



# INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

## A Comprehensive Evaluation Of Sections 24 And 45 Of The Prevention Of Money Laundering Act, 2002

Mudit Sharma, Student, Law Department, Amity University, Noida, India

**Abstract:** One of the main legislations of law supporting India's efforts to stop illegal financial transactions is the Prevention of Money Laundering Act. Sections 24 and 45, two crucial clauses, have drawn a lot of attention because of their implications for procedural justice and the efficacy of regulations. In-depth analysis of the constitutionality, practical implications, and conformity to international norms of Sections 24 and 45 of the PMLA are done in this research paper. The paper assesses the judicial interpretations, practical ramifications, and evolution of jurisprudence of these rules using an interdisciplinary lens that includes legal, business, and regulatory viewpoints. The study provides insights into the complex interactions between evidential burdens, bail terms, and the overriding goals of preventing money laundering while preserving individual rights and financial integrity. It does this by drawing on landmark case law, legislative changes, and academic discourse. This research contributes to a greater knowledge of the regulatory landscape and enriches ongoing discussions about the effectiveness and equity of anti-money laundering measures in India by clarifying the intricacies and ramifications of Sections 24 and 45.

### I. INTRODUCTION

The illegal practice of reintegrating funds obtained illegally into the official financial system in order to conceal their criminal origins is known as money laundering. Usually, this nefarious endeavour has three separate stages:

- Placement:** The first step is to introduce the money that was gained illegally into the legal financial system.
- Layering:** To cause uncertainty and detach the funds from their illicit source, the monies are moved via a number of intricate transactions after placement.
- Integration:** In this last stage, the money that has been laundered is reinjected into the system in a way that makes it impossible to tell them apart from money that has been obtained legally.

*The Prevention of Money Laundering Act, 2002 ("PMLA")* lays forth the legal framework that addresses money laundering in India. 'Money laundering' is defined by this statute in section 3 as follows: if it is found that an individual has participated in any of the following procedures or actions pertaining to the proceeds of crime, directly or indirectly, hiding, possessing, acquiring, using, projecting as untainted property, or claiming as untainted property or has knowingly assisted in any of these actions, that individual is guilty of the crime of money laundering. The process or activity related to the proceeds of crime is continuous and won't end until someone makes a direct or indirect profit by the acquisition, use, projection, or concealment of the proceeds in any manner.

Any property that is obtained or derived from criminal activity related to scheduled offences is included in the term 'proceeds of crime'. Three categories apply to the offenses that fall under the purview of the PMLA:

- Part A:** Contains offenses listed in several legislation, including the Narcotic Drugs and Psychotropic Substances Act, the Prevention of Corruption Act, and the Indian Penal Code.
- Part B:** Addresses offenses under Part A, provided that the total value at involved is more than Rs 1 crore.
- Part C:** Addresses transnational crimes and reflects attempts to stop money laundering that occurs across international borders.

The responsibility of looking into money laundering offenses under the PMLA falls to the Enforcement Directorate (“ED”), which works under the Department of Revenue, Ministry of Finance, Government of India. Furthermore, the Department of Revenue's independent Financial Intelligence Unit-India (“FIU-IND”) reports directly to the finance minister's led Economic Intelligence Council. The primary national organization in charge of gathering, examining, and sharing data about alleged fraudulent financial activities is FIU-IND. Its role also includes supporting and coordinating intelligence operations on a national and international level to fight money laundering and related crimes. Additionally, the relevant agencies listed in the corresponding statutes such as customs departments, local law enforcement agencies, the Securities and Exchange Board of India (“SEBI”), the Central Bureau of Investigation (“CBI”), or other relevant investigative entities, investigate scheduled offenses separately. This article critically examines section 24 and 45 PMLA that have been the subject of controversy in recent years by using the case of Vijay Madanlal Choudhary v. Union of India (“Vijay Madanlal Choudhury case”).

## **II. SECTION 24 OF PMLA (BURDEN OF PROOF)**

The PMLA’s Section 24 (Burden of Proof) was modified in 2013. This adjustment was required in response to the Financial Action Task Force (“FATF”) 2012 recommendations. Following the amendment, Section 24 of the Act stipulated that in any proceedings pertaining to proceeds of crime under this Act, the Authority or court may presume, unless the contrary is proven, that such proceeds of crime are involved in money-laundering in the case of an individual charged with money-laundering under Section 3 and may do so in the case of any other person.

There are two scenarios covered under Section 24. The individual accused of money laundering under Section 3 is the subject of the first section. The other individual is the subject of the second section [Clause (b)]. Starting with the second clause, ‘such other person’ would plainly refer to someone who has not been accused of money-laundering in accordance with Section 3 of the 2002 Act. In a way, the two components are incompatible with one another. Clause (a) would take effect if someone was charged with money-laundering under Section 3 of the 2002 Act as a result of a complaint made by the authorized authority before the Special Court. It says ‘may presume’ in reference to the second category [Clause (b)] of persons. In contrast, the phrase ‘shall, unless the contrary is proved, presume’ is used in relation to the first group [which is covered under Clause (a)].

If a charge of money laundering has already been filed against an individual in this category, it means that the court that filed the charge was at least initially persuaded that the evidence presented to it raised serious suspicions about the individual. In this situation, the onus of proving otherwise must move to the individual in question as soon as the admissibility of evidence corroborating a serious suspicion that they were involved in the commission of a crime under the 2002 Act is recognized by the courts. The burden of proof would then shift to him to demonstrate that no money-laundering offense had been committed and that the property (proceeds of crime) was not connected to money-laundering, rather than reversing as such.

Since Section 24 of the PMLA, 2002 places the burden of proof on the accused, its constitutionality has been a matter of debate. Among the defenses raised in a number of cases against its constitutionality are the following:

- a) The Indian Constitution’s Section 24 violates Article 20(3)’s prohibition against self-incrimination. This is due to the fact that the accused must demonstrate where their money came from, which effectively forces them to testify against themselves and violates the fundamental rule that an accused person should never be forced to testify against oneself.
- b) The burden of proof is on the accused to prove the integrity of their assets, undermining the assumption of innocence until proven guilty. In contrast to the conventional method, this shifts the burden of proof to the accused and may lead to the practice of treating people as guilty unless proven innocent, which is against the core tenets of criminal justice.
- c) There is a chance that law enforcement agencies may take use of this clause to arbitrarily single out people without providing enough evidence of their wrongdoing, which would lead to the arbitrary seizure of property and the violation of due process rights. The judiciary will ultimately decide whether Section 24 of the PMLA is constitutional on a case-by-case basis, balancing the necessity to stop money laundering against defending the rights of the accused.

In the case of **Narendra Singh & Anr. v. State of Madhya Pradesh**, the SC held that in criminal trials, the right to the accused's innocence is deemed to be a human right. A statute enacted by the legislature or parliament, however, might disprove that notion. The accepted opinion is that statutes relating to presumptions are just rules of evidence. As the SC pointed out in **State of West Bengal v. Mir Mohammad Omar & Ors**, the pristine rule, which stipulates that the prosecution bears the burden of proof to prove the accused's guilt—should not be read as a fossilized theory that excludes the possibility of rational reasoning.

The Court went on to say that the presumption idea would neither undermine the general purpose of the rule nor be incompatible with it. On the other hand, if the conventional Rule of the prosecution's burden of proof is allowed to be covered over with a lot of pedantry, society will suffer and serious offenders would stand to gain a lot. This observation was mentioned positively in the case of **Sucha Singh v. State of Punjab**. The Court referenced previous decisions, such as **Shambhu Nath Mehra v. The State of Ajmer**, in its later ruling. It noted that certain provisions of the Evidence Act, such as *Section 106* (which stipulates that the burden of proof rests with the individual when the fact falls within his or her specific area of expertise), are not intended to relieve the prosecution of its burden of proving the existence of other facts for which a reasonable inference can be made. Rather, the Section would be applicable when the prosecution has established facts that allow for a reasonable inference to be made about the accused's guilt; that is, unless the accused has failed to offer an explanation that would have caused the Court to come to a different conclusion because of special knowledge of the facts.

In addition, the respondents in the Vijay Madanlal Choudhury case properly noted several other laws, including *Section 24 of the PMLA*, that permit the burden of proof to rest with the accused. On occasion, this SC has upheld the validity of comparable clauses. In the **Noor Aga v. State of Punjab & Anr.**, it was mentioned that the Court should keep in mind that, much like in this instance, the applicable Act is the outcome of the mandate provided in the international agreement when reading clauses like Section 24.

Moreover, the legislative provision in question need not be illegal just because the burden of proof is placed on the accused in some circumstances. It will be decided if the burden imposed on the accused is evidential or legal based on the objectives and purposes of the act. It actually must pass the proportionality test. Nonetheless, the burden of proof would only rest with the accused, who may discharge it by offering proof of the facts they personally know. The SC reaffirmed in the **Seema Silk & Sarees & Anr. v. Directorate of Enforcement & Ors.** that the establishment of reverse burden of proof does not automatically render a law provision invalid, as it is only an evidentiary standard. If the accused gets the chance to prove he has not violated any of the Act's provisions, the legal language in question cannot be declared unconstitutional. Since the accused then has the opportunity to contest the assumption.

It is imperative to mention that the mandates and recommendations made in that regard by international treaties resulted in the adjustment made to Section 24. Furthermore, Section 24 cannot in any way be regarded as unconstitutional in light of the legislative framework, the goals and objectives of the PMLA, and the fact that the accused or any other party involved in money-laundering would have the opportunity to present information and evidence to refute the legal presumption regarding facts within his personal knowledge during the proceeding before the Authority or the Special Court. It is logically connected to the aims and purposes that the PMLA tries to achieve. In any case, it cannot be seen as blatantly random as what is being presented to us.

Having said so, we can now proceed to deciphering Section 24's meaning. The legal assumption in both cases pertains to the involvement of illegal proceeds in money laundering, which is first and foremost crucial to remember. This fact only becomes significant if the authorities or the prosecution can prove at least three fundamental or foundational facts. First, a scheduled crime has been connected to illegal behavior. Second, that someone has either directly or indirectly derived or received the disputed property as a result of the illegal behavior. Third, the person in question is directly or indirectly involved in any process or activity that has to do with the aforementioned property being proceeds of crime. The act of demonstrating the presence of proceeds from crime and the participation of the relevant party in any associated procedure or activity is known as money-laundering. In compliance with the Finance (No.2) Act of 2019, an explanation has been provided to clarify the objective of the procedure or action. There would be a legal assumption that such proceeds of crime are involved in money-laundering once these necessary conditions are met in accordance with Section 24. The legal presumption would be disputed if the individual in question was able to

demonstrate, by relevant evidence, that he was not a party to any related procedure or activity and that he had no direct connection to the proceeds of the relevant crime.

It should be noted that if someone is charged with money laundering and it is proven that they were involved, either directly or indirectly, in any procedure or action related to the proceeds of crime, then Section 24(a) of the 2002 Act will come into play. Therefore, the existence of criminal proceeds and the defendant's participation in any related process or action are fundamental elements that must be proven by the prosecution.

The burden of proof then shifts to the individual accused of money laundering after the prosecution has established these fundamental facts. He or she must provide proof based on their own knowledge in order to refute the legal presumption that proceeds from crimes are not laundered. Put another way, the word 'presume' is unclear. Furthermore, this does not exclude the accused party from raising relevant evidence based on his own knowledge in order to refute the legal presumption that funds obtained via illegal conduct are used for money-laundering. The Authority and the Court are unable to take this action.

Another source of this obligation is the intent behind *Section 106 of the Evidence Act*. Therefore, he must refute the legal presumption in any way he sees fit and as allowed by law. This may mean asking cross-examination questions of prosecution witnesses or answering in accordance with *Section 313 of the Criminal Procedure Code, 1973 ("1973 Code")*. The individual would have ample opportunity to participate in the proceedings before the Authority or the Court, as applicable. By demonstrating that he is not involved in any procedure or activity involving the proceeds of crime, he could be able to escape responsibility.

In any case, the Court may presume the existence of any fact that it considers likely to have occurred, taking into account the normal course of natural events, human behavior, and public and private business in relation to the facts of the specific case, under *Section 114 of the Evidence Act*, which states that the Court may, with regard to the facts of the particular case, assume the occurrence of any truth that it believes probable to have occurred. Given the above indicated points, it is not feasible to contend that the language in question, Section 24(a), is irrational, let alone obviously arbitrary and unlawful. Going back to Section 24(b) of the 2002 Act, this section deals with people who aren't the ones who are being charged under Section 3 of the same Act with money laundering. In this case, the word 'may presume' is used in Clause (b). This is essentially a factual or arbitrary assumption.

It should be noted that the presumption under Section 24(b) of the Act is not a required legal presumption, in contrast to circumstances falling under Section 24(a) of the 2002 Act. The Adjudicating Authority or the Court, as the case may be, may rely on the legal presumption under Section 24(b) if the individual has not been charged with money laundering. In essence, the group of individuals covered by Section 24(b) would be subject to the same reasoning as was previously addressed about the applicability of Section 24(a) of the 2002 Act. Consequently, the Supreme Court ("SC") determined that Section 24 fairly corresponds to the goals and purposes of the 2002 Act and is neither blatantly arbitrary nor unconstitutional.

In conclusion, the analysis of Section 24 of the PMLA clarifies the complex constitutionality and practical aspects of the law. In the midst of discussions about whether or not it is consistent with the principles of the constitution, specifically the presumption of innocence until proven guilty and the proscription against self-incrimination found in *Article 20(3)*, the SC's case law affirms the validity of laws establishing evidentiary burdens such as those found in Section 24. The Court's findings regularly highlight the contextual significance and procedural fairness of such measures, while expressing concerns about potential exploitation by law enforcement authorities and the need for a balance between fighting money laundering and protecting individual rights.

The discretionary presumption outlined in Section 24(b), coupled with the legal presumption in Section 24(a), provides a framework wherein the burden of proof shifts sensibly depending on the circumstances of the case, ensuring that accused individuals retain opportunities to rebut presumptions through the presentation of relevant evidence. Consequently, within the overarching objectives of the PMLA and the imperative to comply with international standards, Section 24 emerges as a constitutional and proportionate mechanism for addressing the complexities of money laundering while upholding due process and the presumption of innocence. Together with the legal presumption in Section 24(a), the discretionary presumption in Section 24(b) offers a framework in which the burden of proof varies rationally based on the facts of the case,

guaranteeing that those who are accused have the chance to refute presumptions by presenting pertinent evidence. Therefore, Section 24 seems as a constitutional and appropriate tool for tackling the complexity of money laundering while protecting due process and the presumption of innocence within the overall goals of the PMLA and the requirement to conform with international norms.

### **III. SECTION 45 OF PMLA(OFFENCES TO BE COGNIZABLE AND NON-BAILABLE)**

The CrPC states that before deciding whether to approve or deny an accused person's request for bail, the court must consider a number of considerations. These factors include the nature of the charge and the seriousness of the punishment in the event that the accused is found guilty; a reasonable fear that the accused will intimidate the complainant or tamper with witnesses; the kind of evidence the court will use to record a prima facie satisfaction in support of the charge; the possibility that the offense will be repeated; and the possibility that the accused will abscond or flee if granted bail.

Section 45 of the PMLA (Offences to be cognizable and non-bailable) states that no one accused of an offense under this Act may be released on bail or on his own bond unless the court is satisfied that there are reasonable grounds to believe that the accused is not guilty of the offense in question and that he is not likely to commit another offense while on bail. This provision applies regardless of anything in the 1973 code.

Additionally, if the Special Court permits, certain people may be released on bond, including women, minors, the ill, and those who are charged with less than a specific amount of money laundering. Cases under Section 4 of the Act cannot be heard by the Special Court unless authorized government officials file a written complaint beforehand. Police cannot look into PMLA offenses without the Central Government's express permission. These bail restrictions are not the same as those found in the 1973 code or any other legislation. It is made clear that all offenses covered by this Act are serious and not subject to bail, and that officials designated by it are sometimes permitted to make warrantless arrests of suspects.

The Twin Conditions were only applicable, prior to the 2018 Amendment, in cases where an individual was charged with a predicate offense covered by Part A of the PMLA Schedule and might result in a sentence of three years or more in jail. This was overturned by the SC in its earlier ruling in the Nimesh Tarachand Shah v. Union of India & Anr., because it violated the Constitution's guarantees of the right to equality, life, and personal liberty.

Two arguments were used to support the decision: (i) the Twin Conditions were applied arbitrarily to only those offenses covered by Part A of the Schedule to the PMLA that carried a sentence of more than three years in prison; additionally, this created an unusual situation where an individual was charged with a PMLA offense but was denied bail due to the Twin Conditions because of the nature of the underlying predicate offense; and (ii) the Twin Conditions violated the presumption of innocence by requiring a court to decide whether the accused is 'not guilty' of the offense and compelling the accused to disclose its defense at the time of arrest, which was cruel and unjust.

The 2018 Amendment changed the core tenet of the ruling in Nimesh Tarachand Shah v. Union of India & Anr. by extending the application of the Twin Conditions to all PMLA infractions. Even after the 2018 Amendment was passed, many accused under the PMLA were still able to obtain bail based only on the conditions in the CrPC; however, there remained a great deal of disagreement among High Courts regarding whether this meant that the Twin Conditions would once again apply. As a result, in the Vijay Madanlal Choudhary case, the SC raised awareness of this problem. Whether the twin conditions, decided by the SC in Nimesh Tarachand Shah, remained in the statute book was the first issue the SC addressed. Section 45(1) of the 2002 Act was modified by Act 13 of 2018, hence the Court's ruling in that instance would be moot.

The SC retorted that the clause could be regarded *intra vires* as long as it did not violate any other constitutional requirements because the validating Act had corrected the flaw retroactively. From the preceding, it is clear that a provision cannot be considered to be in violation of Article 13 of the Constitution if the Parliament removes the provision's declared voidness or its fault through a retroactive change. Stated differently, a provision cannot be deemed void if the Parliament has eliminated the essential element that gave rise to the Court's decision pronouncing it unenforceable, therefore altering the situation to the point where the judgment is no longer enforceable. Act No. 13 of 2018 has, as previously stated, removed the discrepancies

found in the *Nikesh Tarachand Shah v. Union of India & Anr.*, in this particular instance. Furthermore, the Finance (No.2) Act, 2019 makes it clear that the adjustment will take effect retroactively. Therefore, it cannot be argued that the two requirements stated in Section 45 of the Act of 2002 are no longer true.

Act 13 of 2018, which substituted 'under this Act' for 'punishable for a term of imprisonment of more than three years under Part A of the Schedule' in Section 45(1) of the 2002 Act, corrected the shortcomings in the *Nikesh Tarachand Shah v. Union of India & Anr.* The inquiry at hand is whether the Parliament has the authority to undo the effects of the Court's decision that the twin requirements violate the Constitution. Once the ruling was fairly interpreted, the SC pointed out that although the Court ruled the twin conditions unconstitutional, the discrimination and arbitrariness that were highlighted in the ruling were caused by the then-current version of sub-section (1) of Section 45.

However, the flaw found in the decision that was made has now been fixed, as the initial section referring to the class of offenses that were previously punishable by more than three years in prison under Part A of the Schedule was removed, and the twin requirements are now attached to all offenses under the 2002 Act. The SC helpfully cited the Constitution Bench of the SC in response to the above query, which recognizes the Legislature's power to correct a flaw in a law that the Constitutional Court strikes down as violating certain fundamental rights listed in Part III of the Constitution.

It has long been known that a statement of this type does not automatically render the relevant clause invalid. since the only body with the power to repeal legislation is the Parliament. The only way the clause would truly become void would be if the Parliament decided to repeal it. Nevertheless, the Parliament may decide to fix the problem the Constitutional Court discovered, which would revive the revised act. This is the case because the Constitutional Court's decision to declare a statute unconstitutional only renders it useless and unenforceable in its original form, despite the fact that it may still be in effect, when it infringes fundamental rights and can be traced back to Part III of the Constitution.

The Constitution Bench of the SC acknowledged the theory of eliminating the grounds for invalidating acts in the ***Shri Prithvi Cotton Mills Ltd. & Anr. v. Broach Borough Municipality & Ors.*** This theory does away with the justifications for declaring actions or proceedings that are backed by a legislative measure and then re-enacted by fiction as invalid or ineffective.

The SC made it very clear that the two conditions that were declared unconstitutional in the *Nikesh Tarachand Shah v. Union of India & Anr.*, had nothing to do with the money-laundering provisions of the Act and instead related to the provision that at the time restricted the application of Section 45 of the PMLA to only offenses that were punishable by more than three years in prison under Part A of the Schedule of the PMLA. The SC did not remove Section 45(1) from the law because of the factors it found important to take into account when deciding that the two requirements, as they were at the time, were unconstitutional. Consequently, after Act 13 of 2018 was revised and became operative on April 19, 2018, the Parliament was given the opportunity to rectify the error that the SC had identified and to reintroduce the same clause in its current form.

In addition, the SC considered the challenge to the twin criteria in the context of the 2018 amendment. The SC determined that the provision, as it existed at the relevant time, only applied to offenses covered by Part A of the Schedule to the PMLA, which carries a maximum sentence of three years in prison. However, this challenge must be addressed on its own merits, regardless of the considerations taken into consideration. Now, the provision (Section 45) with dual requirements would apply to the offence(s) under the PMLA itself. In accordance with the 2018 amendment, the clause stipulates that unless the two conditions are satisfied, there would be no bail in relation to the money-laundering violation. Two conditions must be met: first, there must be strong grounds to suspect the accused of being innocent of the money-laundering charge; second, the accused must not likely commit any crimes while free on bond.

It is rather evident that the PMLA was especially created to combat money laundering activities that have a transnational impact on financial systems, including national sovereignty and integrity, given its purposes and objectives. The promise given to international bodies and their recommendations at the time of its implementation made this possible. This is not your typical offense. To deal with such major violations, the PMLA includes strict safeguards for both preventing and countering the threat of money laundering. These actions include the attachment and seizure of criminal proceeds as well as the prosecution of anyone found to

have engaged in any activity involving such proceeds. Owing to the grave repercussions that arise from money laundering operations that have an international scope, a special procedural law that includes the capacity to prosecute the individual involved has been adopted for prevention and regulation. According to this law, criminals who participate in any procedure or activity involving the proceeds of crime are classified separately from other categories of criminals.

Legislative competence was not used as an argument against the clause. Thus, the question was: Is this a fair method to categorize criminals who have committed crimes including money laundering? The PMLA needs to pass the fairness, reasonableness, and connection tests because of the concerns raised by the international community about the global money-laundering activities and their impact across national borders. It also needs to pass because it is assumed that the Parliament understands the needs of its own citizens and responds to them in accordance with the lessons learned from enforcing the law.

The petitioners further argued that, despite the revisions, the reinstatement of the presumption of innocence under Section 45 of the PMLA was arbitrary and infringed upon several fundamental rights guaranteed by the Indian Constitution, most notably the right to life and liberty as guaranteed by Article 21. In the Vijay Madanlal Choudhary case, several arguments were raised against the twin criteria' constitutionality. Moreover, it was argued that the conditions for release were excessive and unjustifiable, and that as a result, the dual requirements of the PMLA could never be satisfied since the accused, in seeking bail before trial, could never offer proof of his innocence.

The Nikesh Tarachand Shah v. Union of India & Anr., ruling was used to bolster the claim that the SC had found that Section 45 had violated Article 21 of the Constitution by inverting the presumption of innocence, in addition to the two flaws noted in the ruling (which were thought to be rectified by subsequent modifications). Therefore, it was argued that Section 45 remained unlawful on this basis even after the modifications.

The Union of India contended that the provisions of the PMLA were legitimate, arguing that the question of each item's constitutionality should be decided by the SC 'from the standpoint of the country's obligations and evolving responsibilities internationally'. The Union of India depended on international agreements and recommendations provided by the FATF, an international organization that assesses various countries' money laundering prevention measures. The argument put out was that the provisions of the PMLA were formulated in compliance with both the Constitution and the 'mandate of FATF'. The Union of India particularly argued that Section 45's 'tough bail conditions' were necessary 'to give effect to the international standards of preventing money laundering prescribed by FATF and other international treaties'. Apart from the reasons mentioned above, the Union of India demonstrated that there was no specific 'compelling State interest' in favor of Section 45's formation.

The SC disapproved of earlier comments that implied either that there was no robust State interest in combating money laundering or that offenses under the PMLA were not as serious as those under the Terrorist and Disruptive Activities (Prevention) Act ("TADA"). The Court underlined the global concern regarding money laundering and the need for strict laws to stop it, as advised by global organizations such as the FATF. The "twin conditions" for granting bail under the PMLA—which include having a reasonable suspicion that the accused is not guilty of money laundering and is unlikely to commit new crimes while out on bail—were confirmed by the Court as constitutionally valid. The ruling stated that these requirements are reasonable and in line with the PMLA's goals, which include preventing money laundering that has a transnational impact on financial systems, national sovereignty, and integrity.

It is important to keep in mind that while the accused's authority to give bail is restricted by the dual requirements listed in Section 45 of the 2002 Act, it cannot be argued that these conditions completely limit the amount of bail that can be granted. The Court is granted discretion under Section 45 of the 2002 Act that is judicial in character and governed by legal principles as opposed to being arbitrary or capricious. *Sub-section (6) of Section 212 of the Companies Act, 2013 ("CA")* puts comparable twin restrictions, as envisioned under Section 45 of the 2002 Act, on the issuance of bail where an individual is accused of a crime under *Section 447 of the CA*, which punishes fraud. Fraud has a minimum sentence of six months in jail and a maximum sentence of ten years, as well as a fine that is equal to the total amount of the fraud plus three times its total value.

As previously indicated, comparable twin requirements have been included in a number of other special laws, the legitimacy of which this Court has affirmed as reasonable and having a connection to the goals and objectives that the relevant special laws are intended to achieve. In addition to the specific laws, even general laws, like the 1973 code, have stipulations that must be met before the accused can be released on bond. Although it is considered a crucial right for the accused, the court does not automatically have to grant bail. Even in cases of general offenses, the request for bail must be granted based on objective, observable judicial standards that the SC has occasionally established, case by case.

The nonapplication of Section 45 of the 2002 Act's strictures with regard to anticipatory bail petitions filed under *Section 438 of the 1973 Code* has also been brought up as an incidental issue. This statement most likely has something to do with the observation made in paragraph 42 of Nikesh Tarachand Shah's case. An analogous dispute arose in the case of **The Asst. Director Enforcement Directorate v. Dr. V.C. Mohan**. As was already noted, participation in any procedure or activity related to the proceeds of crime that arises from criminal activity related to a scheduled offence is specifically considered an offense under this Act under Section 3. The SC held that stating in this ruling that Section 45 of the 2002 Act alludes to a scheduled offense under general law is one thing.

Although Section 45 does not mention Section 438 of the 1973 Code specifically, it is crucial to keep in mind that sub-section (1) expressly states that no one accused of a crime under this Act will be released on bail or on his own bond unless the requirements listed there are fulfilled. This is due to the non-obstante clause at the beginning of the sub-section. Due to the non-obstante clause in Section 45(1) of the PMLA, its provisions are required to take precedence under Section 71 of the PMLA. Not only that, but the 1973 code and the PMLA do not use the word 'anticipatory bail.'

When someone is arrested, Section 438 of the 1973 code directs that they be released on 'bail,' which is also referred to as anticipatory bail in court decisions. In Section 45(1), the word 'bail' is used in a general sense without referring to any particular sections of the 1973 code, such as Sections 437, 438, and 439 (which specify when bail can be granted for offenses that are not subject to bail, when it will compel the accused to appear before the next appeal court, and provide guidelines for granting bail to someone who is expecting to be arrested). Consequently, Section 65 of the 2002 Act states that the 1973's code provisions shall likewise apply to the Act's provisions to the extent that the Act's provisions do not contradict with the PMLA. In addition, Section 71 confers overriding effect upon the Act. Section 45 of the Act prohibits the 1973 code from being implemented in circumstances involving "bail" due to a non-obstante provision at the outset.

Therefore, anticipatory bail is only a bail that is issued before to an arrest. Because of this, the guidelines for granting bail in both circumstances are practically the same. The only difference is that in the instance of anticipatory bail, the accused must appear in person before the investigating authority while the inquiry is still underway. This has been decided in several SC rulings. Therefore, anticipatory bail is usually given in exceptional cases where the accused has been wrongfully charged with a crime in order to harass and dehumanize the accused. Therefore, even in the case of anticipatory bail, it would be nonsensical to disregard the limitations imposed on the granting of release under PMLA Section 45.

It is sufficient to note that it would be illogical and absurd to hold that someone who applies for bail after being arrested can only be granted that relief if they meet the twin requirements in addition to other requirements based on the 1973 code; on the other hand, when evaluating an application for bail under Section 438 of the 1973 Code, these requirements will not apply to someone who has not yet been arrested in connection with the same money-laundering offense. Whether bail is regular or anticipatory, it is subject to the conditions specified in Section 45 of the PMLA. In either case, the basic guidelines of Section 45 of the PMLA would apply prior to the pursuit of bail relief in connection with the money-laundering offense. Because this kind of activity directly affects the country's financial systems, sovereignty, and integrity, any other viewpoint would be detrimental and undermine the goals and intentions behind the strict legislation passed by the Parliament to stop money laundering and fight the threat.

As a result, the SC observed that in order to uphold the objectives of the PMLA, the essential principles and constraints of Section 45 of the PMLA must be applied and consistently taken into consideration, regardless of the form of the relief and the type of proceedings—under Section 438 of the 1973 code or, alternatively,



by utilizing the jurisdiction of the Constitutional Court. Strict rules are enacted by this specific law in an effort to counter the risk of money laundering.

In conclusion, the seriousness and complexity of stopping money laundering operations are highlighted by the SC's thorough examination and interpretation of the PMLA's provisions in a number of instances, including the seminal judgments in Nimesh Tarachand Shah and Vijay Madanlal Choudhary cases. The Court emphasized the need for strict measures to prevent and regulate money laundering, in line with international standards and commitments, and upheld the constitutional legality of the 'twin conditions' for granting bail under the PMLA. The Court upheld the validity of the modifications made to Section 45 of the PMLA, which eliminated earlier irregularities and guaranteed the consistent implementation of bail requirements for all Act offenses. The Court further clarified that in order to maintain the goals of the PMLA and successfully combat the threat of money laundering, which severely compromises financial systems and national integrity, the principles of Section 45 must be applied consistently, regardless of the type of relief sought, whether through regular bail or anticipatory bail.

#### **IV. Conclusion**

To sum up, the examination and precedent pertaining to Section 24 of the PMLA highlight its essential function in tackling the complex constitutional and pragmatic aspects involved in thwarting money laundering endeavours. The judiciary has rigorously scrutinized the evidentiary burdens outlined in Section 24 and, as demonstrated by significant cases like Nimesh Tarachand Shah and Vijay Madanlal Choudhary, has upheld their constitutional validity despite disagreements over whether or not they are consistent with fundamental principles like the presumption of innocence and the right against self-incrimination.

The subtle interactions between the legal presumption expressed in Section 24(a) and the discretionary presumption expressed in Section 24(b) are essential to this validation because they promote a prudent framework in which the burden of proof dynamically shifts to meet the needs of individual cases. This guarantees that those who are charged have significant opportunities to refute assumptions by providing relevant evidence, respecting the norms of due process and the presumption of innocence within the broader goals of the PMLA and global regulatory imperatives.

Further, the judiciary's acceptance of the 'dual criteria' for bail under the PMLA and its approval of Section 45 modifications intended to address procedural irregularities highlight a strong dedication to strengthening the regulatory framework against money laundering. Maintaining the uniform enforcement of bail requirements, regardless of the relief requested, demonstrates the judiciary's understanding of the need to protect the nation's financial institutions and integrity from the damaging consequences of money laundering.

In essence, the legal interpretation of Section 24 and its applicability highlights a balanced combination of regulatory effectiveness and legal strictness, a sign of a deliberate attempt to address the complex issues raised by money laundering while defending individual liberties and constitutional values. In the face of changing international challenges, this all-encompassing strategy highlights stakeholders' common commitment to protecting the integrity of financial institutions and preserving the rule of law.

#### **REFERENCES**

##### **Articles-**

1. Abhishek Gupta, Powers of the Enforcement Directorate Under Various Laws and the Rights of the Accused/Aggrieved Persons, Samisti Legal (January 22, 2022), <https://samistilegal.in/powers-of-the-enforcement-directorate-under-various-laws-and-the-rights-of-the-accused-aggrieved-persons/>
2. Anuj Berry and Nitesh Jain, The Supreme Court on constitutionality and interpretation of provisions of the Prevention of Money Laundering Act, 2002, Trilegal, August 17 2022, <https://www.rgnul.ac.in/PDF/f7ff0636-9075-47f2-8e17-a5ba7be7a3cf.pdf>
3. The Institute of Chartered Accountants of India, A Study on Prevention of Money Laundering Act, 2002, 15-02-2013, <https://kb.icai.org/pdfs/PDFFile5b2780d4bf42a8.02107843.pdf>
4. Mihir Wagh, Vijay Madanlal Choudhary, the Continued Boldening of the Enforcement Directorate, and the Threats to Citizens' Rights, NLU Delhi, January 24, 2023, <https://p39ablog.com/2023/01/vijay-madanlal-choudhary-the-continued-boldening-of-the-enforcement-directorate-and-the-threats-to->

- citizens-  
rights/#:~:text=In%20light%20of%20the%20Vijay,act%20while%20seeking%20bail%2C%20this
- On Procedure and Propriety: Travails of an Innocent Purchaser of Tainted Property under the PMLA Framework, March 16, 2024, <https://www.scconline.com/blog/post/2024/03/16/on-procedure-and-propriety-travails-of-an-innocent-purchaser-of-tainted-property-under-the-pmla-framework/#fn52>
  - Thyagarajan Narendran and Aishwarya Iyer, PMLA Judgement- what has the Supreme Court in the 545 Page Judgement? July 27, 2022, <https://lawbeat.in/amp/top-stories/pmla-judgment-what-has-supreme-court-held-details-of-judgment>
  - Esha Rathi, Grounds of Arrest: Navigating Section 19 of the PMLA, February 3, 2024, <https://indiacorplaw.in/2024/02/grounds-of-arrest-navigating-section-19-of-the-pmla.html#:~:text=Section%2019%20of%20the%20Prevention,offence%20punishable%20under%20the%20law>.
  - Madhav Khurana and Vignaraj Pasayat, Reverse Burden of Proof under Section 24 of the Prevention of Money Laundering Act, 2002– Obligation of the prosecution and the accused and at what stage can this provision be invoked, June 04, 2020,
  - <https://www.scconline.com/blog/post/2020/06/04/reverse-burden-of-proof-under-section-24-of-the-prevention-of-money-laundering-act-2002-obligation-of-the-prosecution-and-the-accused-and-at-what-stage-can-this-provision-be-invoked/>
  - Shanu Modi, Analysing Bail Jurisprudence under PMLA: Unravelling Problematic Twin Conditions, January 06, 2024, <https://taxguru.in/corporate-law/analysing-bail-jurisprudence-pmla-unravelling-problematic-twin-conditions.html>

### Cases-

- Vijay Madanlal Choudhary v. Union of India, 2022 SCC OnLine SC 929
- Narendra Singh & Anr. v. State of Madhya Pradesh, (2004) 10 SCC 699
- State of West Bengal v. Mir Mohammad Omar & Ors, (2000) 8 SCC 382
- Sucha Singh v. State of Punjab, (2001) 4 SCC 375
- Shambhu Nath Mehra v. The State of Ajmer, AIR 1956 SC 404
- Noor Aga v. State of Punjab & Anr., (2008) 16 SCC 417
- Seema Silk & Sarees & Anr. v. Directorate of Enforcement & Ors., (2008) 5 SCC 580
- Shri Prithvi Cotton Mills Ltd. & Anr. v. Broach Borough Municipality & Ors., (1969) 2 SCC 283
- The Asst. Director Enforcement Directorate v. Dr. V.C. Mohan., Criminal Appeal No.21 of 2022, decided on 4.1.2022.

### Acts-

- Code of Criminal Procedure, 1973, No.2, Acts of Parliament, 1974 (India)
- Companies act, 2013, No. 18, Acts of Parliament, 2013 (India)
- Evidence Act, 1872, No.1, Acts of Parliament, 1872 (India)
- Prevention of Money-Laundering act, 2002, No. 15, Acts of Parliament, 2003 (India)
- The Constitution of India, 1950
- The Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India)