



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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