



## FROM TWIN TEST DOCTRINE TO SAFEGUARDS THE SHIFTING LANDSCAPE OF BAIL UNDER THE PREVENTION OF MONEY LAUNDERING ACT, 2002

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In India, securing bail in money-laundering cases is far more difficult than in most other criminal matters. This is because section 45 of The Prevention of Money Laundering Act, 2002 (*hereinafter referred to as “the PMLA”*) imposes a twin test before bail can be granted. In terms of the twin test (i) the public prosecutor has to be given an opportunity to oppose the bail application; and (ii) where the public prosecutor opposes the bail application, the court must be convinced that there are valid reasons to believe that the accused is innocent of the offence and is unlikely to commit any offence while out on bail.

In ***Vijay Madanlal Choudhary v. Union of India (2023)***, the Supreme Court upheld the twin test doctrine under section 45 of the PMLA, both for regular bail and anticipatory bail. The twin test doctrine was reaffirmed in several other judgments of the Supreme Court. In ***Union of India v. Kanhaiya Prasad (2025)***, the Supreme Court set aside an order of the Patna High Court which had granted bail to the accused in a very casual and cavalier manner without considering the twin test doctrine. Nevertheless, there are certain exceptions to the stringent provisions of section 45 of the PMLA, such as for women, a person under sixteen years of age, or an infirm person. In ***Shashi Bala Singh v. Directorate of Enforcement, Criminal Appeal No. 212 of 2025***, the Supreme Court clarified that when a woman applies for bail, the second condition under the twin test need not be satisfied.

While the Courts have upheld the twin test doctrine, they have also carved out important protections for bail. The law on bail under the PMLA has been in transition, moving from the rigidity of the twin test doctrine to a more balanced mechanism that includes constitutional safeguards.

### Written Grounds of Arrest

Section 45 of the PMLA would not come in the way of release of a person from custody if the person has not been provided, at the time of arrest, a written copy of the grounds of arrest. In ***Pankaj Bansal v. Union of India (2024)***, the Supreme Court held that the authorized officer must provide a written copy of grounds of arrest to the arrestee, not just read them out. Recently, in ***Vihaan Kumar v. State of Haryana (2025)***, the Supreme Court went further,

holding that if written grounds are not supplied, arrest is vitiated and once the arrest is vitiated, the arrestee cannot remain in custody even for a second.

### **Prolonged Incarceration**

In ***Manish Sisodia v. Directorate of Enforcement (2024)***, the Supreme Court held that the right to bail should be read into section 45 of PMLA if there is a prolonged delay in trial coupled with incarceration for a long period. In ***Jaffer Sadiq & Anr. v. Enforcement Directorate (2025)***, the Madras High Court held that incarceration of the accused persons pending trial under the PMLA would violate their right under Article 21 of the Constitution of India. Thus, the evolving landscape reflects an attempt to strike a delicate balance between combating money laundering and protecting fundamental rights.