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**THE EVOLVING PENDULUM: INTEGRATING THE
FOUNDATIONAL FACTS DOCTRINE AND ARTICLE 21 INTO PMLA
BAIL JURISPRUDENCE**

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Abstract

This paper examines one of the most serious tensions in Indian criminal law today: the conflict between the reverse burden of proof under Section 24 of the Prevention of Money Laundering Act, 2002 (PMLA), and the constitutional guarantee of personal liberty under Article 21 of the Constitution of India. The paper argues that while the Supreme Court of India upheld both provisions in *Vijay Madanlal Choudhary v. Union of India*, (2022), the subsequent period from 2023 to 2025 has seen a visible shift in judicial thinking. Courts have begun to recognise that a mechanical application of the twin conditions for bail under Section 45 PMLA, read together with the statutory presumption under Section 24, can convert the process of prosecution itself into a form of punishment. This outcome directly violates the fundamental right to a speedy trial and to a fair procedure under Article 21.

The paper further argues that the presumption under Section 24 is not self-activating. It does not come into play the moment the Enforcement Directorate files a complaint. The ED must first establish what this paper calls the foundational facts: the existence of a predicate scheduled offence, the derivation of identifiable property from that offence, and a prima facie connection between the accused and the process or activity of laundering. Only after these foundational facts are shown to a court does the burden shift to the accused. This understanding, drawn from a careful reading of the text of the statute and from the evolving case law, is critical for litigation practice.

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I. Introduction

The Prevention of Money Laundering Act was enacted in 2002 to give effect to India's obligations under international conventions on anti-money laundering, particularly those arising from the Financial Action Task Force (FATF) recommendations.³ In its original form, the Act was primarily directed at drug trafficking proceeds and was closely linked to the Narcotic Drugs and Psychotropic Substances Act, 1985.⁴ Over the two decades since its enactment, however, the PMLA has been transformed through successive amendments, particularly in 2005, 2009, and 2012, into a wide-ranging statute that covers offences ranging from corruption and tax evasion to cybercrime and human trafficking.

This transformation has not been neutral in its effect on the accused. Every amendment has either expanded the list of scheduled offences, tightened the conditions for bail, widened the power of attachment, or strengthened the reverse burden of proof. The result is a statute that starts from a presumption of culpability rather than a presumption of innocence. This is a fundamental departure from the principle that has governed criminal law since *Woolmington v. Director of Public Prosecutions*, [1935] AC 462,⁵ where the House of Lords affirmed that it is for the prosecution to prove the guilt of the accused, not for the accused to prove innocence.

In the Indian constitutional context, the presumption of innocence is not an explicit provision of the Constitution, but the Supreme Court has repeatedly held that it is a facet of the right to a fair procedure under Article 21.⁶ The right to life and personal liberty cannot be curtailed except by procedure established by law, and that procedure must be fair, just, and reasonable. A procedure that treats the accused as guilty from the beginning of the trial is neither fair nor reasonable. This is the central tension that this paper addresses.

The paper proceeds in six parts. Part II analyses the architecture of Section 24 and Section 45 of the PMLA in detail. Part III examines the 2022 Supreme Court ruling in *Vijay Madanlal*

³Prevention of Money Laundering Act, 2002, No. 15 of 2003, pmb. (India).

⁴ Narcotic Drugs and Psychotropic Substances Act, 1985, No. 61 of 1985 (India).

⁵*Woolmington v. Dir. of Pub. Prosecutions*, [1935] AC 462, 481 (HL) (Lord Sankey LC)

⁶INDIA CONST. art. 21. The Supreme Court read the right to a speedy trial into Article 21 in *Hussainara Khatoon v. State of Bihar*, (1979) 3 SCC 544, 548 (India).

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Choudhary and its reasoning.⁷ Part IV traces the evolution of judicial thinking from 2023 to 2025, with particular attention to the decisions in *Pankaj Bansal v. Union of India*, (2023) 14 SCC pvt, *Manish Sisodia v. Directorate of Enforcement*, (2024) SCC OnLine SC 1920, and *Prem Prakash v. Union of India through ED*, (2024) SCC OnLine SC 2693. Part V develops the foundational facts doctrine as a litigation tool. Part VI identifies the constitutional challenges and proposes a proportionality test as a way forward.

II. The Legislative Architecture: Section 24 and Section 45

A. Section 24: How the Burden of Proof Shifts

Section 24 of the PMLA reads as follows in its material part: where a person is accused of having committed the offence of money laundering, the court shall, unless the contrary is proved, presume that the proceeds of crime are involved in money laundering.⁸ The words *unless the contrary is proved* are the operative ones. They place the burden of disproving the charge squarely on the accused. This is the reverse burden of proof. It is the opposite of the ordinary rule under Section 101 of the Indian Evidence Act, 1872, now reflected in Section 106 of the Bharatiya Sakshya Adhinyam, 2023 (BSA),⁹ under which the burden of proving a fact lies on the party who asserts it.

Section 24 creates two distinct situations. Under Section 24(a), where a charge has been framed, the court is obligated to presume that the proceeds of crime are involved in money laundering. This is a mandatory presumption. The court has no discretion. The moment charges are framed, the accused must rebut the presumption. Under Section 24(b), in proceedings other than those where charges have been framed, the court may presume the involvement of proceeds of crime. This is a discretionary presumption. The use of the word *may* gives the court the power to decide, based on the facts before it, whether to raise the presumption at all.

This distinction is of practical importance. In a bail hearing at an early stage, before charges are framed, the court is operating under Section 24(b). This means the court has the power to refuse to raise the presumption if the foundational facts are weak or contested. Defence counsel can therefore argue at the pre-charge stage that the presumption should not be raised, and that the ordinary rules of burden of proof apply. Once charges are framed, this argument

⁷Vijay Madanlal Choudhary v. Union of India, (2022) SCC OnLine SC 929, 5 (India)

⁸Prevention of Money Laundering Act, 2002, S 24, No. 15 of 2003 (India).

⁹Indian Evidence Act, 1872, S101, No. 1 of 1872 (India); Bharatiya Sakshya Adhinyam, 2023, S106, No. 47 of 2023 (India) (successor provision preserving the same general rule on burden of proof).

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is no longer available in the same form, though the accused can still rebut the presumption through affirmative evidence.

It must be understood that the presumption under Section 24 is a rebuttable presumption of law. The standard of rebuttal is the balance of probabilities. The accused does not have to prove beyond reasonable doubt that the property is not proceeds of crime. It is sufficient to show that it is more likely than not that the property has a legitimate origin. This is a lower standard than that applicable to the prosecution, which must prove the charge beyond reasonable doubt at trial. However, at the stage of bail, the accused faces a different and more immediate problem, which is addressed by Section 45.

B. Section 45: The Twin Conditions and the Negative Burden

Section 45 of the PMLA imposes two conditions that must be satisfied before a court can grant bail to a person accused of an offence under the Act.¹⁰ First, the public prosecutor must have been given an opportunity to oppose the application for bail. Second, and more critically, the court must be satisfied that there are reasonable grounds for believing that the accused is not guilty of such an offence, and that the accused is not likely to commit any offence while on bail. These are the twin conditions. They represent a departure from the ordinary position under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) and its predecessor, the Code of Criminal Procedure, 1973 (CrPC),¹¹ where bail is the rule and jail is the exception for most offences.

Under the ordinary law, the burden is on the prosecution to oppose bail by showing reasons why it should not be granted, such as the risk of flight, tampering with evidence, or commission of further offences. Under Section 45 PMLA, the burden is reversed. The accused must satisfy the court that there are reasonable grounds to believe in the innocence of the accused. This is what makes Section 45 so formidable in practice. The accused is being asked to prove a negative: not just that there is doubt about guilt, but that there are positive grounds for believing that the accused is not guilty.

The standard under Section 45 is often described as *prima facie* innocence, which is a phrase the courts have used to explain what the accused must demonstrate. This is different from

¹⁰ Prevention of Money Laundering Act, 2002, S 45(1), No. 15 of 2003 (India). The twin conditions require: (i) an opportunity to the public prosecutor to oppose bail; and (ii) the court's satisfaction that there are reasonable grounds to believe the accused is not guilty and will not commit any offence on bail.

¹¹ Bharatiya Nagarik Suraksha Sanhita, 2023, S 480, No. 46 of 2023 (India) (corresponding to S 437 of the Code of Criminal Procedure, 1973, No. 2 of 1974 (India)).

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proving innocence at trial. At the bail stage, the accused is not expected to lead full evidence and cross-examine witnesses. The court looks at the material available, including the complaint filed by the ED, the records relied upon, and any documents produced by the accused, and decides whether the accused has made out a case that, on first look, there is no convincing material to suggest guilt. This is still a heavy burden, because the ED typically enters the bail hearing with an Enforcement Case Information Report and other documentation that creates a strong initial impression of guilt.

There is also a critical contrast here with the position under the CrPC and BNSS regarding special category offences. Section 436A of the CrPC, and its equivalent in the BNSS, provides that an accused who has undergone half the maximum period of imprisonment for the offence charged shall be released on bail. However, the Supreme Court clarified in *Vijay Madanlal Choudhary* that this provision does not apply to PMLA because of the special character of the Act. The BNSS, which replaced the CrPC from July 2024, does not change this position in relation to PMLA.

It is important to contrast the PMLA position with the general law on bail. Under Section 480 of the BNSS, which corresponds to Section 437 of the CrPC, the court considers factors such as the nature and gravity of the accusation, the background and character of the accused, and the possibility of the accused fleeing justice or tampering with evidence. The court has wide discretion. Under Section 45 PMLA, this discretion is severely curtailed. The court cannot grant bail simply by finding that the accused is unlikely to flee or tamper with evidence. The court must additionally be satisfied of the prima facie innocence of the accused. This additional requirement is the source of the indefinite incarceration problem that has troubled the courts in recent years.

III. The 2022 Landmark: *Vijay Madanlal Choudhary v. Union of India*

A. The Constitutional Challenge

The challenge in *Vijay Madanlal Choudhary v. Union of India*, (2022) SCC OnLine SC 929, was comprehensive. A large number of petitions were consolidated before a three-judge bench of the Supreme Court, and the challenge covered almost every significant provision of the PMLA. The petitioners argued that Section 24 violated the presumption of innocence, which they said was part of the right to life under Article 21. They argued that Section 45 was manifestly arbitrary and violated Article 14. They also challenged the broad powers of the

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Enforcement Directorate to arrest, attach property, and conduct searches without the usual procedural safeguards of the CrPC.

The Supreme Court dismissed virtually all the challenges. On the question of the reverse burden of proof, the court held that the presumption under Section 24 was constitutionally valid because it was based on the rational premise that persons who possess property derived from crime are unlikely to be able to explain its lawful origin without access to that information themselves. The court drew on the principle that a statutory presumption may be raised where the facts to be proved are particularly within the knowledge of the accused. The court also held that since the presumption was rebuttable, it did not permanently shift the burden in a manner that destroyed the right to a fair trial.

On Section 45, the court acknowledged that its earlier judgment in *Nikesh Tarachand Shah v. Union of India*, (2018) 11 SCC 1,¹² had struck down the twin conditions as unconstitutional because they applied even to offences that were not scheduled under the PMLA at the time. Parliament had subsequently amended Section 45 to meet the objection in *Nikesh Tarachand Shah*. The court in *Vijay Madanlal Choudhary* held that the amended provision was valid. The court reasoned that money laundering is a heinous economic offence with serious consequences for the financial system and society at large, and that Parliament was justified in treating it with special severity.

B. The Special Statute Reasoning

The most significant part of the court's reasoning in *Vijay Madanlal Choudhary* was its characterisation of the PMLA as a *sui generis* statute.¹³ The Latin term means *of its own kind*, and the court used it to indicate that the PMLA occupies a unique place in the Indian legal system that justifies deviations from the ordinary rules of criminal procedure. The court said that PMLA is not a penal statute in the conventional sense. It is a regulatory statute that addresses a grave threat to the economic security of the nation. This characterisation allowed the court to justify the removal of several procedural protections that would otherwise apply to criminal proceedings.

The court also addressed the argument that PMLA proceedings are entirely dependent on the predicate scheduled offence, and that if the predicate offence case is resolved in favour of the accused, the PMLA proceedings should also fall. The court rejected this argument. It held

¹² *Nikesh Tarachand Shah v. Union of India*, (2018) 11 SCC, 65 (India)

¹³ *Vijay Madanlal Choudhary v. Union of India*, (2022) SCC OnLine SC 929, 253 (India)

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that once property has been shown to be proceeds of crime, the PMLA proceedings have an independent life. The scheduled offence provides the trigger, but the PMLA offence of money laundering can continue independently. This ruling has led to what practitioners call the predicate offence trap, where the accused faces continuing PMLA proceedings even after being acquitted or after the FIR in the scheduled offence is quashed.

C. The Limits of the Vijay Madanlal Verdict

Despite upholding the core provisions of the PMLA, the court in *Vijay Madanlal Choudhary* did lay down some important qualifications. It said that the arrest power under Section 19 PMLA can only be exercised when the authorised officer has reason to believe, based on material in possession, that the person is guilty of an offence under the Act.¹⁴ The word *reason to believe* imports an objective standard: the belief must be based on tangible material, not mere suspicion. The court also recognised that bail cannot be refused as a punitive measure, and that prolonged pre-trial detention must be avoided.

These qualifications were not given much weight in the initial aftermath of the *Vijay Madanlal Choudhary* verdict. The ED continued to make arrests in large numbers, and bail was routinely denied by trial courts and high courts citing the twin conditions and the reverse burden of proof. It was only in the subsequent years that the Supreme Court began to apply the qualifications more firmly, leading to what the legal community has come to call the course correction phase of PMLA jurisprudence.

IV. The New Wave of Jurisprudence (2023 to 2025)

A. Pankaj Bansal v. Union of India: The Right to Know Grounds of Arrest

Pankaj Bansal v. Union of India, (2023) 14 SCC 656,¹⁵ addressed a problem that had become systemic: persons arrested under Section 19 PMLA were not being given written grounds of arrest. The ED would make verbal communication of the grounds, or provide a summary so vague as to be meaningless. The accused, without knowing the precise material relied upon for arrest, were unable to challenge the arrest effectively or approach a court for bail with full information.

¹⁴ Prevention of Money Laundering Act, 2002, S19, No. 15 of 2003 (India)

¹⁵ Pankaj Bansal v. Union of India, (2023) 14 SCC 656,

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The Supreme Court held that the right to be informed of the grounds of arrest is a constitutional right under Article 22(1) of the Constitution,¹⁶ which provides that no person who is arrested shall be detained without being informed, as soon as may be, of the grounds for such arrest. The court held that this right requires written communication of the grounds of arrest. A mere verbal statement is insufficient. The ED must provide, in writing, the specific material and reasons that led it to believe that the accused is guilty of a PMLA offence. Without this written communication, the arrest itself is invalid.

The practical significance of *Pankaj Bansal* for junior litigators is substantial. A bail application filed under Section 45 PMLA must begin with a challenge to the validity of the arrest if written grounds were not provided. If the arrest is invalid, the continued detention of the accused is without legal authority, and the court must order release regardless of the twin conditions. This is the cleanest and most effective ground for bail in an ED case, and it arises from a constitutional right rather than from any balancing of the twin conditions.

Pankaj Bansal also reinforced the principle that the power of arrest under Section 19 is not automatic upon the existence of a scheduled offence. The ED must apply its mind to the specific material before it and arrive at a belief of guilt. This belief must be capable of being articulated in writing. An arrest made without this process is not just irregular; it is unconstitutional. This moves the inquiry back to the foundational facts, because the ED cannot articulate a belief of guilt without specifying what the accused is alleged to have done with the proceeds of crime.

B. Tarun Kumar v. Enforcement Directorate: Parity and Its Limitations

Tarun Kumar v. Enforcement Directorate, (2023) SCC OnLine SC 1486, arose from the common situation where a co-accused in a PMLA case has been granted bail and the remaining accused seeks bail on the ground of parity.¹⁷ The argument from parity is that since accused A has been released, accused B, who is similarly situated, should also be released. This argument is frequently made in bail applications.

The Supreme Court in *Tarun Kumar* accepted the relevance of parity as a consideration, but held that it is not an overriding principle that automatically entitles the accused to bail. Parity is relevant only when the co-accused to whom comparison is made is truly similarly situated. If the material against one accused is substantially different in character or quantity from that

¹⁶ INDIA CONST. art. 22(1)

¹⁷ *Tarun Kumar v. Enforcement Directorate*, (2023) SCC OnLine SC 1486,

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against the other, the comparison breaks down. The court held that in PMLA cases, the court must look at the specific role alleged against each accused, the specific property said to have been laundered by each accused, and the specific evidence connecting each accused to the offence.

Tarun Kumar is important because it prevents the erosion of the PMLA framework through mechanical application of the parity argument. At the same time, it reinforces the principle that bail decisions must be individualised and must be based on the specific material connecting the accused to the alleged offence. This again brings in the foundational facts doctrine: if the specific material against the accused is thin, the bail application must be argued on that ground rather than on the ground of parity.

C. Manish Sisodia v. Directorate of Enforcement: Speedy Trial as a Bail Ground

Manish Sisodia v. Directorate of Enforcement, (2024) SCC OnLine SC 1920,¹⁸ represents the most significant departure from the framework of *Vijay Madanlal Choudhary*. Mr Sisodia, the former Deputy Chief Minister of Delhi, had been in custody for more than 17 months in connection with cases filed by the Central Bureau of Investigation and the ED. His bail applications had been rejected multiple times on the ground that the twin conditions under Section 45 had not been satisfied.

The Supreme Court granted bail, but not by revisiting the twin conditions. Instead, the court held that the right to a speedy trial under Article 21 is a constitutional right that cannot be subordinated to the rigours of Section 45 PMLA when there is no prospect of the trial concluding within a reasonable time. The court noted that the trial had not yet begun, that there were hundreds of witnesses to be examined, that thousands of documents had been relied upon, and that there was no reasonable possibility of the trial concluding within the next few years. In these circumstances, continued incarceration amounted to a violation of Article 21.

The court drew upon the principle established in *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713, where the Supreme Court had held in the context of UAPA that constitutional courts retain the power to grant bail when continued incarceration violates fundamental rights. The court held that this principle applies with equal force to PMLA. Where the prosecution cannot tell the court when the trial is likely to conclude, and where the accused has already

¹⁸*Manish Sisodia v. Directorate of Enforcement*, (2024) SCC OnLine SC 1920

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spent a prolonged period in custody, bail must be granted even if the technical requirements of Section 45 are not fully met.

Manish Sisodia has changed the landscape of PMLA bail litigation. It has given defence counsel a powerful additional ground: if the accused has been in custody for a substantial period, if the trial is at an early stage, and if there is no realistic prospect of the trial concluding soon, a bail application can be mounted on Article 21 grounds independently of the twin conditions. This does not mean that the twin conditions are bypassed; it means that the constitutional court uses its inherent power under Article 226 or Article 32 to protect the fundamental right of the accused even where the statutory conditions for bail are not met.

D. Prem Prakash v. Union of India through ED: Consolidating the Course Correction

Prem Prakash v. Union of India through ED, (2024) SCC OnLine SC 2693,¹⁹ followed *Manish Sisodia* and applied its reasoning to a different context. The court reiterated that prolonged incarceration without a trial progressing is a ground for bail under Article 21. The court also emphasised that the twin conditions must be applied with sensitivity to the individual facts of each case, and that a court cannot refuse bail merely because the twin conditions on paper are not satisfied if the overall circumstances indicate that continued detention is unjust.

Prem Prakash also touched on the interplay between the PMLA and the BNSS. The accused in that case argued that certain procedural protections available under the BNSS, which came into effect from July 1, 2024, should be applied to his case. The court noted that the BNSS governs general criminal procedure but that the PMLA, as a special statute, continues to have its own procedural framework. However, the general principle of the BNSS that bail is the rule and jail is the exception reinforces the constitutional argument that prolonged pre-trial detention is impermissible.

V. The Foundational Facts Doctrine

A. What Are Foundational Facts?

The foundational facts doctrine is not expressly stated as such in the PMLA or in any single Supreme Court decision. It is a synthesis of principles drawn from the text of the statute and from the evolving case law, and it provides the most important analytical tool for defence counsel in a PMLA case.

¹⁹ *Prem Prakash v. Union of India through ED*, (2024) SCC OnLine SC 2693

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The central argument of the doctrine is this: the presumption under Section 24 PMLA does not arise automatically from the filing of a complaint or from the existence of an FIR in the scheduled offence. The ED must first establish, through material placed before the court, that certain foundational facts exist. Only after these foundational facts are established does the burden shift to the accused to rebut the presumption.

The three foundational facts are as follows. First, the ED must show that a predicate scheduled offence has been committed. The scheduled offence is the primary crime that generates the proceeds of crime. Without a predicate offence, there can be no proceeds of crime, and without proceeds of crime, there can be no money laundering. Second, the ED must show that the property in question was derived from or connected to the commission of the scheduled offence. This requires a specific link between the property and the crime, not a general allegation that the accused is a person of criminal character. Third, the ED must show that the accused was involved in the process or activity of laundering as defined in Section 3 PMLA, which covers the acquisition, possession, use, concealment, or projection of proceeds of crime as untainted property.

B. The Definition of Proceeds of Crime: The Master Key

Section 2(1)(u) of the PMLA defines proceeds of crime to mean any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence, or the value of any such property.²⁰ This definition is deceptively simple but is the most important provision in the entire Act for litigation purposes.

If the property in question cannot be shown to be proceeds of crime within this definition, the entire case under PMLA collapses. The attachment cannot be sustained. The presumption under Section 24 cannot be raised. The twin conditions for bail under Section 45 become difficult to apply because the court cannot be satisfied that there is material suggesting guilt if the very property said to be tainted has not been identified as proceeds of crime.

There are several lines of attack on the definition. First, the accused can argue that the property predates the scheduled offence and therefore cannot have been derived from it. Property acquired before the commission of the crime cannot logically be the proceeds of that crime. Second, the accused can argue that the property was acquired from a source independent of the scheduled offence and that the ED has not traced any money from the offence to the property. This requires the ED to prove a financial chain connecting the crime

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to the property. Third, the accused can argue that even if some proceeds of crime exist, the specific property attached is not those proceeds but legitimate property of the accused.

The distinction between possession of proceeds of crime and acquisition or use of proceeds of crime under Section 3 is also relevant here. Section 3 states that the offence of money laundering is constituted by the process or activity of concealment, possession, acquisition, use, projecting as untainted property, or claiming it to be untainted property. Each of these is a separate mode of committing the offence. Possession alone is insufficient if the accused did not know that the property was tainted. Knowledge of the tainted nature of the property is an element that the ED must establish as part of the foundational facts.

C. Applying the Doctrine in Bail Arguments

For junior litigators, the foundational facts doctrine translates into a practical argument structure for bail applications. The bail application should begin with an analysis of the scheduled offence. Has the FIR been filed? Has any court taken cognisance? Is the scheduled offence proceeding to trial or has it been stayed? If the FIR in the scheduled offence has been quashed by a High Court, the accused can argue that the foundational fact of a predicate offence no longer exists, and that the PMLA proceedings cannot continue in isolation. While the Supreme Court in *Vijay Madanlal Choudhary* held that PMLA proceedings have an independent life, this independence is subject to the continued existence of material connecting the property to a criminal activity. If the scheduled offence is quashed entirely, that material may no longer exist.

The second stage of the bail argument under the foundational facts doctrine is the proceeds of crime analysis. The bail application should examine the specific property that the ED has identified as proceeds of crime and challenge the link between that property and the scheduled offence. If the ED has relied on a general allegation that the accused received funds from a company that was involved in a fraud, the accused should point to the specific bank statements, financial records, or other material that the ED would need to prove a connection, and argue that those records either do not exist or do not establish the connection alleged.

The third stage is the involvement analysis. The accused should argue that even if the property is proceeds of crime, there is no prima facie material showing that the accused was personally involved in the process of laundering. Mere proximity to the proceeds, or mere employment in an organisation accused of financial crime, does not constitute involvement in

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laundering. The ED must show that the accused took some active step to conceal, acquire, use, or project the proceeds as untainted property.

VI. Constitutional Challenges

A. Article 20(3) and the Right Against Self-Incrimination

Article 20(3) of the Constitution provides that no person accused of any offence shall be compelled to be a witness against himself. This provision is the constitutional basis of the privilege against self-incrimination. At first glance, the reverse burden of proof appears to conflict with Article 20(3): if the accused must prove that the property is not proceeds of crime, the accused is in effect being required to produce evidence that may incriminate or at least may not be available to the accused.

The Supreme Court in *Vijay Madanlal Choudhary* addressed this conflict and held that the presumption under Section 24 does not violate Article 20(3) because it does not compel the accused to be a witness. The accused is free to choose how to rebut the presumption and is not required to give oral testimony. The accused may rebut through documents, through cross-examination of prosecution witnesses, or through the presentation of affirmative evidence without taking the witness stand. The court held that Article 20(3) applies specifically to testimonial compulsion, and that a statutory presumption that places an evidential burden on the accused is not the same as compelling testimony.

This reasoning can be critiqued. In practice, an accused who has been in custody for months or years has limited access to documents and limited ability to gather evidence to rebut the presumption. The formal distinction between testimonial compulsion and evidential burden may be legally correct but practically hollow if the accused lacks the practical means to discharge the burden. This point connects to the broader argument about pre-trial punishment: an accused who is denied bail is also denied the ability to effectively prepare a defence.

B. Article 21 and the Right to a Speedy Trial

The most powerful constitutional challenge to the PMLA bail regime today is based on Article 21. The Supreme Court has consistently held since *Hussainara Khatoon v. State of Bihar*, (1979) 3 SCC 544, that the right to a speedy trial is a fundamental right under Article 21.⁴ An accused who is detained for years without trial being concluded is being deprived of liberty without due process of law. The legal process has become the punishment.

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Manish Sisodia v. Directorate of Enforcement, (2024) SCC OnLine SC 1920, elevated this argument into a standalone ground for bail in PMLA cases. The importance of this development cannot be overstated. It means that a court exercising jurisdiction under Article 226 or under Section 439 of the BNSS can grant bail in a PMLA case on constitutional grounds even if the technical requirements of Section 45 are not met. This is not a bypass of the statute; it is an application of the principle that no statute can authorise a violation of fundamental rights.

The proportionality test, which this paper recommends in Part VII, is rooted in this Article 21 jurisprudence. The question is not merely whether the accused meets the twin conditions, but whether continued detention is proportionate to the legitimate state interest in preventing money laundering. If the trial is not moving forward, if the accused has been in custody for a substantial period, and if the state cannot articulate a compelling reason why continued detention is necessary at this stage, the balance tips in favour of release.

VII. Conclusion and Recommendations

The PMLA has evolved from a targeted anti-drug money statute into one of the most powerful criminal law instruments in India. Its key provisions, the reverse burden of proof under Section 24 and the twin conditions for bail under Section 45, represent a significant departure from the traditional principles of criminal jurisprudence. While the Supreme Court in *Vijay Madanlal Choudhary v. Union of India*, (2022) SCC OnLine SC 929 upheld these provisions as constitutionally valid, the subsequent decisions from 2023 to 2025 have demonstrated that the courts are alive to the dangers of abuse and excess.

The key doctrinal development of this period is the foundational facts doctrine. The presumption under Section 24 is not self-activating. It requires the ED to first establish a predicate scheduled offence, a connection between the property and that offence, and the involvement of the accused in the process of laundering. Only then does the burden shift. This doctrine is consistent with the text of the statute, with the constitutional requirement of a fair procedure, and with the principle that the state must make out at least a prima facie case before the accused is required to answer.

The second key development is the recognition of the speedy trial right as a bail ground in PMLA cases. *Manish Sisodia* has established that where the prosecution cannot demonstrate that the trial will conclude within a reasonable time, the continued detention of the accused

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becomes a violation of Article 21. This is an independent constitutional right that exists alongside and above the statutory framework.

This paper recommends the adoption of a proportionality test in all PMLA bail hearings. Under this test, the court should ask three questions. First, is the continued detention of the accused necessary for the protection of a legitimate state interest? Second, is the duration of the detention proportionate to the gravity of the alleged offence and the progress of the trial? Third, are there less restrictive measures, such as electronic monitoring, surrender of passport, or regular reporting to the ED, that would adequately protect the state interest without requiring continued incarceration?

This proportionality test does not require the court to abandon the twin conditions of Section 45. It requires the court to apply those conditions within a constitutional framework that takes the right to liberty seriously. A court that refuses bail without asking whether continued detention is proportionate is not applying the law; it is permitting the process to become the punishment.

The PMLA will remain a powerful instrument in the fight against financial crime. But its effectiveness in the long run depends on its legitimacy, and its legitimacy depends on its application with fairness and proportionality. The evolution in the case law from 2023 to 2025 suggests that the Supreme Court understands this. The challenge for the legal community is to build on this evolution and to ensure that the foundational facts doctrine and the speedy trial right are consistently applied at every level of the court system.

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