



LIBERTY AS THE RULE, DETENTION AS THE EXCEPTION: BAIL JURISPRUDENCE AND CONSTITUTIONAL LIMITS ON PRE-TRIAL DETENTION IN INDIA

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ABSTRACT

Introduction: Bail lies at the intersection of personal liberty, the presumption of innocence and the State's interest in securing the administration of criminal justice. Although Indian courts have repeatedly declared that bail is the rule and jail the exception, statutory restrictions, financial conditions and delayed trials continue to make pre-trial detention constitutionally significant. **Objectives:** This article examines the constitutional foundations of bail, the operation of heightened bail thresholds under special statutes, the relationship between delay and prolonged detention, and the need for institutional reform. **Methods:** The article adopts a doctrinal methodology based on constitutional provisions, the Bharatiya Nagarik Suraksha Sanhita, 2023, special criminal statutes and decisions of the Supreme Court of India. Relevant international standards are used for contextual analysis. **Analysis:** Indian bail jurisprudence links pre-trial release with Articles 14 and 21, the presumption of innocence and speedy trial. At the same time, section 43D(5) of the Unlawful Activities (Prevention) Act, section 45 of the Prevention of Money-Laundering Act and section 37 of the Narcotic Drugs and Psychotropic Substances Act create heightened thresholds for release. Constitutional courts have nevertheless recognised that prolonged incarceration and delayed trials may justify bail even in cases governed by stringent statutory conditions. **Conclusion:** The principal challenge is not the absence of constitutional doctrine but its inconsistent institutional application. Individualised reasoning, proportionate conditions, periodic review and effective trial management are necessary to ensure that detention before conviction remains exceptional.

KEYWORDS : Bail, Pre-trial Detention, Personal liberty, Article 21, Presumption of Innocence, Speedy Trial, Criminal Law, India

1. INTRODUCTION

A person accused of an offence is ordinarily presumed innocent until guilt is established through a lawful trial. Nevertheless, refusal of bail may result in imprisonment for a substantial period before adjudication. If the accused is ultimately acquitted, the loss of liberty cannot be fully restored. Bail therefore represents the point at which the presumption of innocence must be reconciled with the State's legitimate interests in securing the accused's presence, protecting witnesses and preserving the integrity of the trial.

The Supreme Court has repeatedly affirmed that bail is the rule and jail the exception. The continued need to restate that principle, however, indicates a gap between doctrine and practice. This article argues that pre-trial detention should be based on identifiable risks and supported by reasons directed to the individual accused. Detention may become constitutionally vulnerable where it is imposed automatically because of the seriousness of the allegation, where less restrictive conditions are not considered, or where incarceration continues for an unreasonable period without meaningful progress in the trial.

2. Objectives

The principal objectives of this study are:

1. To examine the constitutional and judicial foundations of bail.
2. To analyse restrictions imposed by special criminal statutes.
3. To assess the relationship between delayed trials and prolonged pre-trial detention.
4. To suggest reforms consistent with personal liberty and the administration of criminal justice.

3. METHODS

This study adopts a doctrinal methodology. It examines Articles 14, 21 and 22 of the Constitution, the Code of Criminal Procedure, 1973, the Bharatiya Nagarik Suraksha Sanhita, 2023, and restrictive provisions under the Unlawful Activities (Prevention) Act, 1967, the Prevention of Money-Laundering Act, 2002, and the Narcotic Drugs and Psychotropic Substances Act, 1985.

The analysis also considers Supreme Court decisions concerning ordinary bail, anticipatory bail, sureties, statutory restrictions and speedy trial. Article 9(3) and Article 14(2) of the International Covenant on Civil and Political Rights are referred to as international standards relevant to pre-trial detention and the presumption of innocence.

This is a doctrinal study and does not claim to present empirical findings concerning undertrial populations, bail outcomes or prison administration.

4. RESULTS

Constitutional and International Foundations

The Constitution does not expressly use the phrase "presumption of innocence". Nevertheless, Articles 14 and 21 impose important limits on the State's power to deprive a person of liberty. In *Maneka Gandhi v. Union of India*, the Supreme Court held that the procedure depriving a person of personal liberty must be fair, just and reasonable. Article 22 further provides safeguards relating to arrest and detention.

The international framework also treats pre-trial detention as exceptional. Article 14(2) of the International Covenant on Civil and Political Rights recognises the presumption of innocence, while Article 9(3) states that detention of persons awaiting trial should not be the general rule. These provisions provide useful interpretive context for understanding the relationship between bail and liberty.

Development of Bail Jurisprudence

In *State of Rajasthan v. Balchand*, the Supreme Court expressed the principle that bail is the rule and jail is the exception. The decision recognised that detention may nevertheless be justified where there is a genuine risk of flight, interference with the administration of justice or repetition of the offence.

In *Gudikanti Narasimhulu v. Public Prosecutor*, the Court connected bail with the constitutional value of personal liberty. The decision emphasised that judicial discretion concerning bail must be exercised with sensitivity to the competing interests of individual liberty and the proper administration of criminal justice.

The financial capacity of an accused is also relevant. In *Moti Ram v. State of Madhya Pradesh*, the Supreme Court cautioned against excessive surety requirements and recognised that an indigent accused should not remain in custody merely because of an inability to furnish a financially burdensome bond.

The Constitution Bench decision in *Gurbaksh Singh Sibbia v. State of Punjab* rejected rigid limitations on anticipatory bail and confirmed that applications must be considered according to the facts and circumstances of each case. In *Sanjay Chandra v. Central Bureau of Investigation*, the Court clarified that the purpose of bail is primarily to secure the accused's presence at trial and that pre-trial detention should not operate as punishment.

In *Satender Kumar Antil v. Central Bureau of Investigation*, the Supreme Court restated the importance of liberty, issued directions concerning different categories of accused and highlighted the need for a more coherent bail framework. The decision also drew attention to the possibility of a dedicated law governing bail.

Statutory Restrictions and Heightened Bail Thresholds

The general law of bail is now contained in the Bharatiya Nagarik Suraksha Sanhita, 2023, which replaced the Code of Criminal Procedure, 1973. Section 478 concerns release in bailable cases, while section 479 addresses the maximum period for which an undertrial prisoner may be detained. The general framework operates alongside special statutes that impose heightened conditions for release.

Section 43D(5) of the Unlawful Activities (Prevention) Act restricts the grant of bail where the court, after perusing the case diary or the report under section 173 of the Code, is of the opinion that there are reasonable grounds for believing that the accusation is *prima facie* true.

Section 45 of the Prevention of Money-Laundering Act and section 37 of the Narcotic Drugs and Psychotropic Substances Act impose additional conditions requiring the court to assess whether there are reasonable grounds for believing that the accused is not guilty and is unlikely to commit an offence while on bail. These provisions should not be treated as legally identical. They create different statutory tests and operate within different legislative schemes. Their common feature is that they raise the threshold for release.

The Supreme Court has addressed these restrictions through a developing constitutional jurisprudence. In *Nikesh Tarachand Shah v. Union of India*, the Court invalidated the twin conditions under section 45 of the Prevention of Money-Laundering Act in their then-existing form. Parliament subsequently amended the statutory framework, which was considered in *Vijay Madanlal Choudhary v. Union of India*, 2022 SCC Online SC 929. The Supreme Court judgment was delivered on 27 July 2022.

In *National Investigation Agency v. Zahoor Ahmad Shah Watali*, the Court adopted a restrictive approach to the assessment required under section 43D (5) of the Unlawful Activities (Prevention) Act. The decision limited the extent to which the court should examine prosecution material at the bail stage.

However, in *Union of India v. K.A. Najeer*, the Supreme Court recognised that constitutional courts may grant bail notwithstanding statutory restrictions where prolonged incarceration and the likelihood of delayed trial raise serious concerns under Article 21. The decision confirms that statutory restrictions cannot completely exclude constitutional review.

Delay and Prolonged Detention

In *Hussainara Khatoon v. Home Secretary, State of Bihar*, the Supreme Court recognised speedy trial as part of Article 21. This principle is especially important where a statutory restriction makes release difficult but the trial is unlikely to conclude within a reasonable period.

The longer detention continues without adjudication, the greater the danger that custody will operate as punishment before conviction. The constitutional problem becomes more acute where the prosecution is unable to demonstrate meaningful progress in the trial or where the accused has already spent a substantial period in custody.

In *Manish Sisodia v. Directorate of Enforcement*, 2024 INSC 595, decided on 9 August 2024, the Supreme Court granted bail in proceedings involving stringent statutory provisions and emphasised the importance of personal liberty and the right to a reasonably expeditious trial. The judgment is also reported in 2024 8 S.C.R. 1061.

5. DISCUSSION

The Institutional Gap

The principal difficulty in Indian bail law is not the absence of constitutional principles. The Supreme Court has developed a substantial body of jurisprudence linking bail with liberty, speedy trial and the presumption of innocence. The difficulty lies in the inconsistent institutional application of those principles.

Courts identify factors such as the seriousness of the offence, the possibility of absconding, the likelihood of influencing witnesses and the risk of repeating the offence. Yet bail orders do not always clearly explain how these considerations apply to the particular accused. The seriousness of the charge may thereby become an automatic reason for detention rather than one factor in a structured assessment.

Need for a Structured Bail Law

A dedicated bail statute should identify the legitimate grounds for

detention, including the risk of absconding, interference with witnesses or evidence, and serious harm to others. It should require courts to connect the identified risk with material in the case rather than relying solely on the nature of the allegation.

The law should also require courts to consider whether the same objective can be achieved through less restrictive conditions. Such conditions may include reporting requirements, restrictions on travel, residence conditions, communication restrictions or supervision. Custody should be preferred only where these alternatives are inadequate.

Reasoned and Individualised Orders

Bail orders should record the specific risk relied upon and explain why a less restrictive condition would not adequately address it. Reasons are not a procedural formality. They improve accountability, facilitate appellate review and make inconsistent decision-making visible.

An order refusing bail should therefore distinguish between the seriousness of the allegation and the necessity of continued detention. An order granting bail should similarly identify the conditions considered necessary to secure attendance and protect the integrity of the proceedings.

Surety and Financial Conditions

The principle in *Moti Ram* remains significant. Monetary conditions should be proportionate to the accused's means. A condition that is formally reasonable but practically impossible to satisfy may result in detention by another name.

Personal bonds, reporting obligations, residence requirements and other supervisory conditions may often secure attendance without requiring continued custody. Where an accused is granted bail but remains imprisoned because of an inability to furnish surety, the court should review whether the condition is genuinely necessary and proportionate.

Trial Management and Periodic Review

Bail reform cannot be separated from trial reform. Courts dealing with restrictive special statutes require adequate resources, effective case management and regular review of prolonged detention. Where the prosecution is unable to move the trial forward within a reasonable period, courts should consider the constitutional reasoning in *Hussainara Khatoon* and *K.A. Najeer*.

The availability of legal aid at the bail stage is equally important. An unrepresented accused may be unable to invoke settled constitutional principles or challenge disproportionate conditions. Legal assistance should therefore begin at the earliest stage of arrest and remand.

Public Safety and Individual Liberty

Serious offences, including terrorism, organised crime and offences involving vulnerable victims, may justify strict bail conditions. Public safety is a legitimate consideration, and bail cannot be granted without regard to genuine risks.

The constitutional requirement, however, is that those risks be assessed individually and supported by available material. The seriousness of the offence may justify careful scrutiny, but it should not eliminate the need for reasons. Even under stringent statutes, prolonged incarceration without a reasonably proximate trial may require constitutional intervention.

6. CONCLUSION

The principle that bail is the rule and jail the exception is firmly established in Indian constitutional jurisprudence. Its practical operation, however, is affected by stringent statutory provisions, excessive reliance on the gravity of allegations, financial surety requirements and delayed trials.

The central challenge is not the absence of constitutional doctrine but the absence of a consistent institutional method for applying it. Courts should identify the specific risk presented by the accused, assess whether less restrictive conditions would suffice and periodically review the necessity of continued detention.

A structured bail law, proportionate conditions, individualised orders, effective legal aid and meaningful trial management would help reconcile the needs of criminal justice with the constitutional

protection of personal liberty. Pre-trial detention should remain a reasoned exception, not an automatic consequence of arrest or the invocation of a serious penal statute.

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