

Bail is the Rule, Jail is an Exception: A Constitutional Perspective on Bail Jurisprudence in India

Priyanka Singh

LL.M., 247/PLL/009

School of Law, Justice & Governance, Gautam Buddha University, Greater Noida (U. P.)

Email: adjpriyankasingh@gmail.com

Dr. Santosh Kumar Tiwari

Assistant Professor

School of Law, Justice & Governance, Gautam Buddha University, Greater Noida (U.P.)

Email: santoshtiwari@gbu.ac.in

Article: Received: 22/05/2026, Returned: 28/05/2026, Accepted: 04/06/2026, Published:06/06/2026.

D.O.I. <https://doi.org/10.5281/zenodo.20563903>



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Abstract: The principle that "bail is the rule and jail is an exception" is an integral feature of the Indian Criminal jurisprudence which gets its normative authority from the guarantee of personal liberty by Article 21. The paper provides a constitutional overview of the concept of bail in India, starting with the presumption of innocence, the legislative provisions under the Code of Criminal Procedure, 1973 (now replaced by Bharatiya Nagarik Suraksha Sanhita, 2023) and the judicial interpretation through various cases, including *State of Rajasthan v. Balchand* (1977) and *Arvind Dham v. Directorate of Enforcement* (2026). The paper critically reviews the application of bail principles under special statutory provisions in the Unlawful Activities (Prevention) Act, 1967 and the Prevention of Money Laundering Act, 2002 which set very high conditions for granting bail. It highlights systemic issues such as arbitrary arrest, overcrowding of prisons (with more than 75% undertrial prisoners), socio-economic discrimination, judicial inconsistencies and conditions imposed on the granting of bail. The paper, based on the recent directions of the Supreme Court in the Satender Kumar Antil (2022) cases and the recent trend in granting bail to the accused in high-profile cases, assesses the current trend of bail jurisprudence and proposes recommendations with regard to the statutory amendment and safeguard in the procedure so that liberty is the rule.

Keywords: Bail, Article 21, Personal Liberty, Undertrial Prisoners, Code of Criminal Procedure, Presumption of Innocence, UAPA, PMLA, Constitutional Law.

1. Introduction: The institution of bail plays an important role in the criminal justice system as it is the balancing of the two conflicting and fundamental elements of a constitutional democracy: the freedom of the subject and the power of the State to investigate and prosecute crime. In criminal law, the accused person is considered innocent until he or she has been found not guilty after a fair trial. Such a presumption of innocence is not just a formality in the courtroom; it is a fundamental rule of democratic government and human rights. This principle is put into practice through the use of bail. It enables an accused individual to enjoy freedom pending trial in accordance with the conditions attached to it which ensures the appearance

of such person before a court of law and further prevent obstruction of justice. Meanwhile, the State continues to have the authority to restrict the freedom of liberty when it is justified to keep the person detained for the purpose of securing the accused's presence at the trial, for the purpose of preventing his escape from justice or for the purpose of preventing him from tampering with the evidence. So, bail is a lawful compromise between interest of the society and interest of the individuals.

The right to bail is one of the most important constitutional rights in India, with the Constitution's backing of the right to life and personal liberty under Article 21. Over the years judicial interpretations have evolved and expanded Article 21 from being a narrow procedural guarantee to a repository of substantive rights that includes fairness, dignity and due process. The right to bail, which is the rule and jail the exception, was one of the most persistent doctrines of criminal jurisprudence in this constitutional setting. This was famously expressed by the Supreme Court in the case of *State of Rajasthan v. Balchand*, wherein Justice V.R. Krishna Iyer gave great emphasis on the need to keep deprivation of liberty to a minimum and allow it only in exceptional circumstances. The Justice Krishna Iyer stated that the refusal for bail should not be based on punitive instincts or public sentiment but rational aspects like the possibility of the accused absconding, influencing witnesses or further offences. The judgement made bail a constitutional principle and not a mere matter of judicial discretion, thus connecting it with the human freedom.

Subsequent Supreme Court decisions added to the doctrine. Justice Krishna Iyer reiterated the need to look at the question of bail with a humane and constitutional approach in *Gudikanti Narasimhulu v. Public Prosecutor*, the Court asserted that the deprivation of freedom cannot be taken on its own merits and that discretion of courts on bail must reflect the constitutional principles rather than the colonial attitudes of suspicion. In *Hussainara Khatoon v State of Bihar*, the Supreme Court for its part, revealed the plight of thousands of undertrial prisoners who were languishing in jails for more than the maximum punishment for their alleged offence. The Court had identified speedy trial as an integral part of Article 21 and made the point that the failure of the bail system was directly related to the issue of prolonged detention. These decisions together laid the foundation that pre-trial detention shall never be used as punishment, and that in a democratic state under law it should be the principle of liberty.

The underlying principles of the Constitution, which guide the practice of bail also relate to the broader context of criminal justice. Detention before conviction is problematic even on its own merits because it carries out too many severe social, economic and psychological costs for those who have been legally presumed innocent. A person accused and held in custody frequently loses their job, their education, their family's love and support, and their social standing. At times, the accused is forced into pleading guilty, even if he is not guilty, in order to get released. The results of such outcomes frustrate the principle of equal treatment before law, and lessen the fairness of the justice system. Thus, bail is a more than a procedural protection, it is a tool that is protecting human dignity and democratic accountability.

Although the bases of the bail jurisprudence in the Constitution are firm, the day-to-day experience of the Indian criminal justice system shows that there is a huge gap between the principle and practice of bail. According to the Prison Statistics India 2021 released by the National Crime Records Bureau, the population of undertrial prisoners accounted for about 77 per cent of the total population of prisons. This number includes lakhs who are neither convicted of any crime nor sentenced to any punishment, but are lodged in prisons awaiting trials. A high proportion of undertrial detentions is a symptom of structural flaws in the criminal justice system, such as slow court processing, overburdened courts, weak legal representation, and limited bail opportunities. Rather than being an exception, imprisonment has often become the norm when dealing with criminal charges, particularly for poor and disadvantaged people.

This contradiction is borne by those who are poor and marginalized. The accused who is from a rich background is more likely to get bail in a timely manner as they have the money to hire good lawyers, provide sureties, and clear the procedure. By comparison, people who cannot afford bail bonds, attorneys, or court appearances are often left in custody, and are not paying their bills. Although the bail system is technically a neutral process, it does reproduce the existing socio-economic inequalities. For petty charges, a poor person may languish in prison for months or years due to the inability to furnish surety which is inconsequential compared to the wealthier person. This disparity in the working of the bail system is a matter of grave concern that substantive equality in the sense of Articles 14 and 21 of the constitution is not being achieved.

This has been pointed out repeatedly by the Supreme Court. In the case of *Moti Ram v. State of Madhya Pradesh*, Justice Krishna Iyyer had stated that the impoverished should not be discriminated against in the conditions attached to bail and that the conditions should not be "mechanical". The Court noted that the bail system should take into consideration the socio-economic realities and not deny liberty simply because of poverty. In the same way, in *Sanjay Chandra v. Central Bureau of Investigation* the Court reiterated that the purpose of a pre-trial detention is not to punish and the purpose of bail is simply the attendance of the accused during the trial. The decision highlighted that the imposition of such precautionary custody had significant implications and so should be done on the basis of strong grounds.

But all these court rulings have done little to improve the culture of granting bail in India, which still tends to be inconsistent or too narrow. A key one is the inability to break the culture of risk aversion in lower courts. Judicial officers often refuse bail because, in the case of a sensational trial, the public might criticise the judge for being too soft on the accused, or in the case of a prosecution, the judge may be accused of being too hard on the accused. What is highlighted here is that when people are outraged about an allegation, or there is some sort of media exposure (i.e. a story appears on TV or gets printed in a newspaper), the seriousness of the allegation will be given even more weight than the constitutional right of every human being to be presumed innocent until proven guilty. This has created a culture in which pre-trial detention (holding an individual in jail before their trial) has become normal, when constitutionally this should never be considered a part of our justice system.

Another significant issue related to pre-trial detention is that more and more criminal statutes are legislated that impose severe bail conditions. Most bail regulations impose stringent restrictions on judicial flexibility and mandate that courts apply extra stipulations for granting bail under laws like the Unlawful Activities (Prevention) Act, the Narcotic Drugs and Psychotropic Substances Act, and the Prevention of Money Laundering Act. Commonly these same statutes impose a requirement upon the courts that they must complete a preliminary determination of innocence of the accused before they can approve bail. These types of measures ultimately deny a person their constitutional right to be presumed innocent and restrict the ability of the accused to gain liberty before trial. Therefore, due to the language contained in these various statutes it is possible for an accused to be detained for a lengthy period of time while the criminal proceedings are delayed due to either the delay in the investigation or trial. The imposition of these extreme measures will erode the constitutional rights of individuals and create a "parallel system," where their liberty is converted into "security."

This is especially true with respect to the delays in the criminal process. In India, trials often take years to end due to procedural delays, backlog, few judges, and adjournments. Undertrial detention is thus frequently beyond reasonable bounds. At certain times an accused person may spend more time in prison than the time he is allowed by law for the alleged crime. These situations are a fundamental violation of the principle of fair procedure as guaranteed in the Constitution. The Supreme Court has also highlighted that

protracted detention without trial infringe upon the right to life guaranteed under Article 21, but the situation of prolonged detention is systemic and continues to be a problem.

Overcrowding in pre-trial facilities has a hugely negative impact on people. When the prisons are overcrowded, the undertrials face the social stigma, violence, poor health care and bad conditions of living. Under trial prisoners and their families are at a disadvantage in terms of financial losses from lack of income and legal fees. Educational disruption and emotional instability occur among children of incarcerated parents. Women prisoners are exposed to extra vulnerabilities when it comes to health, childcare and social isolation. Incarceration therefore does not just impact the person accused but communities as a whole. If there are many innocent people who are jailed for years, the legitimacy of the criminal justice system is called into question.

In order to address these issues, the judiciary has attempted to intervene by altering the way bail laws are enforced, through a significant amount of effort (between 2006 and 2012) on the part of the Supreme Court to promote more liberal bail practices, and provide a framework for how to extend bail more frequently and consistently. A good illustration of this is found in the case of *Satender Kumar Antil v. Central Bureau of Investigation* where the Supreme Court issued a large number of directives to assist judicial officers in more quickly and fairly granting bail, and to encourage a more individually based approach in the context of arrest and detention decisions. In this regard, it is as important to provide procedural and substantive fairness in connection with an accused's right to remain free from detention prior to trial as it is to ensure that the interests of victims of crime are protected.

Significantly, on July 2, 2025, during the Justice V.R. Krishna Iyer Memorial Law Lecture, the current Chief Justice of India, B.R. Gavai, spoke to this same issue. While lamenting the fact that, in recent years, the judicial branch has not adhered to the "bail is the rule, jail is the exception" principle; CJI Gavai noted that this was contrary to the original constitutionally based principles of liberty upon which the justice system is founded; and he stated that the unlimited amount of judicial discretion that judicial officers have, due to the lack of limits imposed by the legislature and the executive branches of government on the length of time that an individual can be held in bondage prior to trial, failed to properly reflect those founding constitutional values. The CJI's remarks illustrate the judiciary's acknowledgement of the disproportionate impact that a defective bail process has on the rights of individuals accused of crimes. The institution's acknowledgement of this fact demonstrates that it is a matter of constitutional significance. It shows that our society as a whole has accepted that the justice system has largely deviated from its original promise of individual liberty, that it has failed to ensure that the values protected by our constitution will continue to be preserved through the rhetoric of the courts alone.¹

The bail issue in India is thus not just a legal dilemma, but also a constitutional and moral issue. The disconnect between what is believed in the constitution and how it is translated into practice illustrates the meaning of constitutional rights when institutional arrangements are inadequate. Although courts have stated open-ended principles of bail, they may be elusive for average citizens because of poverty, procedural hassles, and systemic inefficiency. Overcrowded prisons, housing mostly undertrial prisoners, show how much pre-trial detention is a norm these days.

There is a need to make changes at several levels in order to solve this problem. First, there should be more uniformity in applying the principles of bail by judges. The seriousness of the allegations should not be the only factor for courts to rely on for determining the objective factors of risk of absconding, likelihood of witness intimidation, and the need for custodial interrogation. Secondly, the procedural difficulties faced by impoverished accused persons should be minimised. Increased use of personal bonds, bail rules that are

¹National Crime Records Bureau, *Prison Statistics India 2021* (Ministry of Home Affairs, 2022) 18.

easier to follow and a wider availability of legal aid services can contribute to the availability of freedom regardless of economic means. Third, there should be a legislative scrutiny of the very strict conditions attached to bail under special legislation to ensure their conformity with the constitutional requirement of fairness and proportionality. Lastly, there is a need for general judicial reform measures, which include measures to reduce delays in the courts and improve investigative work efficiency, to prevent extended periods of under-trial incarceration.

The bail system finally represents the character of a constitutional democracy. A system that routinely incarcerates people without a conviction and compromises the very values it is supposed to serve risks to undermine those very values. Liberty must not be left to the economic and social elite. The right to freedom guaranteed in Article 21 of the constitution requires that freedom be the rule and detention the strictly controlled exception. It is precisely because the formulation of Justice Krishna Iyer has an enduring relevance and gives one the sense that the criminal justice must move within the paradigm of constitutional morality. The state has a legitimate right to prosecute crime but this power shall be exercised in a manner which is respectful to human dignity and the presumption of innocence.²

Overall, "the Doctrine of Bail is a Rule, and Jail is an Exception" is one of the strongest affirmations in the Indian Constitution on a person's personal freedom. This Doctrine continues to strengthen and expand over time through the judicial interpretation and transformative vision of Justice V.R. Krishna Iyer, supporting constitutional values hitherto such as fairness, dignity and limited government power. Nonetheless, overcrowded prison facilities as well as a large number of undertrial prisoners represents a gross deviation from this ideal. Factors contributing to the reality of imprisonment before guilty has been established include socio-economic class differences, debilitatingly restrictive statutes, court/judicial processing delays and judicial process rigidity. The recent statements by Chief Justice B.R. Gavai (U Bomai) highlight an urgent need to restore constitutional fidelity within bail jurisprudence. The future empowerment and credibility of any criminal justice system depend upon its capacity to provide an assurance that liberty will not be sacrificed for convenience, fear or institutional stagnation. When all people have access on an equal basis to the constitutional right and expectation of bail, only then can the meanings of justice and democracy be said to be plainly available/realized.

2. Constitutional Foundations of Bail

2.1 Article 21: The Right to Personal Liberty

The constitutional basis for the right to bail flows primarily from Article 21 of the Constitution of India, which declares: "No person shall be deprived of his life or personal liberty except according to procedure established by law."³ The Supreme Court has interpreted this provision expansively, holding in *Maneka Gandhi v. Union of India* (1978) that any procedure depriving a person of liberty must be "just, fair, and reasonable."⁴

In the context of bail, Article 21 imposes a dual obligation. First, any statutory restriction on bail must satisfy the test of reasonableness. Second, pre-trial detention that extends beyond reasonable limits particularly where trial is delayed without progress itself constitutes a violation of Article 21. As the Court observed in *Arvind Dham v. Directorate of Enforcement* (January 2026):

"The right to speedy trial, enshrined under Article 21 of the Constitution, is not eclipsed by the nature of the offence. Prolonged incarceration of an undertrial, without commencement or reasonable progress of

²"Bail rule, jail exception principle forgotten in recent past, says CJI Gavai," *The Times of India* (New Delhi, 7 July 2025) 1.

³Constitution of India, art 21.

⁴*Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, para 7.

trial, cannot be countenanced, as it has the effect of converting pretrial detention into a form of punishment.”⁵

Article 22 further reinforces these safeguards by guaranteeing the right to be informed of the grounds of arrest (Article 22(1)), the right to consult a legal practitioner (Article 22(1)), and the mandate for production before a magistrate within 24 hours of arrest (Article 22(2)).⁶

2.2 The Presumption of Innocence

Though not explicitly mentioned in the Constitution, the presumption of innocence is a cardinal principle of India’s criminal jurisprudence derived from Article 21. In *State of Rajasthan v. Balchand*, Justice Krishna Iyer articulated its implications for bail:

“The basic rule may perhaps be tersely put as bail, not jail. Except where the circumstances are of a certain type, the accused may be enlarged on bail. The Court must apply its judicial mind to the facts of the case and determine whether the accused is entitled to bail pending trial.”⁷

The presumption of innocence serves as the philosophical foundation for the bail-is-rule principle. If an accused is presumed innocent until proven guilty, then detention prior to proof of guilt must be justified by compelling state interests not by the mere fact of accusation. The burden lies on the prosecution to demonstrate why an accused should not be released on bail, rather than on the accused to demonstrate entitlement to release.⁸

2.3 Balancing Liberty with Societal Interest

Article 21 permits deprivation of liberty “according to procedure established by law,” and the state has a legitimate interest in ensuring that accused persons do not abscond, tamper with evidence, or influence witnesses.⁹ The bail decision, therefore, involves a balancing exercise between individual liberty and societal security. As the Court held in *Gudikanti Narasimhulu v. Public Prosecutor* (1978), factors to be considered include the nature of the accusation, the severity of punishment, the likelihood of the accused fleeing justice, the character and antecedents of the accused, and the potential for tampering with evidence.¹⁰

3. Statutory Framework: From CrPC to BNSS

3.1 Classification of Offences

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) has replaced the Code of Criminal Procedure, 1973 (CrPC). Yet, since the majority of legal jurisprudence has developed within the CrPC framework, this examination cites CrPC provisions while acknowledging their related sections in the BNSS.

As per Section 2(a) of the CrPC, a “bailable offence” is defined as an offence categorized as bailable in the First Schedule or designated as bailable by any other legislation, whereas all other offences are regarded as non-bailable.¹¹ In cases involving bailable offences, Section 436 provides bail as a matter of right. In contrast, for non-bailable offences, Sections 437 and 437A empower magistrates, while Section 439 grants discretionary authority to the Sessions Court and the High Court to decide on bail.¹³

3.2 Regular Bail: Sections 437 and 439

⁵*Arvind Dham v. Directorate of Enforcement*, 2026 INSC 12 (decided 6 January 2026), para 18.

⁶Constitution of India, art 22(1)– (2).

⁷*State of Rajasthan v. Balchand*, AIR 1977 SC 2447, para 3.

⁸Bhavik Kaushik and Shivangini Khanduri, “Punishment Before Proof: How Indian Courts are Turning Bail into Premature Punishment,” *SCC Online Blog* (10 November 2025).

⁹*Gudikanti Narasimhulu v. Public Prosecutor*, (1978) 1 SCC 240, para 5.

¹⁰*Ibid*, para 8–12.

¹¹Code of Criminal Procedure, 1973, § 2(a). For the corresponding provision under the BNSS, see Bharatiya Nagarik Suraksha Sanhita, 2023, § 2(b).

Section 437 permits magistrates to provide bail for non-bailable offences, but there is a significant restriction: bail cannot be offered if there are reasonable grounds to suspect that the accused has perpetrated an offence that is punishable by death or life imprisonment. Even if this limitation doesn't apply, the court must evaluate aspects like the seriousness of the crime and the likelihood of the defendant fleeing from justice.

Section 439 grants concurrent authority to the High Court and the Court of Sessions to award bail, without being bound by the restrictions applicable to magistrates under Section 437.¹² The legal position requires that an accused be in custody to move an application under Section 439; however, as the Supreme Court clarified in *Sundeep Kumar Bafna v. State of Maharashtra* (2014), custody includes judicial custody upon surrender before the court.¹³

3.3 Anticipatory Bail: Section 438

Section 438 provides a distinctive pre-arrest safeguard by allowing a person who anticipates arrest for a non-bailable offence to approach the High Court or Court of Sessions for a direction that they be released on bail if arrested.¹⁴ This clause was established following the suggestions of the Law Commission's 41st Report (1969), which highlighted the necessity of anticipatory bail to safeguard people from "irreparable harm to reputation and personal liberty" resulting from wrongful prosecution.¹⁵ In *Sushila Aggarwal v. State (NCT of Delhi)*, the Supreme Court decided that anticipatory bail can be awarded without a set time frame and does not have to be restricted to a defined period.¹⁶

3.4 Release of Undertrial Prisoners: Section 436A CrPC / Section 479 BNSS

Section 436A, introduced into the CrPC in 2005, states that an undertrial prisoner who has remained in detention for a duration amounting to one-half of the maximum sentence prescribed for the offence is entitled to be released on bail by the court.¹⁷ The newly enacted Section 479 of the BNSS improves upon this provision by reducing the threshold to one-third of the maximum period for first-time offenders.¹⁸

4. Evolution of Judicial Interpretation

4.1 State of Rajasthan v. Balchand (1977)

Justice V.R. Krishna Iyer's judgment in *State of Rajasthan v. Balchand* remains the most frequently cited authority for the bail-is-rule principle. The Court held that pre-trial detention should not operate as a form of punishment and emphasized that the presumption of innocence must guide every stage of the criminal justice process.¹⁹

4.2 GudikantiNarasimhulu v. Public Prosecutor (1978)

Expanding upon the Balchand framework, Justice Krishna Iyer in *Gudikanti Narasimhulu* articulated the factors that courts should consider while deciding bail applications, describing bail as a "delicate balance between individual liberty and societal interest."²⁰

4.3 Sanjay Chandra v. CBI (2011)

¹²Code of Criminal Procedure, 1973, § 437(1).

¹³*Sundeep Kumar Bafna v. State of Maharashtra*, (2014) 16 SCC 623, para 15.

¹⁴Code of Criminal Procedure, 1973, § 438. Corresponding BNSS provision: § 482.

¹⁵Law Commission of India, *41st Report on the Code of Criminal Procedure, 1898* (1969) para 39.9.

¹⁶*Sushila Aggarwal v. State (NCT of Delhi)*, (2020) 5 SCC 1, para 86.

¹⁷Code of Criminal Procedure, 1973, § 436A (inserted by Act 25 of 2005). Corresponding BNSS provision: § 479.

¹⁸Bharatiya Nagarik Suraksha Sanhita, 2023, § 479(1).

¹⁹*State of Rajasthan v. Balchand*, AIR 1977 SC 2447, para 3.

²⁰*GudikantiNarasimhulu v. Public Prosecutor*, (1978) 1 SCC 240, para 5.

In *Sanjay Chandra v. CBI*, the Supreme Court granted bail to accused in the 2G spectrum case, rejecting the trial court's reasoning that the seriousness of the economic offence justified continued detention. The Court held: "Grant of bail is the rule and refusal is the exception. The provision for bail is intended to secure the presence of the accused at trial. The Court must not permit pre-trial detention to become a form of punishment."²¹

4.4 *Dataram Singh v. State of Uttar Pradesh (2018)*

In *Dataram Singh*, the Supreme Court reiterated that an accused is presumed innocent until proven guilty and that personal liberty should not be sacrificed unless there are compelling reasons: "The court must not be influenced by the nature of the offence alone. Even in serious offences, bail may be granted if the accused is not likely to abscond or tamper with evidence."²²

4.5 *Satender Kumar Antil v. CBI (2022)*

The most comprehensive modern statement on bail jurisprudence came in *Satender Kumar Antil v. CBI*.²³ The Supreme Court laid down detailed guidelines to prevent unnecessary arrests and to ensure that bail is not denied mechanically. Key directives include: categorization of offences for determining when arrest is necessary; mandatory compliance with Sections 41 and 41A CrPC (arrest should not be mechanical); proportionality in bail conditions; and lower judiciary adherence to guidelines with recorded reasons for denying bail. The Court emphasized that "arrest should be the last resort" and that "personal liberty cannot be sacrificed at the altar of mere accusation."

4.6 Recent Reaffirmations: CJI Gavai's Remarks (2025)

In July 2025, Chief Justice of India B.R. Gavai gave the Justice V.R. Krishna Iyer Memorial Law Lecture, voicing worry that the principle of bail-as-rule has been "neglected in the recent past" despite many years of judicial incorporation. The CJI highlighted his own efforts in 2024 to reestablish this principle while granting bail in high-profile cases including *Prabir Purkayastha, Manish Sisodia, and Kavita v. ED*.²⁴

5. Bail Under Special Statutes: UAPA and PMLA

5.1 Statutory Restrictions

Special statutes enacted to combat terrorism, drug trafficking, and money laundering often contain provisions that significantly restrict the grant of bail:

- **Section 37 of the NDPS Act, 1985** specifies that bail may be granted only if the court is satisfied there are reasonable grounds to believe the accused is innocent and unlikely to commit any offense while on bail.
- **Section 43D(5) of the UAPA, 1967** According to Section 43D(5) of the UAPA, 1967, bail may not be awarded if the court determines there are reasonable grounds to assume that the accusations against the defendant are prima facie valid.²⁵
- **Section 45 of the PMLA, 2002** Section 45 of the PMLA, 2002 establishes two criteria for granting bail: firstly, the Public Prosecutor must have a chance to contest the bail plea; secondly, the court must be convinced that there are justifiable reasons to think the accused is innocent and is not expected to engage in any illegal activities while on bail.²⁶

5.2 *Vijay Madanlal Choudhary v. Union of India (2022)*

²¹*Sanjay Chandra v. CBI*, (2011) 4 SCC 80, para 26.

²²*Dataram Singh v. State of Uttar Pradesh*, (2018) 3 SCC 22, para 9.

²³*Satender Kumar Antil v. CBI*, (2022) 10 SCC 51.

²⁴"Bail rule, jail exception principle forgotten in recent past, says CJI Gavai," *The Times of India* (New Delhi, 7 July 2025) 1.

²⁵Unlawful Activities (Prevention) Act, 1967, § 43D(5).

²⁶Prevention of Money Laundering Act, 2002, § 45.

In the case of *Vijay Madanlal Choudhary v. Union of India*, the Supreme Court affirmed the constitutionality of Section 45 of the PMLA. The Court noted that the strict bail conditions were warranted because of the "transnational impact on financial systems, including the sovereignty and integrity of the country."²⁷

5.3 The Manish Sisodia Line of Cases (2024)

A significant shift occurred in August 2024 when the Supreme Court granted bail to Manish Sisodia, arrested under the PMLA in the Delhi Liquor Policy scam. The Court held that "bail is the rule, jail is the exception" applies to PMLA cases as well, and that prolonged incarceration without trial cannot be justified by statutory restrictions alone.²⁸ In *Prem Prakash v. Union of India* (August 2024), the Court applied the same principle to grant bail to an aide of a Chief Minister.²⁹

5.4 Union of India v. K.A. Najeeb (2021)

Under the UAPA, the Supreme Court in *Union of India v. K.A. Najeeb* held that even under UAPA, prolonged incarceration without trial could justify bail, observing that Article 21 applies "irrespective of the nature of the crime" and that statutory restrictions cannot be permitted to result in indefinite pre-trial detention.³⁰

5.5 Arvind Dham v. Directorate of Enforcement (2026)

Most recently, in *Arvind Dham v. Directorate of Enforcement* (January 2026), the Supreme Court granted bail to an accused who had been in custody for 16 months under PMLA charges involving an alleged bank fraud of over ₹670 crore. The Court held that economic offences do not form a homogeneous class warranting blanket denial of bail.³¹

6. Systemic Problems and Gaps

6.1 Judicial Inconsistency

Despite the clear articulation of the bail-is-rule principle, studies reveal deep inconsistencies in judicial application. As Sarthak Gupta observed in the *Supreme Court Observer* (October 2025): "The Court appears to take a subjective interpretation of Article 21, tilting on who the accused is, which bench hears the case, and the vagaries of the political moment."³² Comparing *Gurwinder Singh v. State of Punjab* (February 2024), where bail was denied to a UAPA accused after five years in custody,³³ with *Mohd. Enamul Haque v. Directorate of Enforcement* (2024), where bail was granted,³⁴ illustrates this inconsistency.

6.2 Undertrial Overcrowding

Undertrial prisoners constitute over 75% of India's prison population.³⁵ For many, the inability to secure bail stems from economic circumstances rather than case merits. A 2021 study by the Vidhi Centre for Legal Policy found that over 60% of bail orders lacked reasoning, and the Delhi High Court Legal Services

²⁷*Vijay Madanlal Choudhary v. Union of India*, 2022 SCC OnLine SC 929, para 412.

²⁸*Manish Sisodia v. Directorate of Enforcement*, 2024 SCC OnLine SC 1934, para 31.

²⁹*Prem Prakash v. Union of India*, 2024 SCC OnLine SC 2156, para 24.

³⁰*Union of India v. K.A. Najeeb*, (2021) 3 SCC 713, para 34.

³¹*Arvind Dham v. Directorate of Enforcement*, 2026 INSC 12 (decided 6 January 2026), para 22.

³²Sarthak Gupta, "Article 21 remains a divided promise in the Supreme Court's bail jurisprudence," *Supreme Court Observer* (27 October 2025).

³³*Gurwinder Singh v. State of Punjab*, 2024 SCC OnLine SC 432, para 12.

³⁴*Mohd. Enamul Haque v. Directorate of Enforcement*, 2024 SCC OnLine SC 987, para 18.

³⁵National Crime Records Bureau, *Prison Statistics India 2021* (Ministry of Home Affairs, 2022) 18.

Committee reported that in over 70% of cases, undertrials remained in custody due to inability to afford sureties even when bail was granted.³⁶

6.3 Arbitrary Arrests

Despite judicial mandates in *Arnesh Kumar v. State of Bihar* (2014)³⁷ and *Satender Kumar Antil* (2022),³⁸ arrests continue to be made mechanically without adhering to Sections 41 and 41A of the CrPC. Section 41A provides for the issuance of notices for appearance instead of arrest for offences punishable with up to seven years of imprisonment; however, compliance remains minimal.

6.4 Punitive Bail Conditions

Courts have imposed conditions converting pre-trial release into punishment before conviction, including community service, monetary compensation, planting trees, and in *X v. State of M.P.* tying rakhis on complainants.³⁹ In *Frank Vitus v. Narcotics Control Bureau*, the Supreme Court overturned a condition requiring location monitoring by Google Maps pin, holding that this violated the accused's right to privacy.⁴⁰ These conditions have no nexus to the legitimate purposes of bailensuring presence at trial and preventing interference with evidence.

7. Recommendations for Reform

The following recommendations emerge from the preceding analysis:

First, the bail guidelines articulated in *Satender Kumar Antil* should be codified through amendments to the BNSS, establishing objective criteria for bail decisions. The “triple test” flight risk, evidence tampering, witness influences should be statutorily mandated as the exclusive considerations for bail decisions.⁴¹

Second, bail amounts and surety requirements must be proportionate to the financial capacity of the accused, implementing the Law Commission's 268th Report (2017) recommendation for a risk-based assessment model and the use of personal recognizance bonds.

Third, Section 479 of the BNSS (successor to Section 436A CrPC) should be expanded to mandate automatic release of undertrial prisoners who have completed the prescribed period, without requiring a formal application, with periodic review every 90 days.

Fourth, the stringent bail provisions in special statutes (UAPA, PMLA, NDPS Act) should be interpreted consistently with the principle that constitutional liberty cannot be completely extinguished by statutory restrictions a principle affirmed in *K.A. Najeeb*, *Manish Sisodia*, and *Arvind Dham*.⁴²

Fifth, judicial officers require training on constitutional bail principles and the prohibition against punitive conditions. Orders denying bail or imposing conditions must contain detailed reasoning demonstrating application of the triple test.

Sixth, the National Legal Services Authority (NALSA) should be adequately funded to provide meaningful legal representation to undertrial prisoners, with duty counsel present in all magistrates' courts at the first remand hearing.

8. Conclusion

³⁶Vidhi Centre for Legal Policy, *Fair Trial Rights and Bail Orders in India* (Vidhi, 2021) 23; Delhi High Court Legal Services Committee, *Annual Report 2020-21* (DHC LSC, 2021) 15.

³⁷*Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273, para 12.

³⁸*Satender Kumar Antil v. CBI*, (2022) 10 SCC 51, para 87.

³⁹*X v. State of M.P.*, 2021 SCC OnLine SC 1152, para 6.

⁴⁰*Frank Vitus v. Narcotics Control Bureau*, 2024 SCC OnLine SC 876, para 14.

⁴¹Law Commission of India, *268th Report on the Code of Criminal Procedure, 1973* (2017) para 6.3.1.

⁴²*Union of India v. K.A. Najeeb*, (2021) 3 SCC 713, para 34; *Manish Sisodia v. Directorate of Enforcement*, 2024 SCC OnLine SC 1934, para 31; *Arvind Dham v. Directorate of Enforcement*, 2026 INSC 12, para 22.

The fundamental idea that the "rule of bail is the rule; the exception is jail," reflects a constitutional commitment to liberty as the default position for the criminal justice system. The concept is derived directly from Article 21 of the Constitution guaranteeing each person's right to personal liberty and the fundamental presumption that someone who is accused is innocent until they have been proven guilty. Nevertheless, according to Chief Justice Gavai's observations in July 2025, this fundamental concept has recently been "forgotten."

India's prison population represents over 75% of prisoners are awaiting trial; this statistic speaks to the chasm between constitutional guarantees of liberty and how it exists in practice in Indian society. In fact, for many people who are poor, marginalized or have been accused under various special laws, prisoners today represent the rule while bail represents the exception.

Nevertheless, emerging trends in the judiciary offer hope that the Indian judiciary can be restored to its original intent. The Supreme Court has reaffirmed time and again over the last three recent cases. from Satender Kumar Antil (2022), to Manish Sisodia (2024) and Arvind Dham (2026) ... that statutory restrictions on bail cannot extinguish the grant of constitutional liberty. Going forward, there is a need for legislative efforts to codify the jurisprudence of bail and liberty, administrative efforts to support access to legal representation, and judges' continuing vigilance to guard against any erosion of liberty. Until the reality of bail is fully recognized for the millions of people who will have been awaiting trial in India's vast prisons, the provisions of Article 21 will continue to be a grand promise written on the pages of the Constitution, but a promise that has no bearing in real life.

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