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LIBERTY UNDER THE PREVENTION OF MONEY LAUNDERING ACT, 2002: A CONSTITUTIONAL ANALYSIS WITH SPECIAL REFERENCE TO THE RIGHT OF BAIL

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Abstract

The Prevention of Money Laundering Act, 2002 (PMLA) is one of India's most significant legislations aimed at preventing money laundering and curbing the use of illegally acquired wealth. While the Act strengthens the State's ability to investigate financial crimes, its stringent provisions relating to arrest and bail have raised important constitutional concerns. Section 45 of the PMLA, which prescribes the "twin conditions" for granting bail, has become the focal point of an ongoing debate between the need to combat economic offences and the protection of individual liberty. Since bail is closely linked to the fundamental right to life and personal liberty under Article 21 of the Constitution, any restriction on this right must satisfy the principles of fairness, reasonableness, and due process.

This paper critically analyses the constitutional validity of the bail provisions under the PMLA by examining legislative developments and landmark judicial decisions. It discusses the evolution of judicial interpretation from *Nikesh Tarachand Shah v. Union of India* (2018), where the Supreme Court struck down the original twin conditions, to *Vijay Madanlal Choudhary v. Union of India* (2022), which upheld the amended provisions. The study evaluates whether the present legal framework strikes an appropriate balance between protecting society from sophisticated financial crimes and safeguarding the constitutional rights of the accused. It argues that although money laundering poses a serious threat to the country's economic stability, the criminal justice system must continue to uphold the presumption of innocence and the principle that bail, not jail, should ordinarily be the rule. The paper concludes that a balanced interpretation of the PMLA is essential to ensure that the pursuit of economic justice does not compromise the constitutional commitment to personal liberty and fair trial.

Keywords: Prevention of Money Laundering Act, 2002 (PMLA); Right to Bail; Personal Liberty; Article 21; Economic Offences.

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Introduction

Personal liberty occupies a central position in the constitutional framework of India. Article 21 of the Constitution provides that no person shall be deprived of life or personal liberty except according to procedure established by law. Over the years, the Supreme Court has expanded the meaning of personal liberty beyond mere physical freedom and has recognised it as an essential component of human dignity, autonomy, and constitutional governance.

The Prevention of Money Laundering Act, 2002 was enacted to address these concerns. Unlike ordinary criminal statutes, the PMLA creates a special regime for investigation, attachment of property, confiscation, arrest, and prosecution. The legislation reflects Parliament's determination to prevent offenders from enjoying the proceeds of crime and to ensure compliance with international obligations relating to anti-money-laundering measures.

Among the most significant procedural safeguards flowing from Article 21 are the right to a free and fair trial, protection against arbitrary arrest, the right to legal representation, and the right to seek bail. The right to a fair trial guarantee that the accused is provided a meaningful opportunity to defend himself before an impartial tribunal, ensuring equality of arms between the prosecution and the defence. It reinforces the foundational principle that “justice must not only be done but must also be seen to be done”.

Right to bail, which serves as a crucial mechanism to prevent unnecessary pre-trial detention. Since an accused is presumed innocent until proven guilty, continued incarceration before conviction must be justified by compelling reasons. Bail thus operates as a constitutional tool to balance the interests of the State in ensuring the presence of the accused at trial with the individual’s right to liberty.

Right to Fair Trial

The right to a fair trial constitutes a foundational element of personal liberty within the constitutional framework of India. It ensures that the process through which an individual may be deprived of liberty is not only legally sanctioned but also substantively just and free from arbitrariness. Article 21, as judicially interpreted, embeds within it a guarantee that the criminal process must adhere to principles of fairness, equality, and due process. A trial that is biased, oppressive, or procedurally defective would therefore fail to meet the constitutional threshold and would render any deprivation of liberty invalid.

Right against Arbitrary Arrest

Protection against arbitrary arrest constitutes a vital dimension of personal liberty under the constitutional framework of India. The power of the State to arrest an individual directly interferes with bodily freedom and dignity; therefore, such power must be exercised within strict constitutional and legal limits. Articles 21 and 22 of the Constitution operate in tandem to ensure that any deprivation of liberty through arrest or detention is not only lawful but also procedurally fair, transparent, and non-arbitrary.

Article 21 guarantees that no person shall be deprived of personal liberty except through a procedure that is fair, just, and reasonable, while Article 22 provides specific procedural safeguards to regulate the exercise of arrest powers. Together, these provisions establish a constitutional framework that seeks to prevent misuse of executive authority and protect individuals from unjustified detention.

Right to Bail

The concept of bail holds a central and indispensable place in the criminal justice system because it operates as an important safeguard of personal liberty against unnecessary or arbitrary pre-trial detention. The law proceeds on the foundational principle that every accused person is presumed innocent unless proven guilty through a fair trial. Therefore, an individual should not ordinarily be deprived of liberty merely on the basis of accusation, unless such detention becomes essential for the proper administration of justice, such as to ensure presence during trial, prevent tampering with evidence, or avoid interference with the investigation.

The jurisprudence relating to bail is deeply rooted in the constitutional guarantee of life and personal liberty under Article 21 of the Constitution of India. Courts have consistently recognized that prolonged incarceration of an undertrial person, particularly when guilt has not yet been established, undermines the principles of fairness, dignity, and due process. Detention pending trial can have severe social, economic, and psychological consequences upon an individual, including loss of livelihood, damage to reputation, disruption of family life, and emotional hardship. For this reason, the power to deny bail must be exercised cautiously and only in exceptional circumstances where the interests of justice genuinely require continued custody.

Overview of the Prevention of Money Laundering Act, 2002

The Prevention of Money Laundering Act, 2002 (PMLA) constitutes a specialized legislative framework enacted by Parliament to address the complex phenomenon of laundering illicit proceeds generated through criminal activities. Its primary objective extends beyond the mere punishment of offenders to encompass the disruption of the entire process by which illegally obtained assets are integrated into the formal economy. By targeting the financial dimensions of crime, the statute seeks to ensure that individuals involved in unlawful activities are deprived of the economic advantages derived from such conduct.

The enactment of the PMLA reflects India's broader commitment to tackling sophisticated financial offences that pose a serious threat to economic stability and institutional integrity. Money laundering, by its very nature, enables the legitimization of illicit wealth, thereby distorting markets, facilitating organized crime, and weakening public confidence in the rule of law. In this context, the legislation aligns domestic legal measures with international anti-money laundering standards and obligations, reinforcing the State's resolve to combat financial crime in an increasingly globalized economy.

Definition of the Offence of Money Laundering

The core offence under the Prevention of Money Laundering Act, 2002 is articulated in Section 3, which adopts a wide and inclusive formulation to capture the various stages through which illicit funds are processed and legitimized. The provision criminalizes not only the direct involvement in laundering activities but also indirect participation, including attempts, assistance, or facilitation in dealing with the proceeds of crime. It extends to a broad spectrum of conduct such as concealment, possession, acquisition, or use of such proceeds, as well as the act of projecting or claiming them as untainted property. This expansive definition reflects the legislative intent to address the multifaceted nature of money laundering, which often involves layered and complex financial transactions designed to obscure the origin of illicit assets.

A critical element of the offence is the concept of "proceeds of crime," which is defined under Section 2(1)(u) of the Act. The definition encompasses any property derived or obtained, whether directly or indirectly, as a result of criminal activity linked to a scheduled offence. By adopting such a broad formulation, the statute ensures that the scope of the offence is not confined to immediate gains but also includes assets that may have been subsequently transformed or converted through various transactions.

Stringent Bail Framework

This departure is most prominently embodied in Section 45 of the Act, which lays down restrictive conditions for the release of an accused person on bail. Unlike the general provisions contained in the Code of Criminal Procedure, 1973, which largely operate on the presumption of innocence and favour the grant of bail, Section 45 imposes additional statutory requirements that must be satisfied before bail can be granted.

Accordingly, the bail regime under Section 45 represents a deliberate shift towards a more restrictive approach, aimed at ensuring that individuals accused of serious financial crimes do not misuse the legal process to evade accountability or continue unlawful activities while under investigation or trial.

Judicial Recognition of the Special Nature of PMLA

The stringent statutory framework of the Prevention of Money Laundering Act, 2002 has received authoritative judicial endorsement from the Hon'ble Supreme Court *Vijay Madanlal Choudhary*[2], wherein the Court undertook an extensive examination of the constitutional validity of several key provisions of the Act. The judgment represents a significant milestone in the jurisprudence relating to economic offences, as it affirms the legislative competence to enact rigorous measures aimed at combating financial crimes of a serious nature.

In its analysis, the Court characterized the offence of money laundering as distinct in both nature and scope, observing that:

"The offence of money laundering is a standalone offence which is independent of the predicate offence and has a direct bearing on the economic system of the country."[3]

By upholding these provisions, the Supreme Court effectively affirmed a legislative approach that prioritizes the prevention of illicit enrichment and the preservation of economic order, while simultaneously recognizing that such measures must continue to operate within the broader framework of constitutional safeguards.

Judicial approach towards right to bail under PMLA

Personal liberty constitutes one of the most fundamental values within the constitutional framework of India and forms the cornerstone of the guarantee of human dignity under the Constitution. The

[2] Vijay Madanlal Choudhary v. Union of India, (2022) 10 SCC 1.
[3] *Id.*

protection of personal liberty is primarily embodied in **Article 21 of the Constitution of India**, which provides that *"No person shall be deprived of his life or personal liberty except according to procedure established by law."*[4] The expression *"life"* has been judicially interpreted to mean not merely the *physical act of breathing* but the *right to live with human dignity, free from arbitrary, unfair, or oppressive state action*. Likewise, the expression *"personal liberty"* has been construed in its broadest amplitude to include the *freedom of the individual from unlawful restraint or arbitrary interference with bodily autonomy and movement*.

The phrase *"procedure established by law"* has also undergone a significant constitutional evolution. Initially, in ***A.K. Gopalan v. State of Madras***[5] the Hon'ble Supreme Court took a narrow view and held that any procedure prescribed by a validly enacted law would satisfy the requirement of Article 21. However, this restrictive interpretation was fundamentally reconsidered and expanded in the landmark judgment of ***Maneka Gandhi v. Union of India***[6], wherein the Hon'ble Supreme Court held that the procedure contemplated under Article 21 must be *"right, just and fair and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied."*[7] (para 7). Through this authoritative pronouncement, the Court harmoniously interpreted Articles 14, 19, and 21, thereby establishing that any law depriving a person of life or personal liberty must satisfy the tests of *fairness, reasonableness, and non-arbitrariness*.

The Hon'ble Supreme Court has repeatedly reaffirmed the centrality of personal liberty in a democratic constitutional order. For instance, in ***K.S. Puttaswamy v. Union of India***[8], the Constitution Bench observed that *"life and personal liberty are inalienable rights and are inseparable from a dignified human existence."*[9] (para 298). The Court further recognized that the guarantee of personal liberty under Article 21 encompasses various derivative rights, including the *right to privacy*, which protects the autonomy and dignity of the individual against arbitrary state intrusion.

Similarly, in ***D.K. Basu v. State of West Bengal***[10], the Hon'ble Supreme Court emphasized that custodial actions of the State must strictly adhere to constitutional safeguards, observing that

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[4] INDIA CONST. art. 21.
[5] A.K. Gopalan v. State of Madras, 1950 SCR 88.
[6] Maneka Gandhi v. Union of India, (1978) 1 SCC 248.
[7] *Id.* at para 7.
[8] K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.
[9] *Id.* at para 298.
[10] D.K. Basu v. State of West Bengal, (1997) 1 SCC 416.

"custodial violence and arbitrary detention strike a blow at the rule of law and violate Article 21 of the Constitution."[11] (para 22). The Court laid down detailed procedural safeguards to ensure that the deprivation of liberty occurs only in accordance with a lawful, transparent, and accountable procedure.

Because money laundering is perceived as a serious threat to the financial integrity of the State, the PMLA introduces stringent procedural provisions affecting personal liberty, particularly in matters of arrest, investigation, and bail. The Enforcement Directorate (ED), empowered under **Section 19 of the PMLA**, may arrest a person if the authorized officer has *"reason to believe*—based on material in possession—that the person is guilty of the offence of money laundering, provided such reasons are recorded in writing".[12] This statutory power directly engages the constitutional protection of personal liberty under Article 21 of the Constitution of India.

The tension between **individual liberty** and **collective economic security** becomes most apparent in the bail framework under **Section 45 of the PMLA**. Section 45 introduces what are commonly referred to as the *"twin conditions"* for the grant of bail. The provision states that a person accused of an offence under the Act shall not be released on bail unless:

- The learned Public Prosecutor has been afforded a fair and adequate opportunity to oppose and contest the present application for grant of bail; and
- Upon consideration of the material available on record, the Court is satisfied that there exist reasonable grounds to believe that the accused is prima facie not guilty of the alleged offence and is not likely to commit any offence while on bail.

The constitutional validity and scope of these *twin conditions* have been the subject of extensive judicial scrutiny. In ***Nikesh Tarachand Shah***[13] ***(Supra)*** the Hon'ble Supreme Court declared the twin conditions under Section 45(1) unconstitutional as they were found to violate **Articles 14 and 21** of the Constitution. The Court observed that the provision imposed an *unreasonable and disproportionate restriction on the grant of bail* and held:

[11] *Id.* at para 22.
[12] Prevention of Money Laundering Act, 2002, § 19, No. 15, Acts of Parliament, 2003 (India).
[13] Nikesh Tarachand Shah v. Union of India, (2018) 11 SCC 1.

"The conditions laid down in Section 45 for grant of bail are manifestly arbitrary and violate both Articles 14 and 21 of the Constitution."[14] (para 54)

However, following legislative amendments that substituted the reference to "offences punishable for a term of imprisonment of more than three years under Part A of the Schedule" with "offence under this Act," the constitutional position was revisited by the Supreme Court in ***Vijay Madanlal Choudhary***[15] ***(Supra)***. In this landmark decision, a three-judge bench upheld the validity of the amended Section 45 and reaffirmed the applicability of the twin conditions. The Court held:

"Section 45 of the 2002 Act, as amended, is reasonable and has a direct nexus with the purpose of preventing money laundering and ensuring that the proceeds of crime are not enjoyed by the offenders."[16] (para 401)

Another significant judicial development concerning the liberty of the accused under the PMLA is reflected in ***Pankaj Bansal v. Union of India***[17], where the Hon'ble Supreme Court strengthened procedural safeguards in relation to arrest under Section 19. The Court held that the grounds of arrest must be *communicated in writing* to the arrested person so that the constitutional guarantee under **Article 22(1)**—which provides that an arrested person must be informed of the grounds of arrest—remains meaningful and effective.

Bail under the PMLA: The Twin Conditions:

Section 45 of the Prevention of Money Laundering Act, 2002 lays down a stringent statutory framework governing the grant of bail to persons accused of the offence of money laundering. The provision represents a conscious legislative departure from the general principles of bail under the Code of Criminal Procedure, 1973 and is intended to address the serious and complex nature of financial crimes involving the laundering of proceeds of crime**.**

Statutory Framework under Section 45(1)

Section 45(1) of the PMLA provides that a person accused of an offence under the Act shall not be released on bail or on his own bond unless the following conditions are satisfied:

[14] *Id.* at para 54.
[15] Vijay Madanlal Choudhary v. Union of India, (2022) 10 SCC 1.
[16] *Id.* at para 401.
[17] Pankaj Bansal v. Union of India, (2023) 17 SCC 329.

1. **Opportunity to the Public Prosecutor:**
   The Public Prosecutor must be given an opportunity to oppose the application for bail.
2. **Satisfaction of the Court regarding the twin conditions:**
   Where the Public Prosecutor opposes the bail application, the Court must be satisfied that:

   - there are *reasonable grounds for believing that the accused is not guilty of the offence,* and
   - the accused is *not likely to commit any offence while on bail*.

These requirements are commonly referred to as the **"twin conditions"** for bail under the PMLA. The phrase *"reasonable grounds for believing that the accused is not guilty"* requires the Court to form a prima facie assessment of the innocence of the accused, which is a substantially higher threshold than the ordinary bail standard applicable in criminal proceedings.

Constitutional Validity Upheld After Amendment

The amended provision was subsequently examined in ***Vijay Madanlal Choudhary***[18]***(Supra)***, where a three-judge bench of the Supreme Court upheld the validity of the amended Section 45 and reaffirmed the applicability of the twin conditions. The Court observed:

"The conditions specified under Section 45 of the 2002 Act are reasonable and have a direct nexus with the purposes and objects sought to be achieved by the Act, namely prevention of money laundering and confiscation of proceeds of crime."[19] (para 401)

The Court further emphasized that money laundering is a grave economic offence with transnational ramifications, and therefore the legislature is justified in prescribing stricter standards for the grant of bail**.**

Judicial Evolution: From Unconstitutionality to Revival:

A. Constitutional Challenge to the Twin Conditions: Nikesh Tarachand Shah v. Union of India (2018) 11 SCC 1

[18] Vijay Madanlal Choudhary v. Union of India, (2022) 10 SCC 1.
[19] *Id.* at para 401.

The constitutional validity of the twin conditions for bail under Section 45(1) of the Prevention of Money Laundering Act, 2002 was first comprehensively examined by the Hon'ble Supreme Court in the landmark decision of ***Nikesh Tarachand Shah***[20]***(Supra)***. In this case, the petitioner challenged the constitutional validity of Section 45 on the ground that it imposed unreasonable and disproportionate restrictions on the grant of bail, thereby infringing the fundamental rights guaranteed under Articles 14 and 21 of the Constitution of India**.**

The Supreme Court, after an elaborate analysis of the statutory scheme, struck down the twin conditions contained in Section 45(1) **as** unconstitutional. The Court held that the provision created an arbitrary classification between offences under the PMLA and other serious offences under general criminal law without any rational nexus with the object sought to be achieved.

The Court observed that the requirement that the accused must demonstrate *"reasonable grounds for believing that he is not guilty of the offence"* effectively reversed the presumption of innocence at the stage of bail, thereby imposing an excessively onerous burden upon the accused even before the commencement of trial. In this context, the Court held:

"The twin conditions laid down in Section 45 for grant of bail are manifestly arbitrary and violate both Articles 14 and 21 of the Constitution."[21] (para 54)

The Court further emphasized **that** personal liberty under Article 21 cannot be curtailed through a procedure that is arbitrary, excessive, or disproportionate. By compelling the accused to virtually prove innocence at the pre-trial stage, the provision was found to impose an unreasonable and disproportionate restriction on the right to personal liberty. Consequently, the Court declared the impugned portion of Section 45(1) unconstitutional.

B. Legislative Response: Amendment through the Finance Act, 2018

Following the decision in ***Nikesh Tarachand Shah***[22]***(Supra)***, Parliament introduced amendments to Section 45 through the Finance Act, 2018 with the objective of curing the constitutional defect identified by the Supreme Court.

[20] Nikesh Tarachand Shah v. Union of India, (2018) 11 SCC 1.
[21] *Id.* at para 54.
[22] *Id.*

Prior to the amendment, Section 45 applied the twin conditions to offences punishable with imprisonment of more than three years under **Part A of the Schedule** to the PMLA. The Supreme Court had held that this reference to scheduled offences created an irrational classification.

To address this defect, the legislature amended the provision by substituting the words "offence punishable for a term of imprisonment of more than three years under Part A of the Schedule" with the phrase "offence under this Act."[23] Through this amendment, the twin conditions were made applicable specifically to offences of money laundering under Section 3 of the PMLA, thereby attempting to remove the inconsistency identified by the Court.

C. Reconsideration by the Supreme Court: *Vijay Madanlal Choudhary v. Union of India (2022) 10 SCC 1*

The constitutional validity of the amended provisions of the PMLA, including the twin conditions under Section 45, was subsequently examined by the Supreme Court in ***Vijay Madanlal Choudhary***[24] ***(Supra)***, a landmark judgment delivered by a three-judge bench.

In this decision, the Court upheld the validity of the amended Section 45 and reaffirmed the applicability of the twin conditions for the grant of bail. The Court recognized that money laundering constitutes a grave economic offence with serious implications for the financial system and national economic security**.**

The Court observed that:

"The offence of money laundering is not an ordinary offence. It is a serious threat not only to the financial systems of the country but also to its integrity and sovereignty." [25](para 281)

The Supreme Court further held that the legislature is competent to prescribe stricter procedural safeguards and conditions for bail in respect of grave economic offences, particularly where such offences involve complex financial transactions, cross-border activities, and organized criminal networks**.**

Impact on Personal Liberty:

[23] The Finance Act, 2018, No. 13, Acts of Parliament, 2018 (India).
[24] Vijay Madanlal Choudhary v. Union of India, (2022) 10 SCC 1.
[25] *Id.* at para 281.

The statutory bail framework under the Prevention of Money Laundering Act, 2002 has significant implications for the protection of personal liberty within the constitutional scheme of India. While the legislation aims to combat the serious menace of financial crimes and the laundering of illicit wealth, the **stringent bail regime under Section 45** inevitably raises complex constitutional and jurisprudential questions concerning the balance between **collective economic security and the individual's fundamental right to liberty under Article 21 of the Constitution of India**. The consequences of this framework may be examined through several interrelated dimensions.

1. Reverse Burden at the Pre-Trial Stage

One of the most striking features of the bail regime under **Section 45(1) of the PMLA** is the requirement that the Court must be satisfied that there exist *"reasonable grounds for believing that the accused is not guilty of the offence."*[26] This condition effectively introduces a reverse burden of proof at the stage of bail.

However, the formulation contained in Section 45 requires the accused, even before the commencement of trial, to demonstrate that there exist reasonable grounds indicating his innocence. In practical terms, this often compels the Court to undertake a prima facie evaluation of the evidentiary material placed on record, which may resemble a limited adjudicatory assessment of the merits of the case. Such an inquiry has frequently been described in judicial discourse as akin to a "mini-trial" at the stage of bail.

The Supreme Court has repeatedly emphasized the centrality of the presumption of innocence in criminal law. In **Dataram Singh v. State of Uttar Pradesh (2018) 3 SCC 22**,[27] the Court observed:

"A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty."[28] (para 2)

Similarly, the principle that pre-trial incarceration should not become a substitute for punishment was articulated in ***Sanjay Chandra v. Central Bureau of Investigation***[29], where the Court stated:

"The object of bail is neither punitive nor preventive. Deprivation of liberty must be considered punishment unless it is required to ensure that the accused will stand trial."[30] (para 21)

[26] Prevention of Money Laundering Act, 2002, § 45(1), No. 15, Acts of Parliament, 2003 (India).
[27] Dataram Singh v. State of Uttar Pradesh, (2018) 3 SCC 22.
[28] *Id.* at para 2.
[29] Sanjay Chandra v. Central Bureau of Investigation, (2012) 1 SCC 40.

2. Prolonged Incarceration and Pre-Trial Detention

Another significant consequence of the stringent bail regime under the PMLA is the possibility of prolonged pre-trial detention. Investigations relating to money laundering typically involve complex financial transactions, multiple jurisdictions, voluminous documentary evidence, and intricate corporate structures. As a result, both the investigative process and the subsequent trial often require considerable time.

The Supreme Court has consistently held that unduly long periods of pre-trial incarceration undermine the fairness of the criminal justice system. In ***Hussainara Khatoon v. State of Bihar***[31], the Court recognized that the right to speedy trial forms an integral part of Article 21. The Court observed:

"A procedure which keeps a person in jail for years without trial cannot possibly be regarded as reasonable, fair or just."[32]

Similarly, in **K.A. Najeeb**[33]**(Supra)**, while dealing with stringent bail restrictions under a special statute, the Supreme Court held that constitutional courts retain the power to grant bail where prolonged incarceration renders continued detention unjustified, even when statutory restrictions exist.

3. Departure from the Principle of Proportionality

A further implication of the PMLA bail regime is its uniform application irrespective of the individual circumstances of the accused. The stringent conditions under Section 45 apply broadly to all accused persons charged with the offence of money laundering, regardless of:

- the degree of participation or role of the accused,
- the quantum of alleged proceeds of crime, or
- the actual likelihood of the accused absconding or interfering with the investigation.

This raise concerns in relation to the constitutional doctrine of **proportionality**, which has emerged as a fundamental principle governing state action affecting fundamental rights. The doctrine of

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[30] *Id.* at para 21.
[31] Hussainara Khatoon (I) v. Home Secretary, State of Bihar, (1979) 3 SCC 532.
[32] *Id.*
[33] Union of India v. K.A. Najeeb, (2021) 3 SCC 713.

proportionality requires that any restriction on fundamental rights must be necessary, rationally connected to the objective sought to be achieved, and must not be excessive in relation to that objective.

The Supreme Court elaborated the principle of proportionality in ***Modern Dental College v. State of Madhya Pradesh***[34], where it held that a restriction on fundamental rights must satisfy the tests of legitimate aim, rational connection, necessity, and balancing.

When applied to the context of bail, the doctrine implies that restrictions on liberty should be proportionate to the gravity of the alleged offence and the risk posed by the accused. A framework that imposes uniformly stringent bail conditions without individualized as**sess**ment may potentially raise questions regarding proportionality.

4. Constitutional Concerns under Article 21

At the heart of the debate surrounding the PMLA bail regime lies the constitutional guarantee of personal liberty under Article 21 of the Constitution of India. Article 21 provides that:

"No person shall be deprived of his life or personal liberty except according to procedure established by law."[35]

However, judicial pronouncements have consistently clarified that the phrase "procedure established by law" cannot be interpreted to mean any procedure arbitrarily prescribed by the legislature. The procedure contemplated under law must satisfy the test of fairness, reasonableness, and justice.

This principle was firmly established in ***Maneka Gandhi***[36] where the Supreme Court held: *"The procedure established by law must be right, just and fair and not arbitrary, fanciful or oppressive."*

Thus, even where Parliament has enacted a statute imposing restrictions on liberty, such restrictions must satisfy the constitutional requirement of fairness and reasonableness.

The Supreme Court has repeatedly emphasized that liberty is not a mere statutory privilege but a fundamental constitutional value. In ***Justice K.S. Puttaswamy***[37] the Constitution Bench observed

[34] Modern Dental College and Research Centre v. State of Madhya Pradesh, (2016) 7 SCC 353.
[35] INDIA CONST. art. 21.
[36] Maneka Gandhi v. Union of India, (1978) 1 SCC 248.
[37] K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

that: *“The Constitution places the individual at the forefront of its concern. Life and personal liberty are inalienable rights inherent to human dignity.”*

Conclusion & Suggestion:

The foundational principle that “bail is the rule and jail is the exception,” articulated in ***State of Rajasthan v. Balchand (1977)*** continues to guide judicial discretion in bail matters. This principle is deeply rooted in the presumption of innocence, which remains a cornerstone of criminal jurisprudence. The Supreme Court has repeatedly reaffirmed that pre-trial detention should not be used as a punitive measure and must be justified only by compelling circumstances such as the risk of absconding, tampering with evidence, or threat to public order.[4]

However, the emergence of special statutes such as the Prevention of Money Laundering Act, 2002 (PMLA) has introduced a significant shift in this jurisprudential balance. These statutes reflect the State’s growing concern over complex economic offences that pose a serious threat to the financial integrity of the nation. The stringent bail conditions under Section 45 of the PMLA, particularly the “twin conditions,” represent a legislative attempt to address these challenges by imposing higher thresholds for the grant of bail.

The constitutional validity of such stringent provisions has been the subject of intense judicial scrutiny. *In Nikesh Tarachand Shahcase , 2018* the Supreme Court struck down the twin conditions as unconstitutional, holding that they violated Articles 14 and 21 by imposing an unreasonable and disproportionate burden on the accused.[5] This judgment reaffirmed the primacy of personal liberty and the presumption of innocence.

However, the subsequent legislative amendment and its validation in *Vijay Madanlal Choudhary v. Union of India (2022)* marked a significant doctrinal shift. The Court upheld the amended provisions, emphasizing the grave nature of money laundering offences and the need for stringent measures to combat them. This decision reflects a broader trend in contemporary jurisprudence, where courts have shown increased deference to legislative policy in matters involving economic offences and national security.

In conclusion, the constitutional framework governing the right to bail in India reflects an ongoing effort to balance individual liberty with collective security. While the judiciary has played a crucial role in safeguarding fundamental rights, the increasing reliance on stringent statutory provisions underscores the need for a more balanced and rights-oriented approach. The right to bail must not be reduced to a mere statutory privilege but must be preserved as a fundamental constitutional safeguard against arbitrary deprivation of liberty.