



## Mains Practice Question

**Q.** Analyze the key aspects of the recent Supreme Court judgment on the Enforcement Directorate's powers under the Prevention of Money Laundering Act and its implications. **(250 words)**

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### Approach

- Introduce with ED and its mandate of enforcing PMLA
- Delve into key aspects of the recent SC Ruling
- Mention its implications citing various case laws
- Conclude using syllabus related keywords.

### Introduction

The **Enforcement Directorate (ED)** is a multi-disciplinary agency responsible for investigating money laundering and foreign exchange violations.

- It enforces the provisions of the **Prevention of Money Laundering Act, 2002 (PMLA)** by tracing assets from crime proceeds, provisionally attaching properties and prosecuting offenders.

### Body

The recent Supreme Court judgment on the Enforcement Directorate's powers under the Prevention of Money Laundering Act has significant implications:

#### Key aspects of the judgment:

- **Limitation on Arrest Powers:** SC ruled that the ED cannot arrest an accused under Section 19 of PMLA after the special court takes cognizance of the complaint.
  - This **curtails the ED's power to arrest** a person and protects the accused from potential misuse of the PMLA provisions.
  - It promotes **due process of law** and ensures that **arrests are subject to judicial scrutiny.**
- **Custodial Interrogation:** If the ED wants custody of the accused for further investigation, it **must apply to the special court** and justify the need for custodial interrogation.
  - The court will grant custody only if satisfied that it is required, even if the accused was not initially arrested.
  - This safeguard **prevents undue custodial interrogation** and respects the rights of the accused.
- **Bail Provisions:** The judgment clarifies that an accused who appears before the court pursuant to a summons need not apply for regular bail under **CrPC Section 437.**
  - This relieves the accused from the stringent **twin conditions for bail under PMLA**, providing a more balanced approach.

### Implications

- **Upholding Personal Liberty and Fair Procedure:** The judgment upholds the principles laid down in the *Nikesh Tarachand Shah case (2017)*, where the Supreme Court held that personal liberty cannot be curtailed beyond what is permissible to **fair, just and reasonable procedure** established by valid law.
- **Ensuring Judicial Oversight and Safeguards:** It aligns with the *Vijay Madanlal Choudhary case (2022)*, which emphasized the need for judicial oversight and safeguards against arbitrary arrests under PMLA.
- **Limiting Arrest Powers Post-Cognizance:** By limiting the ED's arrest powers post-cognizance, the judgment addresses the issue highlighted in the *Pankaj Bansal case (2023)*, where the Supreme Court had to intervene and grant interim protection from arrest.
- **Addressing Failings in the Bail System:** The ruling echoes the concerns raised in the *Satender Kumar Antil case (2022)*, where SC acknowledged the **failings of the country's bail system** in recognizing the issue of undertrial and granting bail.
  - The Supreme court in *State of Rajasthan vs Balchand (1977)* established the principle that **bail is the rule and jail is the exception**.
- **Balancing Investigative Powers and Individual Rights:** The judgment strikes a balance between investigative powers and individual rights as highlighted by the current CJI by mentioning that "heart of this balance" lies the need to uphold due process.
- **Potential Impact on Expeditious Investigations:** It may impact the ED's ability to conduct expeditious investigations in complex money laundering cases.

## Conclusion

The Supreme Court's judgment is a significant step towards upholding the **principles of due process, fairness, and individual liberty** while ensuring effective implementation of the PMLA. It reinforces the **judiciary's role as a constitutional watchdog** and sets important precedents for striking the right balance between investigative powers and fundamental rights.

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