

PMLA Snapshot 2025: Know your Rights

Background

The Prevention of Money Laundering Act, 2002 (**PMLA**), its allied rules and regulations make up India's legal framework for money laundering and facilitate asset recovery. The enforcement is undertaken by the Directorate of Enforcement (**E.D.**), which has been granted wide powers, through actions like search, seizure, and property attachment.

While the E.D. wields significant authority, it must operate within constitutional limits and adhere to procedural safeguards. In recent years, the Supreme Court of India has closely scrutinized the E.D.'s exercise of these powers to ensure fair treatment and compliance with due process requirements.

The necessity to protect the rights of the accused under the PMLA is more critical than under other penal statutes, as the PMLA places the burden on the accused to prove their innocence.¹

Procedural Safeguards under the PMLA

Despite its stringent enforcement framework, the PMLA provides safeguards to prevent arbitrary actions by the E.D.

One such safeguard is the requirement on part of the E.D. to record its 'reasons to believe' prior to provisional attachment of property involved in money laundering,² search and seizure,³ search of persons,⁴ and retention of seized/frozen property.⁵

Additionally, another crucial safeguard is codified in the form of the E.D.'s obligation to inform the accused of the



grounds of the arrest in writing.⁶ This safeguard directly protects the accused's fundamental right to know the basis for their detention while ensuring that they are well-positioned to defend themselves.

Beyond the text of the statute, the Supreme Court has continuously refined the contours of these safeguards through judicial interpretation, particularly focusing on protecting the rights of the accused from the investigation stage, all the way till the trial proceedings under the PMLA.

Recent Judicial Developments: Reaffirming the Rights of the Accused

The presumption of guilt against the accused, though backed by the statute, cannot override the fundamental rights enshrined under the Constitution of India (**Constitution**). In furtherance of the same, the Supreme Court has adopted an approach that balances the scope of the E.D.'s powers with procedural safeguards.

¹ Section 24, PMLA.
² Section 5, PMLA.
³ Section 17, PMLA.
⁴ Section 18, PMLA.
⁵ Section 20, PMLA.

⁶ Section 19, PMLA.

Captured below is a snapshot of the recent decisions of the Supreme Court that have significantly cemented the rights of the accused under the PMLA:

A. Right to seek Bail

In *Udhaw Singh v. Enforcement Directorate*,⁷ the Supreme Court settled the legal position on whether an accused can seek bail on the ground of delay in trial and prolonged custody.

While relying on its earlier decision in *V. Senthil Balaji v. Deputy Director, Directorate of Enforcement*,⁸ the Supreme Court reiterated the scope of discretionary powers vested with the Indian Constitutional Courts to navigate the stringent provisions of the PMLA, despite it being a special law.

On the core issue, the Supreme Court held that an accused cannot be subjected to continued incarceration during the pendency of the proceedings when the trial under the PMLA is not likely to be concluded within reasonable time. In such a case, an accused has the right to seek bail. However, whether bail would be granted is subject to the Courts being satisfied *inter alia* that the delay in trial is not attributable to the accused and that the accused will not be a threat to the society, if released on bail. This decision reaffirms that an accused person's right to liberty under the Constitution sustains despite the rigors of the PMLA.

B. Right to be Heard at the Pre-Cognizance Stage

In *Kushal Kumar Agarwal v. Directorate of Enforcement*,⁹ the Supreme Court had to decide whether the Special Court under the PMLA is required by law to provide an accused, the opportunity of being heard, before taking cognizance of the E.D. complaint.

Here, the Supreme Court observed that complaints filed under the PMLA after the *Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS)* came into force i.e., July 1, 2024, would be governed by relevant provisions thereof,¹⁰ and not the corresponding provisions under the erstwhile Criminal Procedure Code, 1973 (**CrPC**).

The BNSS mandates that the cognizance of a complaint cannot be taken without providing the accused

an opportunity of being heard.¹¹ Notably, no such requirement for pre-cognizance hearing was present under the CrPC. While extending the application of this procedural safeguard, the Supreme Court held that, an accused under the PMLA has the right to be heard before the Special Court can take cognizance of the complaint under the BNSS. This decision further cements an accused person's right to speedy and fair trial by ensuring that the accused is allowed to put forth their case even before cognizance is taken.

C. Right to Access Documents under the PMLA

In *Sarla Gupta & Anr. v. Directorate of Enforcement*,¹² the Supreme Court emphasised the importance of a fair trial, ruling that individuals accused under the PMLA have the right to access and review documents held by the E.D.

The main points from the Supreme Court's judgement include:

1. If the E.D. seizes or freezes records or documents during its investigation, the accused must be provided with clear, accurate copies of these materials.
2. Once the Special Court acknowledges a complaint under the PMLA, the accused should receive copies of all documents relied upon by the E.D. in the complaint, as well as statements made by witnesses and the complainant that were recorded by the Court.
3. Additionally, the accused is entitled to a detailed list identifying every statement, document, material object, and exhibit seized during the investigation, with explicit mention of which of these items have not been relied upon by the E.D.
4. The Supreme Court clarified the stage-wise entitlement to such documents/exhibits and held as follows:
 - a. At the stage of framing of charge, the accused is entitled to receive only a list of documents, exhibits, etc. not relied upon by the E.D.

⁷ *Udhaw Singh v. Enforcement Directorate*, 2025 INSC 247.

⁸ *V. Senthil Balaji v. Deputy Director, Directorate of Enforcement*, 2024 SCC OnLine SC 2626.

⁹ *Kushal Kumar Agarwal v. Directorate of Enforcement*, 2025 INSC 760.

¹⁰ Sections 223 to 226, BNSS.

¹¹ Proviso to Section 223(1), BNSS.

¹² *Sarla Gupta & Anr. v. Directorate of Enforcement*, 2025 INSC 645.

- b. At the stage of entering upon defence, the accused has the right to seek production of all such documents or material in the E.D.'s possession which have not been produced or relied upon.
- c. Similarly, for the purposes of bail, the accused is entitled to seek production of documents not relied upon by the E.D.
- 5. The underlying objective behind affording documents to the accused is to ensure that the accused is well-placed to make their case and effectively satisfy the Court that there exist reasonable grounds for believing that they are innocent.

Core Issue	Checklist for the Defence
Right to seek bail on grounds of unreasonable delay in trial	<ul style="list-style-type: none"> ⌞ Track custody duration from arrest to framing of charge. ⌞ Document reasons for delay in trial or non-commencement. ⌞ Highlight completion of investigation while making the bail application.
Right to be heard before cognizance is taken under the BNSS	<ul style="list-style-type: none"> ⌞ Check the date of filing of the PMLA complaint <i>vis-à-vis</i> the date of enforcement of the BNSS i.e., July 1, 2024. ⌞ Approach the Special Court to afford the accused an opportunity of being heard via taking on board an application. ⌞ Move to set aside the cognizance order, if hearing opportunity was not granted.
Right to access records, and documents not relied upon by the E.D.	<ul style="list-style-type: none"> ⌞ Request copies of all documents relied upon by the E.D. and statements recorded by the Special Court while taking cognizance. ⌞ Request a list of records and documents in the possession of the E.D. and seek production of legible and true copies thereof at the appropriate stage.

Significance & Practical Implications

These rulings collectively bring greater transparency to the PMLA proceedings and the procedural safeguards thereunder by making it clear that:

- a. Courts are closely monitoring E.D.'s compliance with procedural safeguards.
- b. The E.D. must follow due process to avoid potentially adverse orders.
- c. Procedural lapses by the E.D. will invite strict judicial censure and provide the accused persons grounds to challenge arbitrary enforcement actions.
- d. Accused persons under the PMLA have enforceable rights at each stage of a proceeding.

Conclusion

Recent Supreme Court rulings have brought PMLA enforcement closer to constitutional protections, particularly the fundamental right to liberty under Article 21 of the Constitution. Indian law seeks to balance anti-money laundering efforts with due process requirements and accountability, thus evolving towards a mature, rights-compatible enforcement framework.

For those navigating PMLA proceedings, the way forward requires adopting a rights-conscious strategy at each stage that recognizes procedural safeguards not merely as technical formalities, but as essential guardrails against arbitrary enforcement actions.

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