



TWIN BAIL CONDITIONS UNDER PMLA AFTER VIJAY MADANLAL CHAUDHARY: A CONSTITUTIONAL AND PRACTICAL ANALYSIS

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ABSTRACT

The Prevention of Money Laundering Act 2002 has emerged as one of the most significant legislations dealing with economic offences in India. Among its most debated provisions are the “twin bail conditions” under Section 45, which impose stringent restrictions on the grant of bail to accused persons. The provision requires courts to be satisfied that the accused is not guilty of the alleged offence and is unlikely to commit any offence while on bail. These conditions have generated extensive constitutional debate due to their apparent inconsistency with the principles of personal liberty, presumption of innocence, and fair procedure guaranteed under Articles 14 and 21 of the Constitution of India. This article critically examines the constitutional validity and practical implications of the twin bail conditions under PMLA. It analyses the judicial evolution of Section 45 through landmark decisions, including Nimesh Tarachand Shah v Union of India and Vijay Madanlal Choudhary v Union of India. The article further evaluates whether the present interpretation of the provision disproportionately strengthens investigative agencies while weakening procedural safeguards available to accused persons. It argues that although economic offences require strict regulation, anti-money laundering measures must operate within constitutional limitations and cannot override foundational criminal law principles.

INTRODUCTION

Economic offences have become increasingly complex in the modern era due to globalisation, technological advancement, and the expansion of international financial transactions. Money laundering, in particular, poses a serious threat to economic stability because it enables illegally acquired wealth to be integrated into the legitimate financial system. Such activities are

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frequently associated with corruption, organised crime, tax evasion, drug trafficking, and terrorism financing. In response to these concerns and in order to comply with international obligations under institutions such as the Financial Action Task Force (FATF), Parliament enacted the Prevention of Money Laundering Act, 2002. The legislation grants extensive powers to the Enforcement Directorate (ED) to investigate offences relating to money laundering, attach property, conduct searches and seizures, arrest accused persons, and initiate prosecution proceedings.

Despite its objective of combating financial crime, the Act has consistently attracted criticism for conferring broad powers upon investigative authorities while creating procedural standards considerably stricter than ordinary criminal law. One of the most controversial provisions in this regard is Section 45, commonly referred to as the “twin bail conditions.”

Under ordinary criminal jurisprudence, bail is generally regarded as the rule and pre-trial detention as the exception. However, Section 45 substantially alters this principle by imposing additional burdens upon accused persons seeking bail. The provision requires courts to be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offence and is unlikely to commit any offence while on bail.

The increasing invocation of PMLA in politically sensitive matters and high-profile economic offences has intensified public debate regarding the extent of powers exercised by the Enforcement Directorate. Critics argue that the combination of broad investigative powers and stringent bail conditions creates a framework where pre-trial detention itself may operate as a punitive mechanism. These concerns have acquired greater constitutional significance. Following the Supreme Court’s decision in *Vijay Madanlal Choudhary v Union of India*, which upheld the validity of the twin bail conditions under Section 45.

RESEARCH QUESTIONS

1. Whether the twin bail conditions under Section 45 of the PMLA violate Articles 14 and 21 of the Constitution of India.
2. Whether the judgment in *Vijay Madanlal Choudhary v. Union of India* appropriately balances state interests with personal liberty.
3. Whether the stringent bail framework under PMLA is consistent with established principles of criminal jurisprudence.

OBJECTIVES OF THE STUDY

1. To analyse the constitutional validity of the twin bail conditions under Section 45 of the PMLA.
2. To examine the judicial evolution of bail jurisprudence under the Act.
3. To study the impact of stringent bail provisions upon personal liberty and due process.
4. To evaluate whether reforms are necessary to preserve constitutional safeguards while combating economic offences.

RESEARCH METHODOLOGY

This article adopts a doctrinal method of research. The study is based upon analysis of statutory provisions, constitutional principles, judicial precedents, journal articles, commentaries, and secondary legal materials relating to the Prevention of Money Laundering Act, 2002.

Understanding Money Laundering under PMLA: Money laundering refers to the process through which illegally obtained money is projected as legitimate wealth. The offence generally involves three stages:

- Placement of illegal funds into the financial system,
- Layering through complex financial transactions, and
- Integration of illicit proceeds into the legitimate economy.

Section 3 of the PMLA defines the offence of money laundering and criminalises direct or indirect involvement in activities connected with the proceeds of crime, including concealment, possession, acquisition, use, or projection of such proceeds as untainted property. The offence under PMLA is dependent upon the existence of a scheduled offence mentioned in the Schedule to the Act. Consequently, the statute operates alongside predicate offences such as corruption, fraud, narcotics offences, terrorism financing, and tax-related crimes.

SECTION 45 AND THE TWIN BAIL CONDITIONS

Section 45 of the Prevention of Money Laundering Act 2002 imposes two mandatory conditions before bail may be granted to an accused person: The Public Prosecutor must be allowed to oppose the application for bail, and

The court must be satisfied that –

- The accused is not guilty of the alleged offence, and
- The accused is unlikely to commit any offence while on bail.

These conditions represent a significant departure from traditional criminal jurisprudence. Under the Code of Criminal Procedure, 1973, the burden of establishing guilt ordinarily lies upon the prosecution. However, Section 45 effectively places a reverse burden upon the accused at the stage of bail itself.

This creates a legal anomaly because bail proceedings take place prior to the completion of the trial and before the evidence has been fully examined. Requiring courts to form a preliminary opinion regarding innocence at such an early stage raises concerns regarding fairness, proportionality, and due process. The stringent nature of the provision is justified because money laundering constitutes a grave economic offence capable of destabilising financial institutions and affecting the economy of the nation. Nevertheless, the seriousness of an offence cannot automatically justify dilution of constitutional safeguards.

JUDICIAL EVOLUTION OF THE TWIN BAIL CONDITIONS

Nikesh Tarachand Shah v Union of India: The constitutional validity of Section 45 was first seriously challenged in *Nikesh Tarachand Shah v Union of India*. The Supreme Court struck down the twin bail conditions on the ground that they violated Articles 14 and 21 of the Constitution. The Court observed that the provision was manifestly arbitrary because the conditions depended upon the scheduled offence rather than the offence of money laundering itself. It further held that requiring an accused person to establish innocence at the stage of bail was inconsistent with settled principles of criminal jurisprudence. The judgment emphasised that personal liberty occupies a central position within constitutional governance and that pre-trial detention cannot become punitive in nature.

LEGISLATIVE RESPONSE AND AMENDMENT OF SECTION 45

Following the judgment in *Nikesh Tarachand Shah*, Parliament amended Section 45 through the Finance Act, 2018. The amendment substituted the phrase “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.” The legislative amendment sought to cure the constitutional defect identified by the Supreme Court and effectively revive the operation of the twin bail conditions. However, conflicting interpretations emerged before various High Courts regarding whether

the amendment successfully restored the validity of Section 45. This legal uncertainty continued until the Supreme Court comprehensively addressed the issue in *Vijay Madanlal Choudhary*.

Vijay Madanlal Choudhary v Union of India: In *Vijay Madanlal Choudhary v Union of India*, the Supreme Court upheld the constitutional validity of several provisions of the PMLA, including the twin bail conditions under Section 45.

The Court observed that:

- Money laundering poses a serious threat to the economic integrity and sovereignty of the nation,
- Parliament possesses the authority to prescribe special procedures for extraordinary offences, and
- The 2018 amendment cured the defects identified in *Nikesh Tarachand Shah*.

The judgment significantly strengthened the position of the Enforcement Directorate and reaffirmed the stringent nature of bail under PMLA. However, the decision also attracted criticism from legal scholars and civil liberties advocates. Critics argued that the judgment excessively prioritised investigative efficiency while weakening procedural protections available to accused persons.

CONSTITUTIONAL CONCERNS

Presumption of Innocence: The principle of presumption of innocence forms one of the foundational principles of criminal law. Ordinarily, the burden of proving guilt beyond a reasonable doubt lies upon the prosecution. Section 45 substantially weakens this principle by requiring courts to form a preliminary opinion regarding innocence before granting bail. This effectively transforms bail proceedings into mini-trials without complete evidence or procedural safeguards. Such a framework is difficult to reconcile with traditional principles of criminal jurisprudence.

Article 21 and Personal Liberty: Article 21 of the Constitution guarantees the right to life and personal liberty except according to procedure established by law. Judicial interpretation has expanded this protection to include fairness, reasonableness, and procedural due process.

In *Maneka Gandhi v Union of India*, the Supreme Court emphasised that any procedure restricting personal liberty must be just, fair, and reasonable.

Stringent bail provisions under PMLA frequently result in prolonged incarceration before conviction. Since money laundering investigations involve complex financial records and multiple transactions, trials often continue for several years. As a consequence, accused persons may remain imprisoned for extended periods despite the absence of a final determination of guilt. This raises serious constitutional concerns because pre-trial detention begins to resemble punishment without trial.

DOCTRINE OF BAIL JURISPRUDENCE

Indian criminal jurisprudence has consistently recognised personal liberty as a fundamental constitutional value. In *State of Rajasthan v Balchand*, the Supreme Court famously observed that “bail is the rule and jail is the exception.” Similarly, in *Satender Kumar Antil v. CBI*, the Court reiterated that unnecessary arrest and prolonged incarceration undermine Article 21 and weaken the presumption of innocence. However, Section 45 of the PMLA departs significantly from this jurisprudential framework by imposing a reverse burden at the bail stage itself.

Article 14 and Arbitrariness: Another criticism against Section 45 concerns arbitrariness and unequal treatment under Article 14. In many cases involving violent offences, courts retain broader discretion while considering bail applications. However, PMLA imposes exceptionally stringent restrictions despite the offence primarily involving documentary and financial evidence. This disproportionate treatment raises questions regarding the reasonableness and proportionality of the provision.

EVIDENTIARY CONCERNS UNDER SECTION 50 PMLA

Section 50 of the PMLA grants extensive powers to the Enforcement Directorate to summon individuals, compel the production of documents, and record statements during an investigation. Statements recorded under Section 50 possess evidentiary value and are admissible in proceedings under the Act. Critics argue that the provision creates a coercive environment because individuals summoned by the ED may effectively become witnesses against themselves. Concerns have therefore been raised regarding compatibility with Article 20(3) of the Constitution, which protects against self-incrimination. When read together with

the stringent bail conditions under Section 45, Section 50 considerably strengthens the powers of investigative authorities while reducing procedural safeguards available to accused persons.

EXPANDING POWERS OF THE ENFORCEMENT DIRECTORATE

One of the most debated aspects of the PMLA is the increasing authority exercised by the Enforcement Directorate.

The ED possesses extensive powers relating to:

- Arrest,
- Search and seizure,
- Attachment of property,
- Custodial interrogation, and
- Financial investigation.

Critics argue that the combination of broad investigative powers and stringent bail restrictions creates an imbalance between state power and individual liberty. Recent controversies involving the arrest of political leaders, businessmen, and public officials under PMLA have intensified concerns regarding selective enforcement and possible misuse of the legislation.

PRACTICAL DIFFICULTIES IN BAIL PROCEEDINGS

Apart from constitutional concerns, Section 45 also creates practical difficulties during bail proceedings.

Lack of Access to Evidence: At the stage of bail, accused persons frequently lack complete access to the material collected by investigative agencies. Without proper disclosure of evidence, establishing “reasonable grounds” regarding innocence becomes extremely difficult.

Delay in Trial: Money laundering cases are highly technical and document-intensive. Delays are common due to complex financial transactions, multiple accused persons, and extensive documentary evidence. Consequently, denial of bail may result in years of incarceration before the completion of the trial.

Inconsistent Judicial Standards: Courts across the country have adopted inconsistent approaches while interpreting Section 45. Some courts apply the provision strictly, whereas

others adopt a more liberty-oriented approach. Such inconsistency creates uncertainty in bail jurisprudence and weakens predictability within the criminal justice system.

Comparative Jurisprudence: Several countries maintain strict anti-money laundering frameworks; however, many democratic jurisdictions preserve wider judicial discretion while deciding bail applications.

In the United Kingdom, courts generally examine factors such as:

- Risk of absconding,
- Witness tampering,
- Seriousness of allegations, and
- Likelihood of reoffending.

Similarly, courts in the United States primarily focus on public safety and the possibility of flight risk rather than requiring accused persons to establish innocence at the bail stage. The Indian approach under Section 45 is comparatively more stringent because it requires courts to arrive at a preliminary satisfaction regarding innocence itself.

NEED FOR REFORM

Although combating money laundering remains an important state objective, procedural safeguards cannot be sacrificed entirely in the process.

Certain reforms may help create a more balanced legal framework:

- Clearer judicial standards for interpreting Section 45,
- Stricter safeguards against arbitrary arrest,
- Faster trial mechanisms for PMLA cases,
- Greater transparency in investigation procedures, and
- Periodic judicial review of prolonged detention.

A constitutional democracy must ensure that anti-money laundering laws operate within the limits imposed by fundamental rights and rule of law principles.

CONCLUSION

The Prevention of Money Laundering Act 2002 undoubtedly serves an important public purpose in combating financial crime and protecting the integrity of the economic system. Considering the sophisticated nature of money laundering operations and their connection with corruption, organised crime, and terrorism financing, the need for stringent anti-money laundering mechanisms cannot be denied. However, the constitutional legitimacy of such measures depends upon their compatibility with personal liberty, due process, and procedural fairness. Section 45 of the PMLA significantly departs from ordinary criminal jurisprudence by imposing a reverse burden upon the accused at the stage of bail itself. In practical terms, this often results in prolonged pre-trial detention and severe restrictions upon judicial discretion.

Although *Vijay Madanlal Choudhary v Union of India* upheld the constitutional validity of the provision, concerns regarding proportionality, fairness, and excessive concentration of investigative powers continue to persist. A constitutional democracy must ensure that the objective of effective investigation does not override the foundational principles of liberty and rule of law. The fight against economic offences is essential, but constitutional safeguards cannot become collateral damage in the process.