



## SC Limits ED's Arrest Powers in PMLA Cases

**For Prelims:** [Supreme Court](#), [Money Laundering](#), [Prevention of Money Laundering Act, 2002](#), [Enforcement Directorate](#), [United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988](#), [Enforcement Case Information Report](#), [Foreign Exchange Management Act, 1999](#).

**For Mains:** [Legal and Regulatory framework in India to combat Money Laundering](#), [Prevention of Money-Laundering Act \(PMLA\)](#), **Supreme Court Judgement and its Implications**

**Source:** TH

### Why in News?

Recently the **Supreme Court** ruled that the **Enforcement Directorate (ED)** loses the authority to arrest an accused once a **special court** takes cognisance of a **chargesheet** filed under the **Prevention of Money Laundering Act (PMLA)**.

- The judgement **limits the ED's power to execute arrests** and emphasises the inviolability of **personal liberty**.

### What is the Recent Ruling of the Supreme Court Regarding PMLA?

- **Provisions in Question:** The judgement stemmed from an appeal against the ED, challenging a Punjab and Haryana High Court decision denying **anticipatory bail**.
  - The case examined whether an accused could apply for bail under the regular provisions of the **Code of Criminal Procedure (CrPC)**, and if so, whether such a bail plea would also have to satisfy the **twin conditions** under **Section 45** of the **PMLA**.
  - The court also deliberated on whether an accused not arrested during the PMLA investigation would have to meet the **stringent PMLA** bail conditions if they appear before the court after being summoned or **having a warrant issued** for their failure to appear.
- **SC Observations:**
  - **Status of Accused Appearing on Summons:** If an accused appears before a designated special court pursuant to a summons, **they cannot be treated as being in custody**, and hence, they need not apply for bail under the stringent conditions posed by the PMLA.
    - The ED will have to separately apply for the custody of an accused after they appear in court, showing **specific grounds** necessitating custodial interrogation.
    - This presumption of liberty is a **crucial step** towards protecting the **fundamental right of personal liberty**.
  - **Nature of Bonds/Sureties:** The special court can direct the accused to provide a **surety/guarantee (bonds)** as per Section 88 of the Code of Criminal Procedure.
    - However, this **surety is not the same as granting bail** and does not require satisfying the stringent twin conditions of Section 45 of the PMLA.
  - **Graded Arrest Procedure:** If the accused fails to appear before the court despite being

summoned, the special court can first issue a **bailable warrant (where bail can be obtained)**.

- If the accused still does not appear, the court can then issue a non-bailable warrant (arrest without bail).
- **Arresting Non-Accused Parties:** The ED can still arrest an individual who is not named as an accused in the initial PMLA complaint.
  - However, to do so, the ED must follow the proper arrest procedures outlined in Section 19 of the PMLA.

## What are the Twin Conditions of Bail Under PMLA?

Under Section 45 of the PMLA, the twin conditions are:

- **Burden of Proving Innocence:** It imposes **rigorous bail conditions**, requiring the accused to prove their innocence.
- **Ensuring No Offences While on Bail:** The accused should be able to convince the judge **he would not commit any offence** while on bail.
  - The burden of proof is entirely on the incarcerated accused.
  - These twin conditions make it almost impossible for an accused to get bail in the PMLA.

## What is PMLA?

- **About:** The [Prevention of Money Laundering Act, 2002 \(PMLA\)](#) was enacted to prevent cases of **money laundering** and provide for the confiscation of property derived from money laundering.
  - It aims to **combat money laundering** related to illegal activities such as drug trafficking, smuggling, and [terrorism financing](#).
- **Key Provisions of PMLA:**
  - **Offences and Penalties:** PMLA defines money laundering offences and imposes penalties for such activities. It includes **rigorous imprisonment** and fines for offenders.
    - Money laundering is the process of **converting illegally** earned money into seemingly legal money.
  - **Attachment and Confiscation of Property:** The Act allows for the **attachment and confiscation of property** involved in money laundering. It provides for the establishment of an Adjudicating Authority to oversee these proceedings.
  - **Reporting Requirements:** PMLA mandates certain entities, such as banks and financial institutions, to maintain records of transactions and report suspicious transactions to the [Financial Intelligence Unit \(FIU\)](#).
  - **Appellate Tribunal: Section 25 of PMLA** provides for the establishment of an Appellate Tribunal, which is vested with power to hear appeals against orders passed by the Adjudicating Authority.
- **Recent Amendments Related to PMLA:**
  - **Prevention of Money-laundering (Restoration of Confiscated Property) Amendment Rules, 2019:**
    - **Insertion of New Rule 3A:** Under it, the Special Court may publish notice in newspapers calling for claimants with legitimate interest in attached/seized/frozen property to establish their claims for restoration, after framing of charges.
  - **Prevention of Money Laundering (Maintenance of Records) Amendment Rules, 2023:** The Finance Ministry has revised money laundering regulations to expand disclosure requirements for NGOs by reporting entities such as financial institutions, banks, or intermediaries.
    - It has also clarified the definition of "**politically exposed persons**" under the Prevention of Money Laundering Act (PMLA) to align with **Financial Action Task Force (FATF)** recommendations.
    - The new PMLA compliance rules define "**Politically Exposed Persons**" (**PEPs**) as individuals entrusted with prominent public functions by a foreign country, such as

heads of state, senior politicians, and high-ranking government, judicial or military officers, senior executives of state-owned corporations and important political party officials.

▪ **Concerns Regarding PMLA, 2002:**

- **Broad Definition of Proceeds of Crime:** Debates have arisen over the **broad interpretation of "proceeds of crime"** in the PMLA, with concerns about its potential to include **legal financial transactions**.
  - The law targets those involved in generating and laundering crime proceeds, holding even those with no direct involvement in the crime but who participate in the laundering process accountable.
- **Coverage of Numerous Offences:** The PMLA includes numerous offences in its schedule unrelated to its original purpose of combating the laundering of drug money.
  - The **UN resolution** that led to the enactment of the law in India only mentioned the offence of laundering drug money, which was considered a serious economic crime with the potential to destabilise the world economy and endanger national sovereignty.
- **Arrest of Person Without Written Communication of Grounds of Arrest:** Enforcement Directorate officers have consistently violated **Article 22(1)** of the Constitution and **Section 19(1) of the 2002 PMLA** by relying solely on verbal communication for arrest, which is considered inadequate.
  - Recently, the Supreme Court ordered the release of NewsClick founder Prabir Purkayastha, ruling his arrest under the **Unlawful Activities Prevention Act (UAPA) invalid**, citing Article 22(1) of the Constitution which mandates that arrested individuals must be **promptly informed of the grounds for their arrest**.

**What are Bailable and Non Bailable Offences in India?**

Offence Type	Description	Example
<b>Bailable</b>	Less serious offences, where the accused is presumed innocent and entitled to release on bail.	Petty theft, Traffic violations, Simple assault
<b>Non-Bailable</b>	More serious offences, where the court has discretion to grant bail based on specific criteria.	Murder, Rape, Kidnapping, Arson

**Way Forward:**

- **Incorporating a Clearer Definition of "Proceeds of Crime:** To prevent the misuse of the term "proceeds of crime" within the PMLA, it is essential to **adopt a more precise definition**.
  - This would involve specifying the types of crimes and the direct or indirect ways in which the proceeds may be obtained, thereby narrowing down the scope for arbitrary interpretation by authorities.
- **Revising the Burden of Proof:** The current framework places a significant burden on the accused to prove the legitimacy of their assets.
  - **Revising this aspect to ensure a more equitable distribution of the burden of proof** between the prosecution and the defence could foster a fairer legal process.
  - This could involve adopting practices from jurisdictions where the presumption of innocence is more robustly protected.
- **Establishing Independent Oversight Mechanisms:** To safeguard against the overreach of law enforcement officers under the PMLA, the **establishment of independent oversight bodies is recommended**.
  - These bodies would review and monitor enforcement actions to ensure they comply with legal standards and respect human rights.
- **Promoting International Cooperation and Compliance:** Given the global nature of money laundering, enhancing international cooperation in the enforcement of PMLA provisions is crucial.
  - This includes **aligning India's PMLA with international standards set by bodies like the Financial Action Task Force (FATF)** and ensuring compliance with its recommendations.

- **Incorporating Technological Advances:** Leveraging technology to detect and prevent money laundering activities can make the PMLA more effective.
  - This could involve the use of **artificial intelligence** and **machine learning** tools to analyse financial transactions and identify suspicious patterns indicative of money laundering.

**Drishti Mains Question:**

Q. Discuss the recent interpretation of the Prevention of Money Laundering Act by the Supreme Court of India, focusing on its implications for personal liberty and the powers of the Enforcement Directorate.

**UPSC Civil Services Examination, Previous Year Questions (PYQs)**

**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)**

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