
LIBERTY ON TRIAL: A CRITICAL STUDY OF BAIL JURISPRUDENCE UNDER PMLA

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ABSTRACT

The evolving landscape of socio-economic offences has significantly transformed traditional principles of criminal jurisprudence, particularly in respect of bail. Among such offences, money laundering poses a deep threat not only to the financial stability of nations but also to their sovereignty and institutional integrity. This paper critically examines the bail jurisprudence under the PMLA with a focus on its stringent provisions that depart from the foundational criminal law principle of 'bail as the rule and jail as the exception.' By tracing the historical and philosophical development of bail from its common law origins to its constitutional founding in personal liberty, the study highlights the tension between individual rights and compelling state interests in encountering complex financial crimes. The paper also interrogates controversial features of the PMLA such as the burden of proof and twin conditions of bail under s. 45 which mandates courts to assess the prima facie innocence of the accused, an apparent deviation from the presumption of innocence. Through a doctrinal and comparative analysis with other special statutes like NDPS Act and UAPA, the research explores how judicial interpretation has vacillated between a pro-state and pro-liberty approach. At its core, the issue persists whether such stringent bail conditions under special laws can truly coexist with the constitutional promise of fairness, reasonableness and personal liberty. This tension continues to shape the ongoing debate on whether the existing framework incorporates a just balance between state interests and individual rights or whether it calls for urgent reconsideration and reform, an inquiry that lies at the heart of contested issues of modern criminal law.

I. INTRODUCTION

Individual liberty is the greatest gift of democracy, yet the law must carefully balance personal liberty with the interest of the society. Traditionally, crime was often linked to poverty, but in the present times it can be said that criminality is not limited to the economically disadvantaged. This has necessitated a distinct branch of criminal law aimed at curbing socio-economic offences, which threaten the national economy and public interest. Over time, existing ordinary laws proved inadequate to tackle these crimes, particularly in the wake of rapid industrialization and post-war economic shifts. Motivated by greed and the lure of overnight wealth, new forms of criminality emerged which accentuated the need to bring a shift in criminal policy from a due process model to a crime control model.¹ This shift has resulted in emergence of new criminal jurisprudence in the form of dilution of the requirements of mens rea, presumption clauses, provision of reverse onus, modification of standard of proof, bail conditions made harsher, etc.

The problem of socio-economic crimes has not only occupied the national space in India but can be seen as an international problem. Out of these crimes, Money Laundering poses a serious threat not only to the financial systems of countries but also to their integrity and sovereignty requiring the need for a legislation to curb such activities. It generally refers to making clean the money that has been acquired through illegal means like smuggling or tax evasion. This economic offence occurs mainly in three stages- “the placement where illegal proceeds of crime are introduced into the economy, then layering where illegal money is invested in multiple transactions so that the origin is lost beneath numerous layers of financial transactions and ultimately the integration stage where money is again introduced into the economy as a legitimate source through front businesses in cash-intensive sector, investments in real estate e.t.c.”²

In this process, at the international level first of all, the U.S came with the legislation³ to deal with ML and thereafter followed by United Nations Convention Against Illicit Traffic in Narcotics Drugs and Psychotropic Substances, 1988, to prevent money laundering and the

¹ Anurag Deep, “Socio Economic Crimes” LII *Annual Survey of Indian Law* 903-943 (Indian Law Institute, New Delhi, 2016).

² Nihit Nagpal and Muneeb Rashid Malik, The Right to bail under Prevention of Money Laundering Act: Balancing Justice and Liberty? Available at <<https://www.livelaw.in/law-firms/law-firm-articles/-/bail-prevention-of-money-laundering-act-justice-liberty-bharatiya-nagarik-suraksha-sanhita-ss-r...>> (last visited on Apr. 26, 2025).

³ The Money Laundering Control Act, 1986 (Public Law 99-570).

connected activities, the Financial Action Task Force in 1989 to examine the problem of money laundering, the Political Declaration and Global Programme of Action adopted by the United Nations General Assembly Resolution⁴ relating to the same, and the United Nations Special Session on countering world drug problem in 1998. In view to the international commitment and demand of the time, India came with the legislation⁵ to deal with.

Money laundering is now seen as a highly serious and harmful crime, which has led to the creation of **strict legal procedures**, especially when it comes to granting bail. These procedures **differ greatly from the ordinary bail rules** under the Code of Criminal Procedure.⁶ This change is part of a **global shift** where financial crimes particularly money laundering are treated with a focus on **deterrence and prevention**, rather than the long-standing belief that bail should be the norm and jail the exception. The PMLA Act came into existence in 2002 but before that India had general provisions to deal with money-laundering. Here, an ordinance⁷ was there in 1944 which was not directly dealing with the offence of money laundering but was addressing some of the underlying activities which can contribute to ML. It granted authorities power to seize and confiscate properties acquired through illegal means, which could be applied to assets that were later laundered.⁸ Moreover, SFEM Act,⁹ also dealt with smugglers and illegal foreign exchange activities commonly used for laundering illicit funds. Despite the enactment of these laws, it had their own limitations and thereby unable to tackle the evolving methods of money laundering.¹⁰ So, considering the lacunae of existing legal framework, the need for PMLA was felt.

But the problem arose because of many controversial provisions like bail conditions, reverse burden of proof, and other which are in direct violation with many of the fundamental rights under the Constitution of India. The stringent bail conditions under PMLA raises concern about due process. s. 45¹¹ of PMLA imposes a twin test for bail, requiring the accused to prove innocence, contrary to the presumption of innocence under criminal law. Though struck down

⁴ The United Nations General Assembly Resolution, *Narcotic Drugs* GA Res 17/2, GAOR, UN Doc A/Res/17/2 (February, 1990).

⁵ The Prevention of Money Laundering Act, 2002 (Act 15 of 2003).

⁶ The Code of Criminal Procedure, 1974 (Act 2 of 1974).

⁷ The Criminal Law Amendment Ordinance, 1944 (Act 38 of 1944).

⁸ Available at < <https://www.livelaw.in/law-firms/law-firm-articles/-/bail-prevention-of-money-laundering-act-justice-liberty-bharatiya-nagarik-suraksha-sanhita-ss-r...> > (last visited on Apr 26, 2025).

⁹ The Smuggler and Foreign Exchange Regulators Act, 1976 (Act 13 of 1976).

¹⁰ *Ibid.*

¹¹ *Supra* note 5.

in *Nikesh Tarachand Shah case*,¹² the provision was reinstated in *Vijay Madanlal Case*¹³, strengthening central agencies' power. The court should also recognize the Legislature's wariness towards money laundering and pass orders such that it balances caution with liberty.¹⁴ The term bail has been well defined under the BNSS, which means that "bail means release of a person accused of or suspected of commission of an offence from the custody of law upon certain conditions imposed by an officer or court on execution by such person of a bond or bail bond."¹⁵ In *Nikesh Tarachand Shah case*¹⁶ it was also pointed out that the primary purpose of the bail is to secure the attendance of the accused at trial rather than using as a punitive measure. Moreover, in *P. Chidambaram case*¹⁷ it was emphasized "even in cases of severe economic offences, bail should not be automatically denied, as no legislation or established bail jurisprudence mandates such a blanket rule and each case must be evaluated individually based on its specific facts, with the ultimate goal of ensuring the presence of an accused for trial." The research paper is trying to examine especially stringent provisions of bail under PMLA along with the approach taken by the courts regarding the same under this Act while also comparing the bail restrictions under other special laws under NDPS Act, UAPA e.t.c. The problem demands consideration because on the name of special legislations, an accused are kept behind the bars for a long period. The PMLA has internal ramifications as the offense of money laundering not only affects the municipal economy where the predicate offenses committed but also has its impact over international economy where the proceeds of the predicate crime may be generalized for the purpose of laundering.¹⁸

II. TRACING DEVELOPMENT ON BAIL JURISPRUDENCE: BALANCING JUSTICE AND LIBERTY

The Concept of bail finds its origin in the ancient legal system. In the Anglo-saxon period, Sheriffs had the discretionary authority to release defendants on "sufficient security."¹⁹ Later these practices were formalized by the Statute of Westminster (1275) by categorizing the

¹² *Nikesh Tarachand Shah v. Union of India*, AIR 2017 SC 5500.

¹³ *Vijay Madanlal Chaudhary v. Union of India*, (2023) 12 SCC 1.

¹⁴ Nachiketa Narain and Aredla Praneet Reddy, "To Bail or Not to Bail: Conundrum of S. 45, PMLA" *NUALS Law Journal*, (2024).

¹⁵ The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023) S. 2(1) (b).

¹⁶ *Supra* note 12.

¹⁷ *P Chidambaram v. Directorate of Enforcement* (2020) 13 SCC 791.

¹⁸ Dr. Rajesh Kumar Dube, "Laws Relating to Bail under UAPA and PMLA: A Jurisprudential Analysis" 7 *International Journal of Law Management and Humanities* 2653 (2024).

¹⁹ Available at < <https://www.bbc.co.uk/bitesize/guides/zqsqjsg/revision/2> (last visited on 27th Apr, 2025).

offences into bailable and non-bailable.²⁰ It had a great impact on the development of bail Jurisprudence across common law jurisdictions, including India. In Mediaval English Law, there developed the Concept of surety as a prerequisite to bail. Sir William Blackstone²¹ has also said “ bail means a delivery or bailment of a person to its sureties upon their giving (together with himself) sufficient security for his appearance he being supposed to continue in their friendly custody instead of going to Gaol.” It laid the foundation for surety based release which continued to shape contemporary bail practices globally.

The English Bill of Rights along with the Eighth Amendment of the U.S. Constitution recognized that the bail should not be excessive.²² This constitutional recognition transformed bail from merely a procedural formality into a **fundamental right closely tied to the protection of personal liberty**. Moreover, modern International Human Rights Instruments also established global standards for bail jurisprudence. For example, art. 9(3) of ICCPR²³ says “it shall not be the general rule that persons awaiting trial shall be detained in custody.....” Similarly, art.5(3) of ECHR²⁴ also emphasizes that “everyone under arrest or detention shall be entitled to trial within a reasonable time or to release pending trial..” In *Neumeister v Austria*²⁵ it was emphasized by the European Court that the pretrial detention cannot be used as anticipatory punishment and must be justified by the specific risks like the interference with the evidence or chances of evading from the trial. In this way, the doctrine of proportionality was established as a general principle in bail determinations across European jurisdictions. Beside the above, the Tokyo rules of 1990²⁶ has also reinforced that the pretrial detention should be used as a last resort encouraging states to develop alternatives to detention. All the above international phenomenon have shaped the domestic bail jurisprudence and India is not an exception.

In India, although the word bail has not be mentioned under the Indian Constitution but the art.21 and art.22 is relevant here. The former says “no person shall be deprived of his life or

²⁰ Judicial Academy Jharkhand in association with Boakro Judgship, Reference Material for Regional Conference on Key Issues of Remand and Bail Jurisprudence, at HRD Auditorium, BSL Bokaro, 6th August 2023).

²¹ Commentaries on the Law of England (1765-69), King Bamford and Sarre Criminology Research Council, Consultancy on Factors that Influence Remand in Custody Final Report, NOV. 2005, 28.

²² *Ibid*.

²³ The International Covenant on Civil and Political Rights, 1966.

²⁴ The European Convention on Human Rights, 1950.

²⁵ 1968 ECHR 1.

²⁶ United Nation Standard Minimum Rules for Non-Custodial Measures, 1990, General Assembly Resolution 45/110.

personal liberty except according to procedure established by law” which included in itself the right to bail as an important aspect of personal liberty as was emphasized by the Supreme Court many times and the later regulates the arrest and detention. In *Maneka Gandhi case*²⁷ also, while interpreting art.21, the Supreme Court said the procedure restraining liberty of an individual should be just, fair and reasonable. It influenced the bail jurisprudence requiring bail provisions to fall under the criteria of reasonableness not arbitrariness. Moreover S. 478 to S. 483²⁸ also governs the aspect of bail under bailable and non-bailable offences and under different circumstances.

III. PRINCIPLES GOVERNING BAIL UNDER GENERAL CRIMINAL PROCEDURAL LAW

In any criminal justice system, there seem to be existence of some principles which are the guiding factors in deciding the criminality of some acts or omissions like mens rea, strict liability, causation, the harm principle and public wrongs e.t.c. Resultantly, there are also many principles which guides the bail jurisprudence under criminal law. These principles are as follows-

The Presumption of Innocence

This Principle is the core principle in ordinary criminal law. According to this principle, an accused is to be presumed innocent until proven guilty beyond a reasonable doubt. It was further asserted as a fundamental principle of our criminal justice system which also extends to determination of bail.²⁹ In furtherance of art.14 and art.21 of the Indian Constitution, the doctrine safeguards the right to a fair trial and protects individual from arbitrary arrest and detention.

Bail as a Rule, Jail as an Exception

The Purpose of bail is to secure the attendance of accused person whenever required in the process of the trial. It is very much required taking into consideration the presumption of innocence and is there to protect the mandate of art. 21 of the Indian Constitution. Moreover, it reflects the idea that an accused person should not be deprived of liberty unnecessarily before

²⁷ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

²⁸ *Supra* note 14.

²⁹ *Dattaram Singh v. State of Uttar Pradesh* AIR 2018 SC 980.

conviction, especially when the investigation or trial is undergoing or pending. The rule was firstly introduced in *Balchand case*³⁰ and after that emerged as a guiding principle while granting bail. With regard to bailable offences, the principle can be implemented with a particular force as in that case, bail becomes a matter of right and can't be avoided under S. 478³¹ of BNSS. On the other hand, the rule has influenced the judiciary in non-bailable cases to not to mechanically deny the bail rather consider the facts and circumstances of the case at the very initial stage.

Principle of Proportionality

When it comes to matter of bail, a balance has to be made between personal liberty and legitimate state interests. So, here comes the importance of proportionality which should not only be applied while deciding to grant bail but also need to be taken into consideration when conditions are imposed in case bail is granted. The Supreme Court has also established that "reasonable of restrictions depends upon proportionality between the nature of the right infringed and public purpose to be served."³² Although the granting of the bail is in the discretion of the Court, but the principle act as a guiding principle to grant bail. So, while balancing the public interest with the rights of the individual, the proportionality should be determined by taking into consideration the nature of the offences, danger of the accused either tampering with the evidence or absconding if released on bail, the health or sex of the accused.

Principle of Least Restrictive Measures

On the hearing of the bail applications, the court should not impose that conditions which the accused is not able to fulfill and thereby may result into the refusal of the bail. There should be least restrictive measures so as to ensure the appearance of the accused as well as public safety. For example, the conditions of bail should be in consonance of the monetary status of the accused and it should not be made excessive leading to denial of bail as was also said by Justice Krishna Iyer.³³

Principle of Expeditious Hearing

Another important principle in this regard is the principle of expeditious hearing supported by

³⁰ *State of Rajasthan v. Balchand*, AIR 1977 SC 2447.

³¹ *Supra* note 14.

³² *Gudikanti Narasimhulu v. Public Prosecutor* (1978) 1 SCC 240.

³³ *Moti Ram v. State of Madhya Pradesh* (1978) 4 SCC 47.

the fact that the right to speedy trial has been considered as a fundamental right under art.21 of the Constitution of India.³⁴ Moreover, it was also emphasized that “speedy trial is an essential ingredient of just, fair and reasonable procedure under art.21 and it is the constitutional obligation of the state to devise such a procedure as would ensure the speedy trial to the accused.³⁵ In furtherance of the above, there has been prescribed certain timelines so as to enforce the decisions of bail.³⁶

Principle of Reasoned Orders

Every power comes with some of the responsibilities and thereby the judges also while hearing the bail applications must give reasons for that. Moreover, reasoned orders constitute as one of the principle of natural justice which has to be adhered to in any situation. The Supreme Court has also said “grant of bail is a discretionary order but however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason can’t be sustained.”³⁷

IV. PRINCIPLES GOVERNING BAIL UNDER SPECIAL PENAL LAWS

1. The Principle of Presumption of Guilt

All the special criminal laws incorporate presumptions that operate against the principle of granting bail or the presumption of innocence. For example, S. 35³⁸ says that there is a legal presumption against the accused that he was in a culpable mental state while committing an act. Additionally, S. 24³⁹ also says that the person charged shall be presumed to have committed the offence of money laundering and he has burden of proof to avoid the prosecution. Moreover, the legislature has some purpose to bring the special law and in the case of any repugnancy with the general law, the former one will prevail and it will be better to use this principle when both the general law and special law can’t be read harmoniously.⁴⁰ Moreover, the constitutionality of the reverse burden of proof was also upheld under NDPS by saying that the foundational requirements of the provisions of law providing for the reverse burden of proof

³⁴ *Hussainara Khatoon v. State of Bihar* AIR 1979 SC 1369.

³⁵ *Ibid.*

³⁶ *Satender Kumar Antil v. Central Bureau of Investigation* (2024) 9 SCC 198.

³⁷ *Ram Govind Upadhyay v. Sudarshan Singh* (2002) 3 SCC 598.

³⁸ The Narcotics Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985).

³⁹ *Supra* note 5.

⁴⁰ *Upendra Rai v. C.B.I.* 2021 SCC OnLine Del 2494, para 45.

should be strictly complied with and should be subject to establishment of certain basic facts along with the emphasis that presumption of innocence is just a human right and should not be equated with the fundamental right under art.21 of the Constitution of India.⁴¹

2. Jail is the Rule, Bail is the Exception

This is a well-established principle under special laws like NDPS, PMLA or UAPA e.t.c. The Supreme Court while hearing a bail petition and rejecting the bail said⁴²-

18. *“The conventional idea in bail jurisprudence vis-à-vis ordinary penal offences that the discretion of Courts must tilt in favour of the oft-quoted phrase - ‘bail is the rule, jail is the exception’ – unless circumstances justify otherwise - does not find any place while dealing with bail applications under UAP Act. The ‘exercise’ of the general power to grant bail under the UAP Act is severely restrictive in scope. The form of the words used in proviso to Section 43D (5)– ‘shall not be released’ in contrast with the form of the words as found in Section 437(1) CrPC – ‘may be released’ – suggests the intention of the Legislature to make bail, the exception and jail, the rule.”*

Here, the Act is framed in a way where securing bail is extremely hard and thus when charges under this law are framed and the burden of doubt bends unreasonably against the accused they lose the right to secure bail which is violative of one of the golden rules of criminal jurisprudence.⁴³ But at the same time in PMLA cases, the Supreme Court said that “S. 45 of PMLA only lays down that the grant of bail would be subject to twin conditions and does not later the fundamental principle that bail is the rule i.e. even in PMLA cases ‘bail is the rule and jail is the exception’ should be taken care of.”⁴⁴ Additionally, Justice B.R. Gavai also emphasized the adherence to this rule in PMLA cases in *Manish Sisodia case*⁴⁵ So, in special cases also, depending on the facts and circumstances of the cases, the courts are taking either pro liberty or pro state approach.

3. Principle of Restricted Judicial Discretion

It is well known that special laws deals with specific category of offences like money

⁴¹ *Noor Aga v. State of Punjab and Another* (2008) 16 SCC 417.

⁴² *Gurvinder Singh v. State of Punjab* (2024) 2 S.C.R. 134.

⁴³ Bhatia and Tulip Tarun, “The Vijay Madanlal Judgment of India: A New Era for PMLA” 3 *Indian Journal of Integrated Research in Law* 15 (2023).

⁴⁴ *Prem Prakash v. Union of India*, 2024 Live Law SC 617.

⁴⁵ *Manish Sisodia v. Directorate of Enforcement* 2024 INSC 595.

laundering or corruption which seems impossible to be addressed by the ordinary criminal laws. Under these laws, judicial discretion is very constrained in bail matters. For example, S. 43D (5)⁴⁶ says “no person shall be released on bail or on his own bond unless the public prosecutor has been given an opportunity of being heard on the application for such release.” Moreover, the S. 45 of PMLA as well as S. 37 of NDPS Act also mandates that the public prosecutor should be heard. In all these cases, the discretionary power has been restricted added by the principle of legal presumption against the accused.

4. Principle of Compelling State Interest

In a society, there are many offences which affects the individuals or society added by those categories of offences having national impact. The “compelling state interest” principle is a constitutional concept that permits the government to limit individual rights particularly fundamental ones like personal liberty or privacy only when such limitations are essential to fulfill a crucial public objective. In the framework of special legislations such as the PMLA, NDPS, and the UAPA, this doctrine is frequently used to justify the imposition of strict legal provisions that significantly diverge from the safeguards typically provided under general criminal law. The Supreme Court⁴⁷ also upheld the specific restrictions under PMLA as valid and the validity of specific provisions under UAPA justifying the urgent interest in counter-terrorism efforts was also upheld.⁴⁸ At the same time, the judicial scrutiny is very much important so that the states could not avoid the rule of law.

5. Doctrine of Proportionality

Under the Constitution of India, fundamental rights are very sacrosanct and can't easily be avoided. If the restrictions are being imposed on the fundamental rights that should satisfy the criteria of reasonableness. In other words, the doctrine of proportionality holds that any restriction on fundamental rights must be appropriate to achieve a legitimate objective, necessary where no less restrictive means are available, and carefully balanced to avoid excessive infringement on individual freedoms. In the context of laws like the PMLA and NDPS, which impose particularly harsh bail provisions, courts have scrutinized whether these limitations align with the proportionality standard by balancing the government's interest in

⁴⁶ The Unlawful Activities (Prevention) Act, 1967 (Act 37 of 1967).

⁴⁷ *Supra* note 13.

⁴⁸ *NIA v. Zahoor Ahmad Shah Watali* 2019.

controlling financial and drug-related crimes against an individual's right to personal liberty under Article 21 of the Constitution. In *Vijay Madanlal Case* also, the Supreme Court upheld the PMLA's tough bail conditions, finding them justified given the serious nature of money laundering and its impact on national economic security. Nonetheless, applying this principle continues to fuel debate over whether such stringent legal standards compromise civil liberties too heavily in pursuit of broader public safety goals.

V. JUDICIAL INTERPRETATION OF BAIL PROVISIONS UNDER SPECIAL PENAL LAWS

The bail provisions under special statutes like PMLA, NDPS and UAPA represent a significant departure from the general rule under ordinary criminal law. These laws create stringent thresholds for grant of bail, reflecting a legislative intent to prioritize national interest, public safety, and economic stability over personal liberty in serious and organized crimes.

The money laundering is an offence which does not have a social impact but can disturb the economic fabric of the country. The offence of money laundering is a non-bailable offence according to S. 45⁴⁹ of PMLA. According to S. 71⁵⁰ the Act will have overriding impact despite having inconsistency with any other law for the time being in force. Moreover, the provisions of CrPC shall apply if it is not inconsistent with any of the provisions given under PMLA.⁵¹

S. 45 has been amended many times first in 2005⁵² and then in 2018⁵³ and 2019.⁵⁴ Initially, S. 45(1) of the Act was declared unconstitutional which was then read as⁵⁵ in *Nikesh Tarachand case*⁵⁶ being violative of art.14 and 21 of the Constitution of India. But the section in its amended form was later upheld in *Vijay Madanlal Case*. So, while hearing the bail under non-bailable offences, the factors that need to be considered are “the nature of accusations, the

⁴⁹ Offences to be cognizable and non-bailable.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence under this Act shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) here the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

⁵⁰ *Supra* note 5.

⁵¹ *Ibid* s. 65.

⁵² Act 20 of 2005.

⁵³ Act 13 of 2018.

⁵⁴ Finance Act, 2019 (Act 2 of 2019).

⁵⁵ (i) that there are reasonable grounds for believing that he is not guilty of such offence; and

(ii) that he is not likely to commit any offence while on bail

⁵⁶ *Supra* note 12.

nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable apprehension of the witnesses being tampered with, the larger interest of the public and other similar conditions.”⁵⁷ In addition to the above, if the other two conditions are satisfied, the person should be released on bail. At this stage, these twin conditions need to be considered through a reasonable reading rather than entering into the evidence given.

The Supreme Court, from their recent judgments, can be seen as taken a very nuanced approach regarding bail applications under PMLA.⁵⁸ This is very evident from the example of Manish Sisodia case and Arvind Kejriwal case to whom bail was granted. In Manish Sisodia case, due to 17 months long incarceration, the Supreme Court reiterated “the right to speedy trial is a facet of the right to life and that prolonged detention or jail before being pronounced guilty of an offence should not become punishment without trial.”⁵⁹ A presumed innocent person is better than others to defend his case when he is outside and bail. Although these principles were already there which were avoided. Additionally, in *P Chidambaram case*⁶⁰ the Supreme Court said “the fundamental principle of bail jurisprudence that granting bail is the rule and refusal is the exception remains unchanged.” So, on the one hand there is prolonged incarceration of the accused and potential misuse of the power of arrest and on the other hand potential violations of art.21 regarding non-disclosure of ECIR to the accused, not informing grounds of arrest in writing to the accused and arrest without necessity and thereby forcing the court to take pro liberty approach as was evident in *Manish Sisodia case, Arvind Kejriwal case, and Pankaj Bansal*. Unfortunately, between 2014 and 2024, 5000 cases have been registered under PMLA out of which only 40 convictions are there.⁶¹ Moreover, in *Prem Prakash Case*, the Court said “any statement made under S. 50 of the PMLA by an accused in custody is inadmissible against them, as they are not acting with a free mind as such statements violate principle of fair play and justice.” Recent judgments shows that the court are now giving importance to personal liberty, the presumption of innocence, and the need for speedy trials rather than considering only twin conditions and thereby making a thorough balance between state power and individual rights.

⁵⁷ *Y.S. Jaganmohan Reddy v. CBI* (2013) 7 SCC 439.

⁵⁸ Available at <<https://www.livelaw.in/articles/bail-pmla-ed-cbi-manish-sisodia-k-kavitha-arvind-kejriwal-268207>> (last visited on April 25, 2025).

⁵⁹ *Ibid.*

⁶⁰ *Supra* note 16.

⁶¹ *Supra* note 46.

Similar approach has been taken under NDPS and UAPA cases also. Under NDPS Act where similar twin conditions⁶² are there, the Supreme Court in *Mohd Muslim case*,⁶³ said “to refuse bail on the one hand and to delay trial of cases on the other are clearly unfair and unreasonable and contrary to the spirit of S. 36 (1) of the NDPS Act, S. 309 CrPC and Arts.14, 19, and 21 of the Constitution.” Likewise the Supreme Court while dealing with a case under UAPA, in *K.A Najeeb case*, held “when a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge accused on bail regardless of the statutory restrictions imposed on the right to bail by provisions like S. 43 D (5) of the UAPA.” Moreover, it was also emphasized that the mere restrictions under S. 43 D (5) of UAPA does not dilute the ability of constitutional courts to grant bail on grounds of violation of part III of the Constitution of India.⁶⁴

Now taking into consideration the number of undertrial prisoners in India and considering the right to speedy as a fundamental right especially under special laws, S.187 of BNSS and S.479 of BNSS should be applied in special cases also. According to S. 187, if the offence is punishable with death or imprisonment for life or for a term of ten years or more, the investigation has to be completed within 90 days and in other cases, it is 60 days. Under PMLA, the maximum punishment is 7 years except when the cases fall under para 2 of part A of schedule where maximum punishment is 10 years. So, generally in PMLA cases also, the investigation has to be completed within 60 days and if it does not happen, the accused should be entitled to bail. Moreover, S. 479 should also be incorporated into PMLA provisions according to which if the accused is a first time offender and has served one-half of the maximum punishment prescribed for the offence with which he has been charged, he shall be released on bail and in other cases, the accused shall be released if he has served one-half of the maximum punishment prescribed. But it will be done only after hearing the public prosecutor. It was also supported by the Supreme Court in *Vijay Madanlal case* under PMLA and in *Mohd Muslim case* under NDPS Act.

VI. CONCLUSIONS AND SUGGESTIONS

From the above, we can clearly understand the complexities of bail jurisprudence under PMLA, in comparison with the similar special laws like NDPS or UAPA having almost similar

⁶²*Supra* note 36, s. 37.

⁶³ *Mohd. Muslim v. State (NCT of Delhi)* (2023) 18 SCC 166.

⁶⁴ *Ibid.*

provisions. Having understood the object and purpose of these special laws including reverse burden of proof, admissibility of statements given to the ED before the court, attachment power to ED for a longer period of 180 days, power to arrest by the ED, stricter conditions of bail, (hereinafter referred as twin conditions), non-disclosure of ECIR (Enforcement case Information Report), the author believes that bail should be granted on ground of prolonged incarceration of the accused and the trial not yet completed, as it directly comes in confrontation with the right to speedy trial especially in these legislations. After analyzing the series of judgments and all the legal provisions discussed therein, it is very much clear that the courts are now inclined towards more pro liberty approach so as to ensure the right to speedy trial. Even in many cases for example, *Manish Sisodia case* the court held that bail is the rule and jail is the exceptions should also be applied in PMLA cases and is not only limited to ordinary legislations. Here, the author proposes the following suggestions-

- Bail is the rule and jail is the exception should also be applied to ensure the right to speedy trial in cases of prolonged incarceration and chance of no completion of trial.
- As the maximum punishment under PMLA is 7 years except in cases falling under para 2 Schedule 1 where the punishment is 10 years, the concept of default bail or mandatory bail under S. 187 of BNSS should also apply if the prosecution complaint is not filed within 60 days.
- The reform under S. 479 of BNSS regarding undertrial prisoners where duty has been imposed to Jail Superintendent to file bail application on behalf of accused who has served one-third of maximum punishment prescribed for the offence charged in case of first time offender and one-half of the maximum punishment in case of second time offender should be made applicable in PMLA cases also. It is mandatory to release those persons under these circumstances and a good step to ensure the right to speedy trial.
- The duty should be imposed on the ED to disclose grounds of arrest in writing to the accused.
- Finally, the documents which the ED has not relied upon should at least be provided to accused if not the ECIR copies so as to prepare the defence in order to ensure reverse burden of proof effectively.

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