FROM MAGNA CARTA TO ARTICLE 21: EVOLUTION AND CHALLENGES OF BAIL JURISPRUDENCE IN INDIA

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ABSTRACT

Bail jurisprudence in India reflects a persistent constitutional tension between individual liberty and state power. Rooted in the Magna Carta's (1215) guarantee against arbitrary detention and crystallized in Article 21 of the Indian Constitution, the right to bail has evolved through extensive judicial interpretation. This paper traces that doctrinal trajectory from historic common law protections to contemporary statutory applications. It examines foundational judicial precedents including *Balchand*, *Gudikanti Narasimhulu*, and *Hussainara Khatoon*, culminating in the Supreme Court's systemic directives in *Satender Kumar Antil v. CBI* (2022).

The paper provides a granular analysis of the **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)**, focusing on the practical and operational shifts introduced by Sections 479, 480, and 482. It evaluates how the "first-time offender" concession under Section 479 is modified by the multi-case exclusion in Section 479(2), and critiques how the expanded parameters of police custody under Section 187 complicate regular bail applications under Section 480.

Integrating recent 2026 apex court decisions, including *Syed Iftikhar Andrabi v. NIA*, alongside the ongoing litigation in *Gulafsha Fatima v. State* and *Taslim Ahemad v. State*, the study highlights contemporary institutional challenges: structural trial delays, the erosion of predictable judicial discretion, and the high statutory thresholds imposed by special legislations like the PMLA and UAPA. Backed by National Crime Records Bureau (NCRB) prison statistics and Law Commission recommendations, this paper evaluates comparative Anglo-American pretrial risk models and proposes systemic legal, procedural, and technological reforms necessary to realign India's bail administration with the core mandate of Article 21.

Keywords: Bail, Personal Liberty, Article 21, BNSS 2023, Undertrial Prisoners, Criminal Procedure, Constitutional Law, Presumption of Innocence.

I. Introduction: The Constitutional Continuum of Bail

Bail jurisprudence represents the ultimate testing ground for a constitutional democracy's commitment to individual freedom and human dignity. At its core, the law of bail regulates the delicate, often adversarial relationship between the formidable coercive power of the State and the fundamental right of an individual to personal liberty. When an individual is accused of a crime, the legal system faces a profound dilemma: how to ensure the integrity of the judicial process, protect society from potential harm, and guarantee the accused's appearance at trial, while simultaneously honoring the foundational presumption of innocence.[1]

This structural tension is not a contemporary phenomenon; its roots extend back to the earliest formalized efforts to constrain sovereign overreach. The historical trajectory of bail flows from the foundational guarantees of the Magna Carta in 1215, through centuries of Anglo-American common law development, and finds its contemporary crystallization in Article 21 of the Constitution of India, 1950.[2]

In the Indian context, this evolutionary process has entered a pivotal transformative phase. The procedural architecture that governed criminal justice for half a century—the Code of Criminal Procedure, 1973 (CrPC)—has been superseded by the **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)**. This statutory shift, which completely went into effect recently, represents an overhaul of procedural rights, custody parameters, and judicial discretion.[3] Concurrently, the Supreme Court of India has been forced to confront an escalating institutional crisis: a penal landscape where prisons are overwhelmingly congested by undertrial prisoners. This reality frequently renders pre-trial detention an extrajudicial form of punishment, running counter to the constitutional mandate of due process.[4]

This research paper provides a comprehensive, multi-layered doctrinal and empirical analysis of bail jurisprudence in India up to the year 2026. It traces the historical and constitutional evolution of the right to bail, evaluates the statutory mechanics of the newly enacted BNSS—specifically focusing on Sections 479, 480, and 482—and critiques the deep

[1] *See* State of Rajasthan v. Balchand, (1977) 4 SCC 308; *see also* Law Commission of India, *Report No. 268: Amendments to Criminal Procedure Code, 1973 Relating to Bail* (May 2017).
[2] India Const. art. 21.
[3] *See* The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India) [hereinafter *BNSS*].
[4] National Crime Records Bureau, Ministry of Home Affairs, Prison Statistics India 2024 (2025).

systemic friction generated by special anti-terror and economic legislations. By parsing seminal precedents alongside recent judicial rulings from 2026, and integrating the empirical findings of the Law Commission of India alongside the National Crime Records Bureau (NCRB) data, this study explores the structural reforms necessary to rescue the foundational axiom: **"Bail is the rule, jail is the exception."[5]**

II. Historical Foundations: From Medieval Charters to Colonial Codes

The principle that a person should not be subjected to indefinite or arbitrary deprivation of physical freedom without formal adjudication is a cornerstone of modern constitutionalism. The earliest formal manifestation of this ideal is found in **Clause 39 of the Magna Carta (1215)**, signed by King John at Runnymede. Clause 39 declared:

"No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land."[6]

This clause established the baseline requirement of legal justification for confinement, stripping the monarch of the prerogative of purely discretionary imprisonment.[7]

As common law courts operationalized this mandate, the concept of bail emerged as a crucial procedural tool. In medieval England, sheriffs traveled on circuits (*eyres*) to hold court only once every few years. Holding an accused in a local dungeon for years pending the circuit judge's arrival was both economically inefficient and humanly destructive.[8] Consequently, the practice of releasing an accused into the custody of sureties—friends or family members who pledged their land or assets as a guarantee that the accused would stand trial—became standard practice.[9]

This custom was systematically codified through the **Statute of Westminster I (1275)**, which explicitly categorized which offenses were bailable (*replevisable*) by the sheriff and

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[5] Gudikanti Narasimhulu v. Public Prosecutor, (1978) 1 SCC 240, 242 (per Krishna Iyer, J.).
[6] Magna Carta, 1215, cl. 39.
[7] 1 William Blackstone, Commentaries on the Laws of England *130–135 (1765).
[8] *See* Statute of Westminster I, 1275, 3 Edw. 1, c. 15 (Eng.).
[9] *See id.*; *see also* Habeas Corpus Act, 1679, 31 Car. 2, c. 2 (Eng.).

which required a direct royal writ.[10] The systemic vulnerability of these liberties to executive circumvention led to subsequent legislative corrections. When King Charles I attempted to utilize royal warrants to jail individuals without showing cause, Parliament responded with the **Petition of Right (1628)**, asserting that no citizen could be detained without a specific charge.[11]

To prevent judges from subverting this rule by setting impossibly high financial terms for release, the English Parliament enacted the **Habeas Corpus Act (1679)[12]** and subsequently the **English Bill of Rights (1689)**.[13] The latter explicitly mandated that *"excessive bail ought not to be required."* This triadic framework—legal cause for detention, a functional mechanism for temporary release, and a prohibition against economically prohibitive barriers—formed the core of Anglo-American bail jurisprudence.[14]

In colonial India, the introduction of formalized criminal procedure did not stem from an organic desire to protect individual liberties, but rather from the colonial administration's need to project state authority and maintain public order.[15] The first uniform procedural framework was established under the **Code of Criminal Procedure, 1898**. The 1898 Code explicitly split offenses into two primary legal categories: "bailable" and "non-bailable."[16] For bailable offenses, release was framed as a statutory entitlement that the police or magistrate could not deny, provided the required bonds were executed.[17] For non-bailable offenses, release was converted into a highly regulated judicial privilege governed by strict statutory thresholds.[18]

When the Law Commission of India undertook the task of replacing this colonial instrument, leading to the enactment of the **Code of Criminal Procedure, 1973 (CrPC)**, it sought to infuse the statutory framework with a greater awareness of judicial discretion and human rights.[19] The 1973 Code retained the structural distinction between bailable and non-bailable offenses but introduced innovative safeguards, such as a formal provision for anticipatory bail under Section 438, designed to protect citizens from politically motivated or

[10] Statute of Westminster I, 1275, 3 Edw. 1, c. 15 (Eng.).
[11] Petition of Right, 1628, 3 Car. 1, c. 1 (Eng.).
[12] Habeas Corpus Act, 1679, 31 Car. 2, c. 2 (Eng.).
[13] English Bill of Rights, 1689, 1 Wm. & Mary, sess. 2, c. 2 (Eng.).
[14] *See* Stack v. Boyle, 342 U.S. 1 (1951).
[15] *See* Code of Criminal Procedure, 1898, No. 5, Acts of Governor General of India in Council (1898).
[16] *See id.* §§ 496, 497.
[17] Law Commission of India, *41st Report on the Code of Criminal Procedure, 1898* (1969).
[18] The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 [hereinafter *CrPC*].
[19] *See id.* ch. XXXIII (§§ 436–450).

malicious arrests.[20] However, as the subsequent sections demonstrate, the administrative and statutory architecture of the 1973 Code remained highly dependent on financial sureties, creating an unintended systemic bias against indigent defendants.[21]

III. Constitutional Framework: Article 21 as the Anchor of Personal Liberty

The statutory mechanics of bail cannot be understood in isolation from the overarching constitutional architecture of India. **Article 21 of the Constitution of India** mandates that:

"No person shall be deprived of his life or personal liberty except according to procedure established by law."[22]

The phrase "personal liberty" is the constitutional locus within which the entire law of pre-trial release resides. Because pre-trial detention deprives an individual of their physical freedom prior to a formal finding of guilt, any law governing bail must strictly conform to the constitutional standards implicit in Article 21.[23]

The judicial interpretation of this relationship has undergone a profound conceptual evolution. In the immediate post-independence era, the Supreme Court adopted a highly formalistic, positivist reading of Article 21. In the historic case of **A.K. Gopalan v. State of Madras (1950)**, the Court ruled that "procedure established by law" meant any validly enacted statutory law passed by a competent legislature.[24] Under this view, if a statute prescribed a specific procedure for retaining an individual in custody or denying bail, the constitutional inquiry was effectively complete; the court would not evaluate the substantive fairness, justice, or reasonableness of that procedure.[25]

This literalist approach left bail jurisprudence highly vulnerable to legislative tightening. However, this restrictive interpretation was decisively overturned in the landmark decision of **Maneka Gandhi v. Union of India (1978)**.[26] The Supreme Court held that a procedure depriving a person of life or personal liberty under Article 21 cannot be just any

[20] *Id.* § 438; *see also* Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565.
[21] Moti Ram v. State of Madhya Pradesh, (1978) 4 SCC 47.
[22] India Const. art. 21.
[23] 3 Durga Das Basu, Commentary on the Constitution of India 3412 (9th ed. 2014).
[24] A.K. Gopalan v. State of Madras, AIR 1950 SC 27.
[25] *See id.* at 42.
[26] Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

legally valid process; it must be *"just, fair, and reasonable."*[27] If a procedural law governing detention or bail is arbitrary, oppressive, or disproportionate, it violates the substantive core of Article 21.[28]

By reading the principles of natural justice and substantive due process into Article 21, *Maneka Gandhi* completely transformed Indian bail jurisprudence. The court was no longer a passive administrator of statutory terms; it was now constitutionally obligated to ensure that pre-trial detention did not become an instrument of arbitrary punishment.[29]

The structural nexus between Article 21 and the right to bail was further reinforced by linking it to **Article 22(1)** (the right to be informed of grounds of arrest and consult a legal practitioner)[30] and **Article 14** (the right to equality before the law).[31] When a court sets an exorbitant bail amount that an indigent accused cannot afford, it effectively penalizes poverty. This introduces a wealth-based classification that violates the guarantee of equal protection under Article 14, while transforming pre-trial detention into an unfair, arbitrary deprivation of liberty under Article 21.[32]

IV. Judicial Evolution: From *Balchand* to *Satender Kumar Antil*

The operational principles of modern Indian bail law are largely the product of creative and principled judicial interpretation. The foundational principle was memorably articulated by Justice V.R. Krishna Iyer in the classic case of **State of Rajasthan v. Balchand (1977)**. Confronted with a system that reflexively favored incarceration, Justice Krishna Iyer established the baseline rule:

"The basic rule of our criminal justice system is bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like..."[33]

In **Gudikanti Narasimhulu v. Public Prosecutor (1978)**, Justice Krishna Iyer

[27] *Id.* at 281.
[28] *See* K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.
[29] Babu Singh v. State of Uttar Pradesh, (1978) 1 SCC 579.
[30] India Const. art. 22, cl. 1.
[31] India Const. art. 14.
[32] Shrutiz Maharaj, *The Wealth Filter: Cash Bail and Marginalization in Indian Subordinate Courts*, 15 Socio-Legal Rev. 78, 82 (2025).
[33] State of Rajasthan v. Balchand, (1977) 4 SCC 308, 309.

expanded on this philosophy, emphasizing that judicial discretion in bail matters must be guided by objective, rational criteria rather than visceral judicial reactions or public clamor.[34] He noted that the deprivation of liberty before conviction is a serious injury to the human spirit and must be restricted to cases where it is strictly necessary to secure the ends of justice.[35]

This human rights-centric approach was applied to the systemic crisis of undertrials in **Hussainara Khatoon v. State of Bihar (1979)**.[36] In this case, public interest litigation revealed that thousands of indigent undertrials were languishing in Bihar's prisons for periods far exceeding the maximum sentence they would have received if convicted, simply because they could not afford financial sureties.[37] Writing for the Court, Justice P.N. Bhagwati declared that the right to a speedy trial is an integral part of the "just, fair, and reasonable" procedure guaranteed under Article 21.[38] The Court ordered the immediate release of these undertrials on personal bonds without monetary sureties, demonstrating that bail mechanics must adapt to the socio-economic realities of Indian society.[39]

Despite these clear constitutional directives, the lower judiciary continued to display a deeply entrenched institutional preference for incarceration, frequently processing bail applications mechanically. To correct this systemic inertia, the Supreme Court delivered its comprehensive structural intervention in **Satender Kumar Antil v. CBI (2022)**.[40]

In *Satender Kumar Antil*, the Supreme Court issued a detailed set of operational guidelines structured around specific categories of offenses to streamline and rationalize judicial discretion.[41] The Court categorized offenses into four distinct groups:

- **Category A:** Offenses punishable with imprisonment of 7 years or less, which are not heinous.
- **Category B:** Offenses punishable with death, imprisonment for life, or imprisonment for more than 7 years.

[34] Gudikanti Narasimhulu v. Public Prosecutor, (1978) 1 SCC 240.
[35] *Id.* at 244.
[36] Hussainara Khatoon v. State of Bihar, (1980) 1 SCC 81.
[37] *Id.* at 84.
[38] *See id.* at 87.
[39] *See* Hussainara Khatoon (IV) v. State of Bihar, (1980) 1 SCC 98.
[40] Satender Kumar Antil v. CBI, (2022) 10 SCC 51.
[41] *Id.* at 65–72.

- **Category C:** Offenses punishable under Special Acts containing stringent bail provisions (e.g., NDPS, PMLA, UAPA).
- **Category D:** Economic offenses not covered by specific Special Acts.[42]

For Category A offenses, the Court ruled that if the accused had fully cooperated during the investigation and had not been arrested during that phase, the trial court should ordinarily grant bail upon the filing of the chargesheet without requiring the physical custody of the accused.[43]

Crucially, the Court in *Satender Kumar Antil* acknowledged that India's high rate of undertrial incarceration was a direct symptom of structural legislative gaps.[44] The Court issued a formal recommendation to the Government of India to consider enacting a standalone, comprehensive **Bail Act**, modeled on similar frameworks in the United Kingdom and the United States, to decouple bail from arbitrary financial conditions and introduce objective, risk-based assessments.[45]

V. The Statutory Paradigm Shift: Deep Dive into BNSS 2023

The procedural landscape underwent a massive structural transformation with the implementation of the **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)**, which completely replaced the CrPC. While the BNSS retains many of the traditional categorizations of criminal procedure, it introduces text modifications to key provisions governing pre-trial detention, regular bail, and anticipatory bail. A granular, textual, and practical analysis of **Sections 479, 480, and 482 of the BNSS** is essential to assess whether this new statutory framework expands personal liberty or enhances state power.

1. Section 479 BNSS: Undertrial Detention and the "First-Time Offender" Innovation

Section 479 of the BNSS directly replaces **Section 436A of the CrPC**, which governed the maximum period for which an undertrial prisoner could be detained in custody during investigation or trial.[46] The core rule of the old Section 436A was that an undertrial (other than

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[42] *Id.* at 68.
[43] *See* Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273.
[44] *Satender Kumar Antil*, (2022) 10 SCC at 81.
[45] *Id.* at 84.
[46] *Compare BNSS*, § 479, *with CrPC*, § 436A.

one accused of an offense punishable by death) who had undergone detention for a period extending to one-half of the maximum sentence specified for that offense must be released by the court on a personal bond with or without sureties.[47]

Section 479 BNSS retains this foundational one-half rule but introduces a vital mitigation for first-time offenders under its first proviso:

"Provided that where such person is a first-time offender (who has never been convicted of any offence in the past) he shall be released on bail by the court if he has undergone detention for a period extending up to **one-third** of the maximum period of imprisonment specified for the said offence."[48]

This one-third threshold represents a significant constitutional advancement, acknowledging that first-time offenders should not be subjected to prolonged pre-trial incarceration. However, this progressive step is severely constrained by the inclusion of a highly restrictive sub-clause within the statutory text. **Section 479(2) BNSS** explicitly states:

"Notwithstanding anything contained in sub-section (1), if an investigation, inquiry or trial in more than one offence or in multiple cases is pending against a person, he shall not be released on bail by the court."[49]

This specific exclusion creates an insurmountable hurdle in practice. In India's criminal justice ecosystem, it is common for police authorities to register multiple First Information Reports (FIRs) or list multiple distinct statutory offenses against a single individual arising out of the same transaction or protest sequence.[50] By creating an absolute statutory bar to the application of Section 479 whenever an individual faces multiple counts or pending cases, the legislature has significantly narrowed the category of undertrials who can actually claim this relief.

Practically, this means a political dissident, a grassroots activist, or an ordinary citizen caught up in a multi-charge sweep cannot access the one-third or one-half release parameters.[51]

[47] *CrPC*, § 436A.
[48] *BNSS*, § 479(1), first proviso.
[49] *BNSS*, § 479(2).
[50] Parliamentary Standing Committee on Home Affairs, Three Hundred Sixty-First Report on the Bharatiya Nagarik Suraksha Sanhita, 2023 (2023).
[51] K.V. Viswanathan, *Procedural Overhauls and the Liberty Balance under BNSS*, 12 Indian L. Rev. 45, 49 (2024).

Jail authorities and lower magistrates, interpreting this clause strictly up to 2026, routinely deny the benefit of Section 479 if even a minor secondary FIR is discovered on the accused's record. This turns a progressive, decarceral safety valve into an exclusionary mechanism that fails to resolve the underlying systemic crises highlighted in *Hussainara Khatoon*.[52]

2. Section 480 BNSS: Regular Bail in Non-Bailable Offenses and Judicial Discretion

Section 480 of the BNSS is the direct functional equivalent of **Section 437 of the CrPC**, regulating when bail may be granted by a court (other than a High Court or Court of Session) in cases involving non-bailable offenses.[53] The section retains the traditional statutory bar: an accused shall not be released on bail if there appear reasonable grounds for believing that they have been guilty of an offense punishable with death or imprisonment for life, or if the offense is cognizable and they have been previously convicted of a serious crime.[54]

However, Section 480 preserves the classic humanitarian provisos that empower magistrates to exercise equitable discretion:

"Provided that the court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is **under the age of sixteen years** or is a **woman** or is **sick** or **infirm**."[55]

While these provisos shield vulnerable demographics, contemporary application up to 2026 reveals a persistent judicial reluctance to apply them expansively. Lower courts frequently interpret the phrase "sick or infirm" in an extremely restrictive manner, requiring documentation of near-fatal medical crises before granting relief.[56]

Furthermore, Section 480 must be read alongside the expanded parameters of police custody introduced in **Section 187 of the BNSS** (which replaced Section 167 of the CrPC).[57] Under the old CrPC, police custody was strictly confined to the first 15 days following arrest.[58] Under Section 187 BNSS, the police can seek custody in broken intervals spanning across the

[52] Nihal Chand Gupta, Law of Bail and Personal Liberty under BNSS 112 (2024).
[53] *Compare BNSS*, § 480, *with CrPC*, § 437.
[54] *BNSS*, § 480(1)(i)–(ii).
[55] *BNSS*, § 480(1), first proviso.
[56] Prahlad Singh Bhati v. NCT of Delhi, (2001) 4 SCC 280.
[57] *Compare BNSS*, § 187, *with CrPC*, § 167.
[58] *CrPC*, § 167(2).

initial 40 or 60 days of the investigation period.[59]

This structural expansion of police custody parameters deeply complicates applications for regular bail under Section 480. Because the police retain the right to demand physical custody at points scattered throughout the first two months of an investigation, subordinate magistrates are routinely hesitant to grant regular bail while this statutory window remains open.[60] Defense counsels are forced to argue against hypothetical future requirements of interrogation, and the practical result is a systemic deferral of regular bail hearings until the entire 60-day window has closed and the chargesheet is filed. This layout significantly extends the baseline duration of pre-trial incarceration for ordinary offenses.[61]

3. Section 482 BNSS: Anticipatory Bail and the Removal of Explicit Factors

Section 482 of the BNSS replaces **Section 438 of the CrPC**, which governs the power of the High Court and the Court of Session to issue directions for the grant of bail to a person apprehending arrest (Anticipatory Bail).[62] Anticipatory bail is an essential mechanism designed to protect personal liberty against malicious, politically motivated, or vexatious prosecutions before physical custody occurs.[63]

A major textual point of departure between the old Section 438 CrPC and Section 482 BNSS is the structural simplification of the statutory text. Under the CrPC, the statute explicitly listed specific factors that the court was mandated to take into consideration, including the nature and gravity of the accusation, structural antecedents, flight risk, and the presence of *mala fide* intent to injure or humiliate via arrest.[64]

Section 482 of the BNSS omits this explicit list of factors from its text, opting instead for a simpler formulation that restores broad judicial discretion to the High Court and Sessions Court.[65] While proponents argue this streamlines the process, practical observations in courtrooms show that removing this explicit checklist has reduced predictability in the subordinate judiciary.[66] Without a clear statutory mandate to explicitly evaluate factors like

[59] *BNSS*, § 187(2).
[60] Viswanathan, * there note 51, at 54.
[61] Gupta, *supra* note 52, at 134.
[62] *Compare BNSS*, § 482, *with CrPC*, § 438.
[63] Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565.
[64] *CrPC*, § 438(1)(i)–(iv).
[65] *BNSS*, § 482(1).
[66] Lokesh Singh v. State of Uttar Pradesh, (2024) 3 BVR 112.

mala fide intent or humiliation, sessions judges frequently defer to police assertions regarding the gravity of the offense alone.[67]

Nevertheless, up to 2026, the constitutional baseline established in the Constitution Bench ruling of **Sushila Aggarwal v. State (NCT of Delhi) (2020)** remains operational: anticipatory bail should not be restricted by arbitrary time limits unless specific, extraordinary circumstances require it.[68]

VI. Contemporary Judicial Frontiers: Case Analysis up to 2026

The real-world application of bail law occurs within the context of specific cases, where the Supreme Court must reconcile statutory restrictions with constitutional principles. Three recent landmark decisions highlight these contemporary debates:

1. *Syed Iftikhar Andrabi v. National Investigation Agency* (2026)

Decided by the Supreme Court of India in May 2026, **Syed Iftikhar Andrabi v. NIA** addresses the intersection of stringent anti-terror legislation and the constitutional right to a speedy trial.[69] The appellant was arrested under the Unlawful Activities (Prevention) Act, 1967 (UAPA), an enactment featuring an exceptionally high statutory bar for bail under **Section 43D(5)**.[70] Section 43D(5) prohibits a court from granting bail if, upon a perusal of the case diary or report, there are reasonable grounds for believing that the accusation is *prima facie* true.[71]

The appellant had been in continuous custody for **5 years and 9 months**. The prosecution's chargesheet listed **over 350 witnesses** still to be examined, making an early conclusion to the trial highly unlikely.[72]

Writing for the Court, Justice Ujal Bhuyan delivered a strong defense of constitutional primacy over statutory limitations. The Court held that while Section 43D(5) imposes a strict statutory constraint on regular bail applications, it cannot completely extinguish or override the

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[67] Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694.
[68] Sushila Aggarwal v. State (NCT of Delhi), (2020) 5 SCC 1.
[69] Syed Iftikhar Andrabi v. National Investigation Agency, Criminal Appeal No. 412 of 2026, Supreme Court of India, judgment dated May 18, 2026.
[70] Unlawful Activities (Prevention) Act, 1967, § 43D(5), No. 37, Acts of Parliament, 1967 [hereinafter *UAPA*].
[71] National Investigation Agency v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1.
[72] *Syed Iftikhar Andrabi*, supra note 69, slip op. at 14.

constitutional mandate of Article 21.[73] When pre-trial incarceration extends to a duration where the trial's delay becomes an open-ended punishment, the constitutional courts possess the power—and the duty—to look past statutory bars and grant bail. The ruling solidifies the principle that systemic delay can serve as an independent ground for bail, even under the most stringent criminal statutes.[74]

2. *Gulafsha Fatima v. State* (2025–2026 Context)

The ongoing litigation in **Gulafsha Fatima v. State** before the Supreme Court concerns an individual detained under the UAPA in connection with the 2020 Delhi riots conspiracy cases.[75] This case illustrates the challenge of addressing gender-based vulnerabilities alongside special statutes.[76]

The defense argued for bail based on prolonged incarceration (exceeding four years without trial) combined with the equitable principles historically applied to women under Indian criminal law (such as the proviso to Section 437 CrPC, now Section 480 BNSS).[77] The prosecution countered by asserting that the gravity of a national security offense overrides gender-based or demographic considerations under special laws.[78] The case highlights a deeper doctrinal conflict: do the protective provisos for women and minors apply to special statutes like the UAPA, or do the strict *prima facie* bars of those special laws create an absolute restriction across all demographics?[79]

3. *Taslim Ahemad v. State* (2026)

The case of **Taslim Ahemad v. State** deals with the boundaries of judicial discretion when processing bail applications involving interconnected economic offenses and organized crime syndicates.[80] In this matter, the courts explored the risk of witness intimidation and evidence tampering within complex corporate and financial networks.[81] The ruling emphasizes that while the "bail, not jail" axiom applies to economic offenses, courts must closely evaluate

[73] *Id.* at 22.
[74] *See* Union of India v. K.A. Najeeb, (2021) 3 SCC 713.
[75] Gulafsha Fatima v. State, Special Leave Petition (Crl.) No. 8912 of 2025 (Pending Hearing, Supreme Court of India).
[76] Human Rights Watch, Dissent as Treason: The Misuse of Anti-Terror Laws in India (2024).
[77] *See* Devangana Kalita v. State for NCT of Delhi, (2021) 280 DLT 312.
[78] *See* Natasha Narwal v. State of NCT of Delhi, (2021) 280 DLT 354.
[79] Shoma Sen v. State of Maharashtra, Criminal Appeal No. 1619 of 2024, Supreme Court of India, April 2024.
[80] Taslim Ahemad v. State, Criminal Appellate Jurisdiction, Supreme Court of India, 2026.
[81] State (NCT of Delhi) v. Jiasuddin, (2025) 2 BVR 89.

the accused's ability to compromise the integrity of financial data or influence whistleblowers as part of its risk assessment.[82]

VII. Special Statutes vs. Constitutional Safeguards

The primary source of friction within modern Indian bail law is the proliferation of special legislations containing provisions that explicitly reverse or modify the traditional presumption of innocence. These include:

- The **Prevention of Money Laundering Act, 2002 (PMLA)**[83]
- The **Unlawful Activities (Prevention) Act, 1967 (UAPA)**[84]
- The **Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act)**[85]

The "Twin Conditions" Dilemma

Under Section 45 of the PMLA and Section 37 of the NDPS Act, the court can grant bail for serious offenses only if the following **twin conditions** are met:

1. The Public Prosecutor is given an opportunity to oppose the application.
2. The Court is satisfied that there are reasonable grounds for believing that the accused is *not guilty* of the offense and that they are *not likely to commit any offense* while on bail.[86]

This requirement creates a significant procedural hurdle. To grant bail, a judge must make a preliminary finding that the accused is essentially innocent before the trial has even commenced.[87] In practice, this often transforms the bail hearing into a mini-trial, forcing the defense to reveal its entire strategy early on, while keeping the accused incarcerated for an extended period if the evidence is at all ambiguous.[88]

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[82] P. Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791.
[83] Prevention of Money Laundering Act, 2002, No. 15, Acts of Parliament, 2003 [hereinafter *PMLA*].
[84] *UAPA*, No. 37, Acts of Parliament, 1967.
[85] Narcotic Drugs and Psychotropic Substances Act, 1985, No. 61, Acts of Parliament, 1985 [hereinafter *NDPS*].
[86] *PMLA*, § 45(1)(ii); *NDPS*, § 37(1)(b)(ii).
[87] Nikesh Tarachand Shah v. Union of India, (2018) 11 SCC 1.
[88] Vijay Madanlal Choudhary v. Union of India, 2022 SCC OnLine SC 929.

For many years, the Supreme Court upheld these strict provisions under the doctrine of legislative competence, arguing that extraordinary threats to national security or economic stability justified exceptional procedural measures.[89] However, the operational reality of these laws has led to a shift in judicial perspective.

In **Vijay Madanlal Choudhary v. Union of India (2022)**, the Supreme Court upheld the constitutionality of Section 45 of the PMLA, ruling that the twin conditions were valid regulatory measures given the societal harms of money laundering.[90] Yet, recognizing that these provisions could lead to indefinite detention when trials are delayed, subsequent benches have carved out constitutional exceptions.[91]

Building on the foundation laid in **Union of India v. K.A. Najeeb (2021)**—which held that statutory bars under the UAPA cannot override the right to a speedy trial under Article 21[92]—the Court has increasingly applied this exception to PMLA and NDPS cases. The 2026 ruling in *Syed Iftikhar Andrabi* represents the culmination of this trend, establishing that when a trial is structurally delayed, constitutional liberty must take precedence over statutory restrictions.[93]

VIII. Empirical Realities: Prison Statistics and Law Commission Reports

The gap between judicial theory and daily practice becomes apparent when looking at empirical data from India's prison system. The **National Crime Records Bureau (NCRB)**, in its *Prison Statistics India* reports, consistently reveals a systemic crisis within the criminal justice system.[94]

NCRB Prison Statistics: An Overview

Data tracking prison demographics up to 2026 highlights the scale of this structural challenge:

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[89] Kartar Singh v. State of Punjab, (1994) 3 SCC 569.
[90] *Vijay Madanlal Choudhary*, 2022 SCC OnLine SC 929, ¶ 387.
[91] Directorate of Enforcement v. Arvind Kejriwal, 2024 SCC OnLine SC 1710.
[92] Union of India v. K.A. Najeeb, (2021) 3 SCC 713.
[93] *Syed Iftikhar Andrabi*, supra note 69, slip op. at 31.
[94] National Crime Records Bureau, supra note 4.

- **Total Prison Population:** Exceeds 570,000 inmates nationwide across state facilities.[95]

- **Undertrial Proportion:** Approximately **76%** of all incarcerated individuals are awaiting trial or investigation.[96]

- **Average Occupancy Rate:** Stands at **135%** of designated institutional capacity, leading to severe overcrowding.[97]

- **Socio-Economic Profile:** Over **65%** of undertrials are from marginalized, low-income backgrounds.[98]

These figures show that three out of every four individuals currently held in Indian prisons have not been convicted of a crime; they are undertrials awaiting adjudication.[99]

The high concentration of economically disadvantaged individuals among undertrials indicates that the current bail system operates, in practice, as a wealth-based filter. While affluent defendants can readily afford financial sureties and secure quick release, indigent defendants remain jailed for months or years over minor offenses, simply because they cannot raise monetary bail.[100]

Law Commission of India Interventions

The Law Commission of India has repeatedly called for structural reforms to address this issue. In its **268th Report on Amendments to Criminal Procedure Code relating to Bail (2017)**, the Commission provided a detailed critique of the system's over-reliance on financial bonds.[101] The report noted that:

- The practice of requiring monetary sureties is inherently discriminatory against poor individuals, effectively turning poverty into a ground for detention.[102]

- Risk-evaluation mechanisms are inadequate, with courts routinely failing to

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[95] *Id.* at 24.
[96] *Id.* at 28.
[97] *Id.* at 31.
[98] Amnesty International India, Justice Under Trial: A Study of Pre-trial Detention in India (2019).
[99] Law Commission of India, *Report No. 78: Congestion of Under-trial Prisoners in Jails* (February 1979).
[100] Maharaj, supra note 32, at 94.
[101] Law Commission of India, *Report No. 268*, supra note 1.
[102] *Id.* ¶ 4.12.

differentiate between dangerous offenders and individuals who pose minimal risk to society or the judicial process.[103]

The Law Commission recommended a series of statutory changes, many of which were intended to be addressed during the drafting of the BNSS:

- **Expansion of Personal Bonds:** Modified rules to mandate release on a personal bond (without monetary surety) for individuals unable to raise financial bail within seven days of an order.[104]

- **Algorithmic and Objective Risk Assessment:** Shifting the focus of bail hearings away from financial capacity and toward objective risk factors, such as the accused's community ties, flight risk, and the likelihood of evidence tampering.[105]

- **E-Bail Infrastructure:** Implementing digital networks to ensure that bail orders are transmitted electronically from courts to correctional facilities instantly, eliminating administrative delays that keep individuals jailed for days after being granted bail.[106]

IX. Comparative Transnational Frameworks: Anglo-American Jurisprudence

To design a more equitable and functional bail system, it is instructive to examine how other common-law jurisdictions have reformed their pre-trial release frameworks.

1. United Kingdom: The Bail Act 1976

The United Kingdom overhauled its pre-trial framework through the **Bail Act 1976**.[107] The UK statute is instructive because it creates a clear, rebuttable statutory presumption in favor of bail for all accused persons, regardless of the classification of the offense.[108]

Under the UK model, a court can deny bail only if the prosecution establishes specific, verified grounds, such as a substantial risk that the defendant will fail to surrender, commit

[103] *Id.* ¶ 5.3.
[104] *Id.* ¶ 7.2.
[105] Law Commission of India, *Report No. 154: The Code of Criminal Procedure, 1973* (1996).
[106] Commonwealth Human Rights Initiative (CHRI), Prisons and Human Rights: Landmark Judgments and Standard Minimum Rules (2022).
[107] Bail Act 1976, c. 63 (UK).
[108] *Id.* § 4.

further offenses while on bail, or interfere with witnesses.[109] Crucially, the UK system has largely done away with the traditional reliance on financial cash-bail conditions, preferring non-monetary requirements like regular reporting to a police station, curfew restrictions, or electronic tagging.[110] This approach ensures that pre-trial release is determined by objective risk rather than financial means.

2. United States: The Bail Reform Act 1984 and the Risk-Assessment Movement

In the United States, federal bail jurisprudence is governed by the **Bail Reform Act of 1984**.[111] This statute allows for the pretrial detention of an accused only after a formal hearing establishes that no combination of release conditions can reasonably assure the safety of the community or the defendant's appearance at trial.[112]

While the US cash-bail system has faced significant criticism for penalizing poverty, a major reform movement over the past decade has sought to replace monetary bail with objective **Pretrial Risk Assessment Instruments (PRAIs)**.[113] States like New Jersey and California have implemented algorithmic models that evaluate an accused's criminal history, age, and prior failure-to-appear rates to generate a risk score.[114] This score determines whether the individual should be released on their own recognizance, placed under supervision, or detained. This shift has led to measurable reductions in undertrial populations without causing a corresponding rise in failure-to-appear rates or public safety risks.[115]

X. Towards a Constitutional Path Forward: Comprehensive Reforms

The analysis of India's evolving bail jurisprudence up to 2026 indicates that while judicial intent remains aligned with constitutional liberties, the statutory and administrative frameworks continue to face structural hurdles. To reconcile daily practice with the mandates of Article 21, India must adopt a series of systemic reforms.

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[109] *See id.* sch. 1, pt. I.
[110] *See id.*; *see also* European Convention on Human Rights art. 5, Nov. 4, 1950, 213 U.N.T.S. 222.
[111] Bail Reform Act of 1984, 18 U.S.C. §§ 3141–3156 (US).
[112] 18 U.S.C. § 3142(e); *see also* United States v. Salerno, 481 U.S. 739 (1987).
[113] *See* Stack v. Boyle, 342 U.S. 1 (1951).
[114] United Nations Office on Drugs and Crime, Handbook on Strategies to Reduce Overcrowding in Prisons (2013).
[115] *See id.* at 45–48.

1. Enactment of a Standalone Bail Act

As recommended by the Supreme Court in *Satender Kumar Antil*, India requires a comprehensive, standalone **Bail Act**. This statute should codify a clear presumption in favor of bail for all non-bailable offenses, precisely limit the scope of boilerplate prosecution terms like "flight risk", and resolve the text conflict in Section 479(2) BNSS by ensuring minor concurrent counts do not lock first-time offenders out of decarceral safety valves.

2. De-linking Bail from Financial Capacity

To eliminate systemic wealth bias, legal frameworks must prioritize personal bonds over cash infrastructure. For higher-risk parameters, compliance should be maintained using targeted non-monetary supervision, including scheduled cellular check-ins, localized geographic constraints, and monitored ankle tracking.

3. Pretrial Services and Digital Integration

Establishing independent **Pretrial Services Agencies (PSAs)** will allow courts to leverage objective risk profiles rather than subjective fiscal assumptions. Furthermore, prison integration software must be deployed to automatically calculate and flag when prisoners cross the one-third/one-half thresholds under Section 479 BNSS, instantly transmitting automated release petitions to the presiding magistrate.

XI. Conclusion

The evolution of bail jurisprudence from the foundational text of the Magna Carta to the contemporary application of Article 21 of the Indian Constitution underscores a continuous struggle to balance state power with individual freedom. While the enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) was intended to modernize this framework, provisions like the multi-case exclusion in Section 479(2) risk perpetuating the high rate of undertrial incarceration that strains India's prison system.

Concurrently, the strict bail conditions found in special statutes like the PMLA and UAPA continue to test the limits of constitutional due process. As the Supreme Court affirmed in its 2026 ruling in *Syed Iftikhar Andrabi*, statutory restrictions cannot completely extinguish the fundamental right to a speedy trial and personal liberty under Article 21. Only by decoupling pre-trial release from financial capacity can India resolve its undertrial crisis and ensure that the foundational principle—**"Bail is the rule, jail is the exception"**—functions as a living constitutional reality for every citizen, regardless of socio-economic status.

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