



Reforming Bail Provisions

For Prelims: [Supreme Court](#), [Prevention of Money Laundering Act \(PMLA\), 2002](#), [Detention, Article 21](#), Constitutional Courts, [Bail](#), [KA Najeeb Case](#), Cash Bonds, Surety Bond.

For Mains: Challenges associated with bail provisions in India and reforms needed.

[Source: HT](#)

Why in News?

Recently, the [Supreme Court \(SC\)](#) disapproved of using the [Prevention of Money Laundering Act \(PMLA\), 2002](#) “as a tool” to prolong the **incarceration** of an accused.

- It ruled that **constitutional courts** will not allow **indefinite pretrial detention** under the anti-money laundering law.

What are the Key Points of SC's Ruling on PMLA and Bail?

- **No Arbitrary Detention:** Although there is a *prima facie* case against an accused, the court can rule in favour of his release due to the **prolonged detention** without a clear timeline for the trial.
 - Stringent provisions of the **PMLA, 2002**, especially **Section 45**, should not result in **arbitrary detention** of the accused.
 - According to **Section 45 of the PMLA, 2002** bail can be granted to an accused in a money laundering case only if two conditions are satisfied.
 - The person has to prove in court that he or she is **prima facie innocent** of the offence.
 - The accused should be able to **convince** the judge s/he would **not commit any offence** while on bail.
- **Bail Principles Affirmed:** The court reaffirmed the principle that “**bail is the rule, and jail is the exception**” in India’s criminal jurisprudence.
 - It was noted that the high threshold for bail under PMLA must not lead to an **indefinite loss of personal liberty** for the accused.
- **Judicial Concerns on Delayed Trials:** The ruling highlighted the intersection of **delayed trials** and **harsh bail provisions** under special laws like **PMLA, 2002**, or **UAPA, 1967** and **Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS)**.
 - The **expeditious disposal of trials** is necessary and should be integrated into the interpretation of these laws.
- **Judicial Authority to Grant Bail:** The SC reiterated that stringent **bail provisions** do not stop constitutional courts from intervening in cases where trials are **excessively delayed**.
 - The Supreme Court referenced its **2021 judgement in the KA Najeeb case** that recognised inordinate delays in trials as a **ground of bail in UAPA cases**.
- **Impact on Fundamental Rights:** Excessive delays in trials could infringe on the **fundamental rights** of individuals under [Article 21](#) of the Constitution, which guarantees the **right to life and**

personal liberty.

- **Prolonged incarceration** without trial can result in unjust deprivation of liberty, highlighting cases where individuals were acquitted after years of detention.
- **Potential Claims for Compensation:** The SC suggested that individuals who suffer wrongful imprisonment may have grounds for **compensation** due to violations of their rights under Article 21.

What are the Concerns Regarding India's Bail System?

- **High Proportion of Undertrials:** Over **75%** of India's prison population comprises **undertrials** and **overcrowding** in prisons is reported at **118%**.
 - This situation reflects systemic inefficiencies in the bail system that need urgent reform.
 - The Supreme Court of India, in ***Satender Kumar Antil vs CBI, 2022*** acknowledged the **failings of the country's bail system** in recognizing the issue of **undertrial and granting bail**.
- **Undermines Principle of 'Presumption of Innocence':** Crowding of jails with undertrial prisoners undermines the **principle of 'presumption of innocence'**.
 - Presumption of innocence is a legal principle that states that a person shall have the **right to be presumed innocent** until proven guilty according to law.
- **Lack of Empirical Evidence:** Information regarding the **demographics of undertrials, category of offences and timelines for bail**, proportion of undertrials applying for bail, the acceptance or rejection rates of bail applications, and the challenges in bail compliance remain is not widely available.
- **Lack of Safeguards:** The arrest of a person is justified as **'necessary'** if the police have **'reasons to believe'** that arrest is required to ensure their presence in court.
 - Many arrested individuals, particularly from **disadvantaged sections** of society, remain unprotected.
- **Challenges in Bail Adjudication:** The power to grant bail is largely based on the **court's discretion** and depends on the **facts of each case**.
 - Bail is denied based on the **gravity of the offence, character of the accused and likelihood** of the accused absconding or tampering with evidence.
- **Challenges in Bail Compliance:** A large number of undertrials continue to remain in prison despite being granted bail due to challenges in **complying** with bail conditions.
 - Bail conditions in the nature of **cash bonds, surety bond, proof of property ownership and solvency**, make it harder for poors to secure their release.
- **Flawed Assumptions:** The bail system has flawed assumptions that every arrested person will be **propertied** or have access to **propertied social connections**.
 - It presumes that the **risk of financial loss** is necessary to ensure the presence of the accused in court.

What are Supreme Court judgments Regarding Bail System?

- ***Babu Singh v. State of Uttar Pradesh Case, 1978*:** Bail should **generally be granted** unless there are substantial grounds for believing that the accused will abscond or tamper with evidence.
- ***State of Rajasthan v. Balchand Case, 1978*:** SC held that **Bail is the rule and Jail is an Exception**.
 - Detention of a person affects his right to life and liberty and the main objective of detention is to ensure easy availability of an accused for trial without any inconvenience.
- ***Parvez Noordin Lokhandwalla v. State of Maharashtra Case, 2020*:** It was noted that bail conditions should **not be excessive** compared to their intended purpose.
- ***Satender Kumar Antil v CBI Case, 2022*:** Courts must ensure that **strict bail conditions** do not disproportionately affect the accused.

Way Forward

- **Simplification of Bail Conditions:** Reassess and **simplify bail conditions** to make them more accessible, particularly for individuals from economically disadvantaged backgrounds.
 - E.g. **Community service** as alternative to cash and surety bonds.

- **Safeguards Against Arbitrary Arrests:** Introduce strict guidelines and safeguards to protect against **arbitrary arrests**, particularly for vulnerable populations.
 - Police must provide **clear justification for arrests**.
- **Community-Based Supervision Programs:** Develop **community-based supervision** programs as alternatives to incarceration.
 - These programs could involve monitoring undertrials through local organisations or social workers, rather than relying solely on bail.
- **Alternative to Petty Criminals:** Petty criminals awaiting trial could be ordered to stay in **reformatory facilities** where they can engage in useful labour, such as **volunteer work**.
- **Speedy Trials:** The **Supreme Court Committee on Prison Reforms** headed by Justice (retd) Amitava Roy underlined that **speedy trial** can become an **effective tool** to address the issue of overcrowding in jails.
- **Adequate Infrastructure:** The report “**Empirical study to evaluate the delivery of justice through improved infrastructure**” issued by the Ministry of Law and Justice highlighted that increased **space of courtrooms, availability of basic furniture, digital infrastructure, and skilled manpower** can reduce the number of under-trial prisoners.
- **Clear Legal Provisions:** **Clearly defined laws** help individuals understand their rights and responsibilities, **decreasing the chances of prolonged detention** caused by misunderstandings.

Drishti Mains Question:

Examine the challenges associated with accessing bail in India and suggest measures for a more equitable bail provision framework.

UPSC Civil Services Examination, Previous Year Question (PYQ)

Prelims

Q. With reference to India, consider the following statements: (2021)

1. When a prisoner makes out a sufficient case, parole cannot be denied to such prisoner because it becomes a matter of his/her right.
2. State Governments have their own Prisoners Release on Parole Rules.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

Ans: (b)

Mains

Q. Discuss how emerging technologies and globalisation contribute to money laundering. Elaborate measures to tackle the problem of money laundering both at national and international levels. (2021)

