the requisite mental state or connection to proceeds of crime substantially shifts onto the accused even before the twin test is engaged.

The combined effect of Sections 45 and 24 is a bail framework that is markedly more restrictive than ordinary criminal procedure: the accused must, at a preliminary stage and on an incomplete record, persuade the court of the reasonable probability of their own innocence, in addition to negativing any likelihood of re-offence.

III. Doctrinal Origins of the Twin Test in Special Legislation

The twin test is not a PMLA invention. Similarly structured reverse onus bail provisions predate the PMLA by decades and were devised for offences that Parliament considered to require enhanced deterrence, organised crime, terrorism and narcotics trafficking. Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 imposed an equivalent twin condition for bail in respect of commercial, quantity narcotics offences. Section 20(8) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 and Section 21(4) of the Maharashtra Control of Organised Crime Act, 1999 followed a similar template.

Courts upheld these provisions in NDPS and MCOCA contexts by treating the extraordinary threat posed by narcotics trafficking and organised crime as sufficient constitutional justification for the reversed onus, provided the classification of offences to which the test applied was not itself arbitrary. It was precisely this question of classification, whether the class of offences singled out for the twin test bore a rational nexus to the object of the differentiation that would prove decisive when the PMLA's own version of the test reached the Supreme Court in 2017.

IV. The Constitutional Challenge: Nikesh Tarachand Shah v. Union of India (2018)

In November 2017, a two judge bench of the Supreme Court struck down Section 45(1) insofar as it imposed the twin conditions, holding the provision unconstitutional as violative of Articles 14 and 21 of the Constitution.

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

The Court's reasoning turned principally on classification. As it then stood, Section 45(1) applied the twin conditions only to offences listed in Part A of the Schedule to the Act where the punishment prescribed exceeded three years, and to all offences under Part B regardless of sentence, while other scheduled offences escaped the rigour of the test altogether. The Court found this classification manifestly arbitrary: two accused charged with the same offence of money laundering, involving materially identical proceeds of crime, could be subjected to entirely different bail standards depending on the happenstance of which Part of the Schedule the predicate offence fell under. There was, the Court held, no intelligible differentia bearing a rational relation to the object sought to be achieved, and the provision therefore offended Article 14. Because the same defect infected the deprivation of personal liberty occasioned by the provision, the Court also found a violation of Article 21, applying the principle that a law depriving a person of liberty must be fair, just and reasonable, not arbitrary or fanciful. The Court struck down the twin conditions in their entirety, restoring ordinary bail principles to money laundering prosecutions with immediate effect.

V. The Legislative Response: The 2018 and 2019 Amendments

Parliament responded within months. The Amendment Act of 2018 (Act No. 13 of 2018) restructured Section 45(1) by removing the Part A/Part B classification of the Schedule that Nikesh Tarachand Shah had found objectionable, and instead applied the twin conditions uniformly to all offences under the Act, without regard to the identity of the predicate offence or the length of the sentence prescribed for it. The Finance (No. 2) Act, 2019 further clarified that this amendment was to operate with retrospective effect, a step later relied upon by the Supreme Court to hold that the twin conditions, once revived by the removal of the constitutional infirmity, continued to apply without interruption.

This legislative sequence striking down, prompt amendment, and retrospective validation, set the stage for a second, more comprehensive constitutional challenge to the PMLA as a whole, which culminated in the Supreme Court's 2022 decision in Vijay Madanlal Choudhary.

VI. Revival and Vindication: Vijay Madanlal Choudhary v. Union of India (2022)

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

A three judge bench headed by Justice A.M. Khanwilkar heard a batch of petitions challenging multiple provisions of the PMLA, including the twin conditions, the wide definition of 'proceeds of crime', the status of Enforcement Directorate officers, the admissibility of statements recorded under Section 50, and the validity of the PMLA amendments having been passed as Money Bills. On the twin conditions specifically, the Court held that the amendment of 2018, by removing the very classification that Nikesh Tarachand Shah had condemned, had cured the constitutional defect at its root. Since the premise on which the twin conditions had been struck down no longer existed, the 2018 judgment could not survive the changed statutory landscape, and the twin conditions stood revived and further, retrospectively, by virtue of the 2019 clarification.

The Court additionally held that Enforcement Directorate officers are not ‘police officers’ for the purposes of the Code of Criminal Procedure, with the consequence that constitutional protections against self incrimination and procedural safeguards attaching to police custody do not straightforwardly extend to ED interrogation, and that statements recorded under Section 50 of the PMLA are admissible in evidence. Read together with the revival of the twin conditions, Vijay Madanlal Choudhary represented the high water mark of the enforcement oriented reading of the PMLA.

VII. Doctrinal Critique of Vijay Madanlal Choudhary

The decision attracted sustained academic and professional criticism, and review petitions were filed shortly after the judgment, notably by parties including Karti Chidambaram seeking reconsideration of several of its findings, particularly the treatment of the Money Bill route and the reverse, burden architecture of Sections 24 and 45 read together.

Three principal objections recur in the literature. First, critics argue that the Court’s classification, based reasoning, while formally responsive to Nikesh Tarachand Shah, did not engage searchingly with the independent question of whether a reverse onus bail standard is itself compatible with the presumption of innocence, a value the Court itself has elsewhere located within Article 21. Second, the proportionality framework articulated in K.S. Puttaswamy v. Union of India, requiring among other things that a rights restricting measure adopt the least restrictive means reasonably available, was, in the critics’ view, insufficiently applied to the specific architecture of the twin conditions. Third, the practical consequence of treating ED officers as non police combined with the admissibility of Section 50 statements, was said to create an asymmetry of investigative power difficult to reconcile with ordinary safeguards against compelled self incrimination.

K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1

These criticisms did not result in the review petitions succeeding in dislodging the core holding on the twin conditions; the essential architecture of Section 45 as constitutionally valid has remained undisturbed since 2022. What has changed, markedly, is the manner in which the test is applied at the level of individual bail adjudication a shift driven not by revisiting Vijay Madanlal Choudhary but by a distinct line of Article 21 jurisprudence on prolonged pre trial incarceration.

VIII. The 2024 Recalibration: The Quartet of Decisions

Across August and September 2024, the Supreme Court delivered a closely spaced series of rulings that, without disturbing the formal validity of Section 45, substantially recalibrated how the twin conditions are to be applied where an accused has suffered prolonged incarceration without meaningful progress in trial.

A. Manish Sisodia v. Directorate of Enforcement (2024 INSC 595)

The former Delhi Deputy Chief Minister had been in custody for approximately seventeen months in the Delhi excise policy case without the trial having commenced in any substantial sense. The Supreme Court granted bail, holding that prolonged incarceration coupled with the absence of any realistic prospect of an early trial can itself satisfy, or at least significantly inform, the twin conditions, and reiterated the constitutional principle that bail is the rule and jail the exception a principle the Court held applies with equal force to PMLA prosecutions, notwithstanding the special procedure of Section 45. The Court cautioned trial courts and High Courts against treating incarceration as a substitute for a speedy trial.

B. Prem Prakash v. Union of India through Directorate of Enforcement (2024 INSC 637)

This decision clarified the evidentiary sequencing of Section 45: it is only once the prosecution, in its counter affidavit opposing bail, makes out a cogent prima facie case on the foundational facts of the offence that the presumption under Section 24 is triggered and the burden correspondingly shifts to the accused. The Court also addressed the evidentiary weight of admissions made by an accused while in judicial custody, observing that a person in custody cannot be treated as speaking with an entirely free mind, and that such circumstances warrant caution in treating custodial statements as voluntary admissions for the purposes of satisfying the first limb of the twin test.

C. V. Senthil Balaji v. Deputy Director, Directorate of Enforcement (2024 INSC 739)

The Court observed that inordinate delay in trial and a stringent bail threshold cannot indefinitely coexist: where the state's own machinery is unable to bring a prosecution to trial within a reasonable time, the right to bail must correspondingly expand, on pain of the twin conditions being used as a mechanism of indefinite pre trial detention rather than a genuine safeguard against flight or recidivism.

D. Tarsem Lal and the Summons versus Arrest Distinction

A related, though doctrinally distinct, line of authority addressed whether an accused who appears before a special court pursuant to a complaint and summons, without having been arrested by the Enforcement Directorate during investigation, is bound to seek bail under the rigours of Section 45 at all, or whether the ordinary procedure governing appearance on summons applies instead. This distinction has become a further variable that practitioners must account for when assessing whether the twin test is engaged in a given case.

Read together, these four decisions came to be described in professional commentary as a functional supplement to the Vijay Madanlal Choudhary framework: a four part inquiry asking whether the Enforcement Directorate has established prima facie foundational facts, how long the accused has been in custody, whether the trial is realistically likely to conclude within a reasonable time, and whether the accused was arrested at all or is appearing on summons. Trial courts across the country began, through late 2024, applying this quartet with increasing liberality, and bail grants under the PMLA rose accordingly.

IX. Correction: Union of India v. Kanhaiya Prasad (2025 INSC 210)

Union of India v. Kanhaiya Prasad, 2025 INSC 210

By early 2025, the Supreme Court had grown concerned that lower courts were treating the 2024 quartet as effectively displacing the twin conditions rather than contextualising them. In Kanhaiya Prasad, the Enforcement Directorate successfully appealed a High Court order granting bail in a case involving proceeds allegedly derived from illegal mining, on the ground that the High Court had invoked the quartet without independently applying the twin conditions of Section 45 at all. The Supreme Court set aside the bail order, holding that the twin conditions remain a mandatory threshold and cannot be bypassed ,the quartet informs how the test is applied in a case of genuinely prolonged and unexplained delay; it does not substitute for the test itself.

Kanhaiya Prasad is best read not as a retreat from the liberty protective orientation of the 2024 decisions, but as a corrective on sequencing and rigour: courts must still ask, and answer, whether there are reasonable grounds for believing the accused is not guilty and whether they are unlikely to reoffend, before any relaxation attributable to prolonged custody or trial delay can properly be brought to bear.

X. The Proviso and Gender, Sensitive Bail

The proviso to Section 45(1), which permits relaxation of the twin conditions for the sick, the infirm, minors, and women, has generated its own body of interpretation. Courts have held that the word ‘may’ in the proviso confers a discretion, to be exercised having regard to the facts and circumstances of the case rather than as an automatic entitlement. Even so, High Courts have applied the proviso to allow women accused to seek bail on general principles without being held to the full rigour of the twin conditions.

Sandeepa Virk v. Directorate of Enforcement, 2025: DHC: 12026 (Delhi High Court)

In Sandeepa Virk, the Delhi High Court held that, in the case of a woman accused, the embargo of the twin conditions can be relaxed and the bail application considered on ordinary principles, while still keeping in view the nature and gravity of the allegations ,a formulation that preserves judicial discretion rather than converting the proviso into a categorical exemption.

XI. The Emerging Trajectory: Speedy Trial, Prosecutorial Wherewithal and the 2026 Cases

The tension between the twin conditions and Article 21’s guarantee of a speedy trial has continued to sharpen into 2026. In January 2026, the Supreme Court's decision in Arvind Dham v. Directorate of Enforcement extended the reasoning of the 2024 quartet, holding that where a trial shows no realistic sign of commencing or concluding, the fundamental right to liberty must prevail over the procedural rigour of the twin conditions, and introduced the further consideration of ‘prosecutorial wherewithal’ ,the practical capacity of the investigating and prosecuting agency to actually complete the trial within a reasonable period ,as a factor bearing on the bail inquiry.

Arvind Dham v. Directorate of Enforcement (2026)

At the same time, courts have resisted treating this liberty protective trend as unconditional. In Dharam Singh Chhoker v. Directorate of Enforcement, the Punjab and Haryana High Court distinguished the Senthil Balaji and Arvind Dham line of authority on its facts, denying bail where the circumstances of arrest and the conduct of the accused did not support the analogy sought to be drawn, and emphasising that the extension of speedy trial reasoning to displace the twin conditions must remain fact sensitive rather than formulaic.

Dharam Singh Chhoker v. Directorate of Enforcement (2026), Punjab & Haryana High Court

The cumulative effect of the 2025–2026 decisions is a bail jurisprudence under Section 45 that can no longer be reduced to the bare text of the twin conditions. A court applying Section 45 today must, in substance, conduct a structured, multi,factor inquiry: whether the prosecution has laid a prima facie foundation; the length and character of the accused's custody; the realistic likelihood and pace of trial, including the prosecuting agency's demonstrated capacity to bring the matter to conclusion; whether the accused was arrested at all; and whether the accused falls within the proviso's protected categories ,all before, and in addition to, the core twin conditions themselves.

XII. Comparative Perspective

Placed alongside cognate provisions in other special statutes, Section 45 emerges as part of a broader and long standing legislative pattern of using reverse, onus bail conditions to signal the gravity of particular categories of offence. Section 37 of the NDPS Act continues to apply an almost identical twin test to commercial, quantity narcotics offences, and has attracted parallel jurisprudence on prolonged incarceration and the presumption of innocence. Section 43D(5) of the Unlawful Activities (Prevention) Act adopts a differently worded but comparably restrictive standard, requiring courts to be satisfied, on a prima facie reading of the case diary, that the accusation is not prima facie true before bail can be granted ,a formulation that, while not textually identical to the PMLA's twin conditions, performs an analogous gatekeeping function and has likewise generated tension with Article 21 in cases of extended pre trial detention, as seen in Javed Gulam Nabi Shaikh v. State of Maharashtra (2024).

Javed Gulam Nabi Shaikh v. State of Maharashtra, (2024) SCC OnLine SC (UAPA)

The consistent judicial response across these statutes NDPS, UAPA, and now PMLA has been to preserve the formal validity of the reverse onus standard while progressively reading into it an Article 21 sensitivity to the duration and futility of continued detention. This convergence suggests that the twin test, wherever it appears in Indian special criminal legislation, is increasingly being interpreted not as an isolated statutory bar but as one variable within a broader constitutional calculus governing pre trial liberty.

XIII. Critical Analysis

A. The Persistent Article 14/21 Tension

Even after Vijay Madanlal Choudhary resolved the narrow classification defect identified in Nikesh Tarachand Shah, the deeper question of whether a reverse onus standard is compatible with the presumption of innocence at the pre trial stage has not been definitively settled, only managed through case by case liberalisation. The 2024–2026 line of cases has, in effect, achieved through Article 21 what a fresh Article 14 challenge to the twin conditions as such has not: a substantial softening of the practical burden on accused persons, without formally reopening the constitutional validity of Section 45.

B. The Reverse Burden and Practical Fairness

Prem Prakash's clarification that the Section 24 presumption operates only after the prosecution has laid a cogent prima facie foundation is significant because it prevents the twin test from operating as an automatic bar triggered by the bare fact of prosecution. Nonetheless, the practical difficulty for an accused of demonstrating 'reasonable grounds' for believing in their own innocence, at a stage when the investigation is often incomplete and relevant material remains with the prosecution, continues to generate asymmetry between the parties.

C. Undertrial Detention and Institutional Capacity

The introduction of 'prosecutorial wherewithal' as a relevant factor reflects judicial recognition that the practical operation of the twin conditions cannot be divorced from the institutional capacity of the Enforcement Directorate and the special courts to try PMLA cases within a reasonable time. Given the documentary and often voluminous nature of money laundering evidence, and the frequent multiplicity of connected proceedings, delay has been a recurring feature of PMLA prosecutions; the jurisprudential shift of 2024–2026 can be read as an attempt to prevent that institutional reality from being visited, in the form of indefinite detention, upon the accused.

D. The Risk of Doctrinal Instability

The rapid alternation between liberalising decisions (the 2024 quartet, Arvind Dham) and correcting decisions (Kanhaiya Prasad, Dharam Singh Chhoker) within a short span has itself become a subject of comment, since it requires trial courts and High Courts to track a fast moving and occasionally oscillating body of precedent rather than apply a settled test. This is arguably an inherent cost of developing constitutional content for a bail standard through incremental case law rather than through legislative amendment or an authoritative constitution bench restatement.

XIV. Conclusion

The twin test under Section 45 of the PMLA has traversed an unusually eventful constitutional trajectory: struck down in 2017 for arbitrary classification, revived by legislative amendment, vindicated as constitutionally valid in 2022, substantially recalibrated through a cluster of liberty protective decisions in 2024, reaffirmed as a mandatory threshold in early 2025, and further refined through 2026 by the introduction of considerations such as prosecutorial capacity and the realistic prospect of trial. What began as a rigid, text bound bar has become in practice a structured and increasingly contextual inquiry in which the formal twin conditions operate alongside a cluster of Article 21 derived factors concerning custody duration, trial delay and institutional capacity.

Whether this evolution represents a satisfactory constitutional equilibrium remains contested. Proponents of a strict reading emphasise the gravity and complexity of money laundering offences and the legitimate legislative interest in denying easy bail to those accused of concealing the proceeds of serious crime. Critics continue to point to the fundamental tension between a reverse onus pre-trial standard and the presumption of innocence, and to the risk that even a liberty sensitised twin test can, in practice, translate into years of undertrial detention for individuals ultimately acquitted or never brought to trial at all. What is clear is that the twin test can no longer be understood, doctrinally or practically, by reference to the bare text of Section 45 alone; its content today is supplied jointly by the statute and by an active, still developing body of Supreme Court jurisprudence on the constitutional limits of pre-trial detention.

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