



Presumption of Innocence in Bail Jurisprudence: Erosion or Evolution?

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Abstract

The presumption of innocence is a cardinal principle of criminal jurisprudence, ensuring that an accused is considered innocent until proven guilty. However, in the context of bail proceedings, this principle faces significant challenges, particularly in India, where special laws like the Unlawful Activities (Prevention) Act (UAPA), 1967, the Narcotic Drugs and Psychotropic Substances Act (NDPS), 1985, and the Prevention of Money Laundering Act (PMLA), 2002, impose stringent conditions for bail. These laws, by nature, often reverse the burden of proof, requiring the accused to demonstrate their innocence or satisfy 'twin conditions' to secure release, thereby straining the integrity of the presumption of innocence. This paper examines whether these developments signify an erosion of this fundamental principle or an evolution driven by contemporary challenges such as national security and economic offenses, among others. Through a doctrinal analysis, the paper explores the historical evolution of bail jurisprudence in India, the impact of special laws and also discusses the comparative perspectives from the United Kingdom's Bail Act, 1976 and the European Court of Human Rights (ECtHR) standards. The author argues for a recalibration of bail laws to balance individual liberty with state interests, ensuring that the presumption of innocence remains a robust safeguard in the criminal justice system, even against the contemporary evolving nature of criminal legislations.

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Introduction

The concept of bail plays a pivotal role in the criminal justice process, serving as a mechanism to secure the release of an accused pending trial while ensuring their appearance in court. It is intrinsically linked to the presumption of innocence, a constitutional guarantee enshrined in Article 21 (right to life and personal liberty) ^[1], Article 14 (equality before the law) ^[2], as well as Article 20(3) (protection against self-incrimination) ^[3] of the Indian Constitution. The principle that 'bail is the rule, jail is the exception' has been enshrined within the Indian legal system since time immemorial and underscores the importance of protecting individual liberty until guilt is established beyond a reasonable doubt. Bail not only prevents unnecessary and premature punishment but also allows the accused to prepare an effective defence, avoiding the social and economic consequences of incarceration. In a country like ours, the importance of having a robust bail mechanism increases manifold since the risk of a media trial also looms.

However, the landscape of bail jurisprudence in India has undergone significant transformation, particularly with the enactment of special laws like UAPA, NDPS, and PMLA. These statutes impose stringent conditions for bail, often requiring the accused to prove their innocence or satisfy specific criteria, which directly challenge the presumption of innocence. The resulting tension between individual rights and state security necessitates a careful re-evaluation of some of the most settled criminal law principles and also constitutional commitments made towards individuals. This paper seeks to address this very central question: Is the presumption of innocence being eroded or evolved through modern bail jurisprudence in India?

The author shall discuss the same by examining historical developments, statutory frameworks, judicial interpretations, and global perspectives. This paper aims to provide a comprehensive analysis of this critical issue.

Theoretical Foundations

The presumption of innocence, a cornerstone of criminal jurisprudence, finds its roots in the common law tradition, where it emerged as a safeguard against arbitrary state power and wrongful convictions. Originating in English legal principles, as articulated in cases like *Woolmington v. DPP* [4], it mandates that the burden of proof lies with the prosecution, ensuring that an accused is deemed innocent until proven guilty beyond a reasonable doubt. Now, this is an extremely important but general principle. However, when it is seen in the context of bail, this principle translates into a prima facie right to liberty, prioritising release over detention unless justified by compelling reasons. Of course, basis the needs of the country, when applying such a principle, relevant checks and balances can be put in place. This common law foundation underscores the intrinsic link between bail and the protection of individual freedom, setting the stage for this principle's reinforcement in modern legal systems through instruments like the Indian Constitution.

I. Constitutional and International Foundations of Presumption of Innocence

At its core, the presumption of innocence protects the individual from arbitrary state action and wrongful conviction. As mentioned earlier, Article 21 of the Indian Constitution guarantees the right to life and personal liberty, while Article 14 ensures equality before the law, and Article 20(3) protects against self-incrimination. Collectively, they form a robust constitutional framework reinforcing the principle that no person shall be deprived of liberty without due process.

In addition, internationally, this presumption is embedded in Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR) [5] and Article 11 of the Universal Declaration of Human Rights (UDHR) [6], affirming its status as a non-derogable right. Indian courts have repeatedly upheld its significance, notably in *Maneka Gandhi v. Union of India* [7] and *Sanjay Chandra v. CBI* [8], stressing that any curtailment of liberty must follow fair, just, and reasonable procedure.

II. Bail as a Procedural Safeguard

Bail is a fundamental expression of the presumption of innocence, ensuring that individuals are not subjected to punitive detention before conviction. The erstwhile Criminal Procedure Code (CrPC), 1973, upheld this principle by distinguishing between bailable and non-bailable offences and generally favouring release unless compelling reasons necessitate custody. Even under the new criminal law regime, Section 479 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 [9], further strengthens this philosophy by mandating the release of undertrial prisoners who have served half the maximum sentence for the alleged offence. Judicial pronouncements, from *State of Rajasthan v. Balchand* [10] to *Vaman Narain Ghiya v. State of Rajasthan* [11], have consistently reinforced the doctrine that 'bail, not jail' is the rule, emphasizing that liberty should not be curtailed mechanically. The Courts have noted that bail is equivalent to the understanding of what constitutes to be a

human right, which in the author's view is as strongly worded as it can be.

III. Reverse Burden Statutes and Doctrinal Friction

Despite these safeguards, recent legislative trends have reversed the normative order. Special laws like the UAPA, NDPS, and the PMLA contain provisions that impose reverse burdens. Sections like 43D(5) of UAPA [12] and 37 of NDPS [13] require courts to deny bail unless the accused can prove prima facie that they are not guilty.

These statutes place a pre-trial evidentiary burden on the accused, clearly subverting the presumption of innocence and on the flipside introducing a presumption of guilt. The Supreme Court's ruling in *NIA v. Zahoor Ahmad Shah Watali* [14] upheld this restrictive threshold, effectively compelling courts to assess guilt at the bail stage. In this case, the Supreme Court overturned the lower court's grant of bail under the UAPA, ruling that it erroneously exceeded the statutory threshold of Section 43D(5) by scrutinizing evidence beyond the prima facie stage. There was a supposed 'failure' to treat UAPA as a stringent special statute and it was held that grant of bail 'undermined legislative intent'. While such measures are often justified in the name of national security or controlling grave offences, they risk normalizing pre-trial incarceration and undermining the foundational values of a fair criminal justice system.

Bail Jurisprudence in India: A Historical Overview

Indian courts have historically upheld the right to bail as a fundamental aspect of personal liberty. Bail is closely tied to Article 21 of the Constitution, which guarantees the right to life and personal liberty. In *State of Rajasthan v. Balchand*, the Supreme Court emphasized that bail should be the rule and jail the exception. The Court stated that, unless there are compelling reasons, such as the likelihood of the accused fleeing, tampering with evidence, or threatening witnesses, bail should be granted as a default rule. This case laid the foundational principle that pre-trial incarceration must not become punitive and must align with the constitutional protection of liberty. This landmark judgment, to this day, continues to be cited as a cornerstone of Indian bail jurisprudence.

This liberal perspective was reinforced in *Gudikanti Narasimhulu v. Public Prosecutor* [15], where the Court linked the right to bail directly to Article 21. In this case, the Supreme Court provided a comprehensive framework for bail decisions, emphasizing the need for courts to assess factors such as the nature of the accusation, the seriousness of the offence, the character of the evidence, and whether granting bail would obstruct justice. It was held that bail decisions must balance liberty and societal interest, and that refusal of bail should not become a punitive measure. Bail is the rule, jail is the exception and the same cannot be withheld as a punishment. This ruling signified a commitment to individualized justice, cautioning against mechanical denials of bail and reaffirming that pre-trial detention should only be used when absolutely necessary.

A significant shift occurred with the landmark decision in *Sanjay Chandra v. CBI*, where the Supreme Court advanced a more liberty-centric interpretation of bail under Article 21. In this case, involving allegations of financial irregularities and conspiracy in telecom spectrum allocation, it was held that the mere gravity of the offence could not be the sole ground for denying bail. It was observed that courts must

evaluate factors such as the nature of the accusation, the strength of evidence, the severity of punishment, and the possibility of the accused absconding or interfering with the process of justice. Here, the interference by the accused s to be seen broadly however, and doesn't necessarily have to result in any hampering. The judgment, in the author's view emphasizes that indefinite detention undermines the right to personal liberty and that bail must be granted unless there is a substantial risk of injustice. It marked a significant moment in bail jurisprudence, reiterating that liberty must not be sacrificed at the altar of public sentiment or prosecutorial demand.

While these judgments underscore a liberal, constitutionally anchored approach to bail, the enactment of special statutes such as the UAPA, the NDPS, and the PMLA has significantly altered the landscape. These laws impose stringent bail conditions, deviating from the general principle that bail is the norm.

Under UAPA, Section 43D(5) requires courts to deny bail unless there are no reasonable grounds for believing the accusations are prima facie true. This effectively requires the accused to disprove guilt at the bail stage a clear reversal of the presumption of innocence. Further, the NDPS Act's Section 37 imposes similar conditions, particularly in cases involving commercial quantities of drugs. The Court must be satisfied that the accused is not guilty and is unlikely to commit further offences, which by the simple nature of the requirement would need to the court to delve into evidence. Then there is PMLA's Section 45^[16] which includes a twin-test: the Court must 'reasonably' believe the accused is not guilty and will not commit the same offence again. While it offers limited exceptions (such as for women, minors, and the infirm), it too significantly raises the bar for bail. This is especially draconian when validity of such conditions has been upheld against the thresholds of the Constitution in *Vijay Madanlal Choudhary v. Union of India*^[17].

Recent judicial interpretations reflect this shift. In terrorism cases under UAPA, courts are often constrained by the prima facie requirement, leading to extended pre-trial detention. In *Watali*, the Supreme Court emphasized that courts must not delve into evidence deeply at the bail stage under UAPA, yet paradoxically, must still be satisfied about the absence of prima facie guilt. Similarly, courts dealing with NDPS matters have struggled to balance strict statutory mandates with constitutional safeguards. Although the Delhi High Court, in recent verdicts this year, such as the one in *Zakir Hussain v. State of NCT of Delhi*^[18], has highlighted undue delay as a ground for granting bail even under NDPS, such relief remains exceptional.

The Rise of Carceral Statutes and Reverse Burden

Special laws like UAPA, NDPS, PMLA, and even POCSO have significantly altered the bail landscape by imposing stringent conditions that often reverse the burden of proof. These laws require the accused to demonstrate their innocence or satisfy "twin conditions" to secure bail, effectively presuming guilt rather than innocence.

I. UAPA

At the cost of repetition, Section 43D(5) mandates that bail can only be granted if the court is satisfied that the accusations are not prima facie true and that the accused is unlikely to commit further offenses. As also discussed previously, In *NIA v. Zahoor Ahmad Shah Watali*, the

Supreme Court upheld this provision, stating that courts must accept the prosecution's version without delving into the merits of the case. However, recent judgments like *Athar Parwez v. Union of India*^[19] have shown a more nuanced approach, granting bail where there is insufficient evidence of terrorist activities and prolonged pre-trial custody, as seen in cases like *Jalaluddin Khan v. Union of India*^[20], where the Court again emphasized 'bail is the rule, jail is the exception'.

II. NDPS

Section 37 imposes similar conditions, requiring the court to be satisfied that the accused is not guilty and unlikely to reoffend. In *Mohd. Muslim @ Hussain v. State of NCT of Delhi*^[21], the Supreme Court emphasized the need for expeditious trials, granting bail to an accused who had spent over seven years in jail with only half the trial completed, highlighting that prolonged incarceration due to trial delays violates Article 21. Another such case, *Naeem Ahmed v. State of NCT of Delhi*^[22], saw bail granted after 1 year and 11 months in custody, noting the lack of FSL/Chemical examiner report and the main accused's interim bail.

III. PMLA

Under the PMLA, Section 45 requires the court to be satisfied that there are reasonable grounds for believing the accused is not guilty and will not commit further offenses. In *Vijay Madanlal Choudhary v. Union of India*, as mentioned earlier, the Supreme Court upheld these conditions, arguing that money laundering is a heinous crime justifying stricter bail norms. However, in *Rana Kapoor v. Directorate of Enforcement*^[23], bail was granted after the accused completed more than half his sentence without trial completion, reflecting clear judicial efforts to mitigate prolonged detention. In the author's view this sort of a ruling clearly points to how our courts view bail as a tool to prevent overcrowding of jails and to safeguard the interests of the undertrials.

Even generally speaking, these special legislations have led to prolonged undertrial detention, with data from The Hindu showing that under UAPA, only 3% of arrested individuals were convicted between 2018 and 2020, while many spent years in jail without trial completion^[24]. This scary trend sadly underscores the practical erosion of the presumption of innocence that is critical for a robust bail mechanism.

Comparative Analysis

The bail frameworks under the UK's Bail Act, 1976 and the European Convention on Human Rights (ECHR) offer a robust defense of personal liberty, placing the onus on the State to justify any form of pre-trial detention. Section 4 of the UK's Bail Act, 1976^[25] establishes a strong presumption in favor of granting bail. It mandates that bail must be allowed unless specific, narrowly defined risks, such as the likelihood of the accused absconding, committing further offenses, or obstructing the course of justice, are demonstrably present. In India as well, we see the courts consider similar factors. This presumption of liberty is central to the Act's purpose, which is reducing unnecessary incarceration and upholding the principle that one is innocent until proven guilty.

The ECHR, through Article 5^[26], guarantees the right to liberty and security, with pre-trial detention being an exception that must be necessary and proportionate. Cases like *Matznetter v. Austria*^[27] and also *Letellier v. France*^[28] emphasize the importance of speedy trials and the limited use

of pre-trial detention, ensuring compliance with human rights standards.

In contrast, Indian special laws often lack such safeguards, leading to arbitrary detention and delayed trials. This departure from international standards highlights the need for reform in Indian bail jurisprudence to align with global best practices. While some judicial pronouncements here and there do bring the focus back on individual liberty but largely due to them being at odds with core, tightly drafted special legislations, it would not be wrong to deduce that these safeguards have taken a backseat in Indian criminal law regime, at least for now.

Constitutional Tensions and Critique

The stringent bail conditions under special laws raise constitutional concerns regarding proportionality and due process. The Maneka Gandhi test, in the case mentioned earlier in the paper, requires that any procedure depriving a person of life or personal liberty must be just, fair, and reasonable. The reverse burden imposed by special laws may not meet this standard, as it presumes guilt and places an undue burden on the accused.

Moreover, the distinction between procedural and substantive due process is crucial. While special laws may have procedural safeguards, they often lack substantive protections that ensure the essence of the presumption of innocence is maintained. The presumption of innocence must be treated as a human right, not a discretionary policy, to uphold the integrity of the criminal justice system.

Concluding Remarks

The evolution of bail jurisprudence in India reflects a tension between national security pragmatism and doctrinal dilution. While special laws like UAPA, NDPS, and PMLA address contemporary challenges, they risk eroding the presumption of innocence by imposing stringent bail conditions that reverse the burden of proof. Recent judgments, such as *Athar Parwez v. Union of India* and *Mohd. Muslim @ Hussain v. State of NCT of Delhi*, indicate a judicial effort to balance these concerns, but legislative reforms are essential.

To address this, the following recommendations are proposed by the author:

- Clear, statutory guidelines should be enacted to ensure consistency and fairness in bail decisions, balancing security concerns with individual rights.
- Special laws should be amended to align with constitutional principles, reducing the reverse burden on the accused.
- Courts must continue to interpret bail provisions in a manner that upholds fundamental rights, using their power of judicial review to strike down unconstitutional provisions.

In sum, while the changes in bail jurisprudence may be seen as an evolution to meet modern challenges, they also pose a risk of eroding the presumption of innocence. A balanced approach that respects both state interests and individual rights is essential to maintain the integrity of the criminal justice system.

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