

# *LSI Insight*

## Evolving Jurisprudence on Money-Laundering



**Background:**

Money laundering is the process of changing a huge sum of money obtained from crimes, into origination from a legitimate source. It's a serious financial crime that is employed by white-collar and street-level criminals in a similar way. To prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto, the Prevention of Money Laundering Act, 2002 ('PMLA') was enacted. PMLA enables government or public authority to confiscate the property earned from illegally gained proceeds and empower the Enforcement Directorate in the Department of Revenue, Ministry of Finance, to investigate the offence. Recently, the Govt. has tightened the noose on money launderers, significantly enhancing its vigil under the regime.



In an important judgment, the Supreme Court has laid down guidelines for grant of bail to persons not arrested during investigation on filing of chargesheet, so as to tackle “unnecessary bail matters” coming for hearing.

Bail can thus be tricky to navigate, and therefore it may be essential to take a look at the evolving jurisprudence on money laundering. In this context, we bring to you various noteworthy judicial pronouncements of the Supreme Court, High Courts, PMLA Court and District Courts with regard to money laundering.

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**\*\*\*Note: This compilation contains Rulings upto April 26, 2022.**

**I] Rulings related to grant of regular/anticipatory bail – Sec. 45 of the PMLA Act stipulates conditions in which a person accused of an offence, shall not be released on bail or on his own bond. Further, sec. 46 provides for application of CrPC (including provisions as to bails or bonds) to proceedings before Special Court.**

Sl. No.	Headline	LSI Citation	Summary
<b><u>Supreme Court Rulings</u></b>			
1.	SC: Anticipatory bail sought in connection with PMLA offence triggers Sec. 45 rigours	<a href="#"><u>[LSI-55-SC-2022 (NDEL)]</u></a>	The Apex Court observed that “ <i>Indeed, the offence under the PMLA Act is dependent on the predicate offence which would be under ordinary law, including provisions of Indian Penal Code. That does not mean that while considering the prayer for grant of anticipatory bail in connection with PMLA offence, the mandate of Section 45 of the PMLA Act would not come into play.</i> ”.
2.	SC: Frames guidelines for granting bail to persons not arrested during investigation on filing of chargesheet	<a href="#"><u>[LSI-795-SC-2021 (NDEL)]</u></a>	SC stated that the guidelines will apply if the following requisite conditions exist, i.e. if the accused - (i) was not arrested during investigation, and (ii) cooperated throughout in the investigation including appearing before Investigating Officer whenever called.
3.	SC: Grants temporary bail in money laundering case, on medical grounds	<a href="#"><u>[LSI-761-SC-2021 (NDEL)]</u></a>	Taking note of the fact about the treatment of the Petitioner, SC granted temporary bail to the Petitioner for a period of four months and specified that “ <i>...no application for extension of bail shall be entertained by this Court. The temporary bail granted to the petitioner is subject to the conditions that were imposed by the High Court...</i> ”.
4.	SC: Dismisses Chidambaram's anticipatory bail plea, cites "devastating consequences" of sharing white-collar crime's evidence	<a href="#"><u>[LSI-484-SC-2019 (NDEL)]</u></a>	SC denied anticipatory bail to former FM P. Chidambaram, stating that doing so will hamper the investigation and “this is not a fit case” for exercise of discretion to grant anticipatory bail to the Appellant.
5.	SC: Sec. 45(1) of PMLA, a “drastic provision”, strikes down twin conditions for grant of bail	<a href="#"><u>[LSI-86-SC-2017 (NDEL)]</u></a>	In this landmark judgment, a Division Bench of the Apex Court struck down the twin conditions laid down under Sec. 45(1) of the PMLA, calling Sec.45 a “drastic provision” and holding that the twin conditions were violative of Article 14 and 21 of the Constitution of India.
<b><u>High Court Rulings</u></b>			
6.	HC: Denies bail to Avantha Group Founder Gautam Thapar in money laundering case	<a href="#"><u>[LSI-130-HC-2022 (DEL)]</u></a>	HC ruled that “ <i>...considering the parameters of Section 45(1) PMLA as well as the gravity of the alleged offences, it cannot be held that the applicant is not guilty of the alleged offences or that he is not likely to commit any such offence while on bail.</i> ”.

7.	HC: PMLA provision barring bail petitions 'constitutional', pending SC decision, binding on accused Directors	<a href="#"><u>[LSI-29-HC-2022(MAD)]</u></a>	Remarking that merely because the entire Sec. 45 is not re-enacted would be of no consequence, since the provision even after being declared unconstitutional, does not get repealed or wiped out from the statute book and it only becomes unenforceable, HC highlighted that once the Parliament steps in and cures the defect pointed out by a Constitutional Court, the defect appears to be cured and the presumption of constitutionality is to apply to such provision, and held that there is a presumption in favour of constitutionality since the amended Sec. 45(1) of PMLA has not been struck down.
8.	HC: Grants bail to accused involved in money laundering through Hawala operations in Netherlands	<a href="#"><u>[LSI-891-HC-2021(P &amp; H)]</u></a>	HC held that the Petitioner qualifies the triple test u/s 45 of PMLA, and allowed the petition while remarking that “ <i>It is well settled principle of law that when the investigation is complete and charge sheet is filed in the Court, conclusion of trial is likely to take a long time, a person/accused like the present petitioner, who is aged about 63 years old, can be released on bail, subject to his furnishing bail/surety bonds and with a condition that his passport shall remain deposited with the Court/Prosecuting Agency and he will not leave the country without seeking prior permission of the Court.</i> ”.
9.	HC: Grants bail to former-MLA in PMLA case, challenge to Sec. 45 being subjudice before SC	<a href="#"><u>[LSI-51-HC-2022(P &amp; H)]</u></a>	Noting that the matter regarding validity of Sec. 45 of PMLA Act laying down twin conditions for granting bail is subjudice before SC, Court remarks that “ <i>...till the validating amendment to Section 45 of the PML Act, as made, post the decision in case Nimesh Tara Chand's case (supra), becomes upheld, by the Hon'ble Apex Court, thereupto, it may not be appropriate to fetter the personal liberty of the bail applicant-petitioner.</i> ”.
10.	HC: Grants bail to person detained for over 8 years for PMLA offense	<a href="#"><u>[LSI-1070-HC-2021(ORI)]</u></a>	Orissa HC granted bail to the Petitioner, prosecuted by CBI, after pleading guilty of the crime of committing fraud and deceiving investors, on finding that he had already served the sentence of seven years imprisonment. However, Court specified that the release shall be subject to some stringent terms and conditions.
11.	HC: Denies bail to persons accused of conducting international Hawala operation	<a href="#"><u>[LSI-618-HC-2021(DEL)]</u></a>	On finding that the Petitioners are involved in various criminal cases in India and abroad and that two Red Corner Notices have also been issued by the Interpol against one of the Petitioners, HC held that there is a



			further likelihood of them fleeing the country to evade trial in case they are enlarged on bail.
12.	HC: Grants bail to RJD MP arrested for money laundering in fertilizer scam	<a href="#"><u>[LSI-576-HC-2021(DEL)]</u></a>	Delhi HC granted bail to RJD MP Amarendra Dhari Singh ('Petitioner' – 'Accused') who was arrested by ED in a money laundering case related to fraudulent import of fertilizers, and against whom Income Tax Act prosecution was lodged in regard to the same allegations. Court remarked that <i>"There are no specific allegations that the petitioner in any manner over the last many years since the filing of the complaint way back in the year 2013 had in any manner tried to tamper with the evidence or threaten the witnesses."</i>
13.	HC: Denies pre-arrest bail to Journalist in Ponzi schemes fraud, pending investigation under PMLA	<a href="#"><u>[LSI-427-HC-2021(ORD)]</u></a>	On finding that material has been collected indicating that the Petitioner was lobbying in the Ministry of Finance for the ponzi firm and that he has also applied arm-twisting techniques to collect money from many ponzi firms knowing their illegal activities in the camouflage of business transaction, the Court opined that <i>"His custodial interrogation is likely to throw more light regarding involvement of many other influential people in growth of the ponzi firms and the commission of offence alleged which is an economic offence wherein lacs of gullible depositors were duped."</i>
14.	HC: Grants ad-interim bail to person assisting Chinese-resident posing as Indian, in money laundering	<a href="#"><u>[LSI-344-HC-2021(DEL)]</u></a>	Delhi HC granted ad-interim bail to Petitioner, who allegedly assisted a Chinese person posing as an Indian resident basis forged documents, in money laundering and forged capital cooperation, in view of the Petitioner's health, and also owing to the fact that he is in custody since January 15, 2021.
15.	HC: Equates money-laundering to 'financial terrorism' posing threat to nation's sovereignty; Denies bail	<a href="#"><u>[LSI-479-HC-2020(ORD)]</u></a>	Orissa HC rejected Petitioner's bail application on finding that the alleged offence of money laundering committed by the Petitioner is serious in nature and Petitioner's role is not unblemished, and remarked that <i>"The offence of Money Laundering is nothing but an act of financial terrorism that poses a serious threat not only to the financial system of the country but also to the integrity and sovereignty of a nation."</i>
16.	HC: Grants anticipatory-bail to individual accused of duping innocent depositors by laundering their money	<a href="#"><u>[LSI-1004-HC-2021(ORD)]</u></a>	Holding that if the Investigating Officer has no reason to believe that the accused will abscond or disobey the summons and when he has in fact throughout cooperated with the investigation, there arises no compulsion

			to arrest the accused, HC observed that there is no material to show that since the inception of investigation the Petitioner has made any attempt to tamper with the evidence or influence the witnesses or that he has ever resorted to abscondence.
17.	HC: Rejects plea seeking anticipatory bail considering serious money-laundering allegations against accused	<a href="#">[LSI-903-HC-2021(JHAR)]</a>	Considering the serious allegations against the Petitioner and in the absence of any material to suggest that the Petitioner is not guilty of the offence and that he is not likely to commit any offence, while on bail, Court opined that “... <i>this is not a fit case, where the privilege of anticipatory bail be given to the petitioner.</i> ”.
18.	HC: Grants bail to MDs of developer companies imprisoned for alleged money laundering	<a href="#">[LSI-457-HC-2021(P &amp; H)]</a>	Punjab & Haryana HC granted bail to Managing Directors of developer Companies, who were alleged to have committed money laundering by playing fraud and acting dishonestly, subject to the satisfaction of the Trial Court, and subject to deposit of the Petitioners' Passports and furnishing of heavy local sureties.
19.	HC: Denies bail to NRI Director accused of money laundering, cites non-cooperation in investigation	<a href="#">[LSI-190-HC-2022(MAD)]</a>	Madras HC dismissed application filed by an NRI Director ('Petitioner') accused of money laundering, on finding that the Petitioner is widely connected with other parts of the world and not inclined to be cooperative with the investigation in its true sense.
20.	HC: Citing “typical money laundering trail”, possibility of evidence tampering, rejects bail applications	<a href="#">[LSI-193-HC-2022(MAD)]</a>	Madras HC dismissed bail applications filed by persons ('Petitioners') arrested and remanded to judicial custody for offence punishable under PMLA, on the ground that if the Petitioners were released the evidence would be tampered with.
21.	HC: 2018 Amendment Act revives twin conditions for bail in Sec. 45(1) PMLA	<a href="#">[LSI-204-HC-2022(BOM)]</a>	Underscoring that certainly, the legislature cannot by way of amendment undo the decision of Courts, HC clarifies that at the same time, the Legislature has power to rectify through amendment the defect noticed or highlighted by the decision of the Court, and elucidates that the purpose behind amendment is not to overrule the decision of the Court but simply to correct it and to remove the basis on which the provision has been declared as unconstitutional.
22.	HC: Grants bail to individual in money-laundering case, on grounds of infirmity	<a href="#">[LSI-230-HC-2022(P &amp; H)]</a>	Punjab & Haryana HC confirmed the interim bail granted to an individual in a PMLA case, on finding that the Petitioner would be covered under proviso to Sec. 45(i) of PMLA as he is a sick person requiring urgent medical treatment, especially in view of the fact that while in

			custody for a period of about 3 months, he was repeatedly advised medical care.
23.	HC: Rejects bail application, given non-fulfilment of twin conditions u/s 45 of PMLA	<a href="#">[LSI-238-HC-2022(BOM)]</a>	Stating that the Applicant cannot be kept in custody for inordinate long time, and noting ED's submission for separation of Applicant's trial from the accused who are not yet arrested, Court concluded that <i>"It would be beyond logic, reason and propriety that the arrested accused would have to remain in jail as an under-trial prisoner till all the absconding accused are arrested, though he cannot be granted bail because of the restrictions under Section 45 of the PMLA."</i>
24.	HC: Denies bail to accused in PMLA case involved in diverting gold-jewellery scheduled for export	<a href="#">[LSI-256-HC-2022(CAL)]</a>	Calcutta HC refused to grant bail to an accused ('Petitioner') in a PMLA case, on finding that the Petitioner with the help of his son, wife and brother adopted the procedure contained in 113(k) of the Customs Act to divert gold jewellery schedule for exportation in domestic market.

**II] Rulings related to attachment of property involved in money laundering – Sec. 5 of the PMLA Act provides for attachment property involved in money-laundering.**

**High Court Rulings**

25.	HC: Stays PMLA AT order directing non-attachment of property, suggests joint auction	<a href="#">[LSI-992-HC-2021(GUJ)]</a>	Gujarat HC stayed an order passed by the Appellate Tribunal, PMLA directing non-attachment of certain mortgaged property in which the Respondent-Bank is a secured creditor on the ground that the property has not been derived or acquired, directly or indirectly through the proceeds of crime.
26.	HC: Directs status quo on attachment order till Appellate Tribunal, PMLA becomes functional	<a href="#">[LSI-969-HC-2021(DEL)]</a>	Delhi HC partly allowed Petitioner's appeal against the order passed by the Adjudicating Authority under PMLA, inter alia provisionally attaching the Petitioner's retirement benefit, and directed parties to maintain status quo till the Petitioner's appeal and stay application are taken up by the Appellate Tribunal, PMLA.
27.	HC: Directs parties to maintain status-quo till availability of PMLA Appellate Tribunal	<a href="#">[LSI-445-HC-2021(DEL)]</a>	HC noted that ED does not dispute that presently Appellate Tribunal is not functioning, and accordingly, directed parties in the PMLA proceeding to maintain status quo till the Petitioners' appeal/application for interim protection is taken up for consideration by the PMLA Appellate Tribunal, subject to the Petitioner filing its appeal within ten days from the date of this order.

28.	HC: Other agencies not precluded from conducting investigations for offences under PMLA Schedule	<a href="#"><u>[LSI-829-HC-2021(DEL)]</u></a>	Delhi HC held that investigations for distinct offences under the IPC and under Prevention of Money Laundering Act can be carried out by different agencies, as Sec. 45(1) of the PMLA doesn't exclude other agencies from conducting investigations into the offences mentioned in the schedule to the PMLA.
29.	HC: ED cannot claim deemed extension of provisional-attachment order basis SC order extending limitation	<a href="#"><u>[LSI-775-HC-2021(CAL)]</u></a>	Analyzing relevant provisions under PMLA and the said SC order, Court observed that " <i>Adjudicating authority/Respondent No. 2 cannot call himself a litigant or advocate or a Tribunal or a Court or a quasi-judicial authority within the ambit and scope of the aforesaid order of the Hon'ble Supreme Court in Suo moto Writ Petition (Civil) No. 3 of 2020...in defending the action of not passing the order under Section 8 (3) of the aforesaid Act for extension or confirmation of the order dated 11th December, 2020...</i> ".
30.	Calcutta HC temporarily restrains PMLA authorities from taking action against Kolkata Knight Riders	<a href="#"><u>[LSI-261-HC-2021(CAL)]</u></a>	Remarking that Sec. 5(3) is very clear as to the period of 180 days operating in respect of orders of attachment and says in positive language that the order of attachment shall cease to have effect after the expiry of such period, HC opined that " <i>The said restriction/stipulation does not relate to any period of limitation prescribed under the general or special laws pertaining to institution or termination of "proceedings" but directly deals with the tenure of operation of the order of provisional attachment.</i> ".
31.	HC: PMLA Adjudicating Authority not rendered functus officio after 180 days from provisional attachment order	<a href="#"><u>[LSI-323-HC-2021(CAL)]</u></a>	HC ruled that the Adjudicating Authority under PMLA does not become functus officio on expiry of 180 days from passing of the order of provisional attachment ('PAO') unless such order is confirmed u/s 8(3) of PMLA in view of Sec. 5(3).
32.	HC: Vacates Single Judge order holding PMLA Adjudicating Authority non-litigant in money-laundering matter	<a href="#"><u>[LSI-968-HC-2021(CAL)]</u></a>	Calcutta HC allowed appeal filed by the PMLA Adjudicating Authority challenging the portion of the Single Judge order holding that the Appellant authorities are to permit the Petitioners to operate the bank account and postal accounts by declaring the provisional attachment order as having lost its efficacy, as the confirmation order wasn't passed within 180 days in terms of Sec. 5(3) of PMLA.



33.	HC: Properties purchased before committing PMLA offence, not 'proceeds of crime'; Quashes attachment-order	<a href="#">[LSI-214-HC-2022(GUJ)]</a>	
<b><u>PMLA Special Court Rulings</u></b>			
34.	PMLA Special Court: Directs ED to release Firestar International's attached assets in Liquidator's favour		PMLA Special Court allowed application u/s 8(7) and 8(8) of PMLA filed by Punjab National Bank ('Applicant') thereby permitting release of certain assets linked to fugitive offender Nirav Modi attached by ED ('Respondent'), mortgaged with the Applicant, in favour of the Liquidator appointed by NCLT for Nirav Modi's company, Firestar International Ltd.

### III] Rulings related to interpretation of PMLA provisions

<b><u>High Court Rulings</u></b>			
35.	HC: Construes amended PMLA provision retrospectively; Upholds reduced penalty on Banks	<a href="#">[LSI-564-HC-2019(DEL)]</a>	HC reiterated that a beneficial legislation must be construed retrospectively, and ruled that <i>"It would be unfair to impose a higher punishment than as prescribed under a statute as currently in force, merely because the person visited with such punishment has committed the offence/default prior to the legislation being enacted."</i>
36.	HC: Issues notice over petition challenging PMLA provision empowering ED to act as Civil Court	<a href="#">[LSI-44-HC-2021(RAJ)]</a>	Observing that the ED is a Department in the Ministry of Finance and hence litigant before the PMLA Tribunal, HC noted that <i>"Article 50 requires that the State shall take steps to separate the judiciary from the executive in the public services of the States. Simply stated, it means that there shall be a separate judicial service free from the executive control."</i> , and relied on SC judgment in UoI vs. Rajiv Gandhi in this regard.

**IV] Rulings related to quashing of summons** – Sec. 11 stipulates power regarding summons, production of documents and evidence, etc. Sub-section 2 provides that all the persons so summoned shall be bound to attend in person or through authorised agents, as the Adjudicating Authority may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

<b><u>High Court Rulings</u></b>			
37.	HC: Director liable to face trial when company accused of PMLA offences	<a href="#">[LSI-1106-HC-2021(MAD)]</a>	Court opined that <i>"...even assuming the finding of the adjudicating authority has reached finality, the summons issued to the petitioner herein cannot be treated as premature or illegal, since the petitioner is liable to face the trial both in his individual</i>

			<i>capacity as well as a person in-charge and responsible for the conduct of the business of...Company, which has alleged to have contravened the provisions of the PMLA.”.</i>
38.	HC: Rejects plea to quash summons under PMLA for offence committed during commercial transaction	<a href="#"><u>[LSI-913-HC-2021(JHAR)]</u></a>	HC remarked that “...merely because offence was committed during the course of commercial transaction would not be sufficient to hold that the complaint did not warrant a trial. This is required to be decided on the basis of the evidence to be led at the trial in the complaint case.”, and thus holds that, no case of cutting-down the criminal trial has been made out, stating that “In view of the allegations in the complaint it cannot be said that the trial if conducted would be an empty formality.”.
39.	HC: Dismisses D.K. Shivakumar's writ challenging ED summons pursuant to income-tax search u/s 132	<a href="#"><u>[LSI-487-HC-2019(KAR)]</u></a>	Rejecting Petitioners' stand that proceedings under PMLA cannot be continued as offence under IT Act are not ‘scheduled offence’, which is sine qua non for the provisions of PMLA being attracted, HC explains that “proceedings can be against persons who are accused of a scheduled offence or against persons who are accused of having committed an offence of money laundering and also persons who are found to be in possession of the “proceeds of crime”. It is not necessary that a person has to be prosecuted under the PML Act only in the event of such person having committed schedule offence.”.

## V] Others

<u>High Court Rulings</u>			
40.	HC: Quashes PMLA proceedings against spinning-mill, cites fake bank account transactions	<a href="#"><u>[LSI-95-HC-2022(MAD)]</u></a>	Madras HC quashed prosecution on the file of Principal Sessions Judge against a spinning mill (‘Petitioner’), opined that the Petitioner in whose name a person opened a fake bank account and parked certain sum, cannot be prosecuted for money laundering.
41.	HC: Stays penalty on payment facilitator for PMLA violation, asks FinMin to clarify position	<a href="#"><u>[LSI-12-HC-2021(DEL)]</u></a>	Delhi HC stayed order passed by Financial Intelligence Unit-India (‘FIU’) imposing a penalty of Rs. 96 lakh on Paypal Payments Pvt. Ltd. (‘Petitioner’) for violation of PMLA provisions, and directed Ministry of Finance to constitute a Committee with an RBI nominee and clarify their position as to whether companies like the Petitioner who claim to be facilitators of monetary transactions, both in foreign exchange and in Indian Rupees, ought to be

			categorised as 'payment system operators' and hence 'reporting entities' under PMLA.
<b><u>PMLA Court</u></b>			
42.	PMLA Court remands Maharashtra Minister Nawab Malik to ED custody for money laundering	--	PMLA Court remanded Maharashtra Cabinet Minister Nawab Malik ('Accused') to ED custody till March 3, 2022, on grounds that the accused had not co-operated in the investigation and <i>prima facie</i> had reasonable grounds to believe that the accusations were well-founded under PMLA.
43.	AT PMLA: ED Assistant Director duly authorized by Competent Authority, eligible to file appeal	<a href="#"><u>[LSI-555-AT PMLA-2021(ND EL)]</u></a>	AT PMLA ruled that it is not necessary that an appeal before it on behalf of the ED has to be filed by the Director only, who is the head of ED, and remarked that " <i>If any of the officers in the same class of officer (section 48(a) of the said Act) has taken a decision to file an appeal then...there is no illegality.</i> ".
44.	AT PMLA: Upholds penalty on Co., MD for ODI in step-down subsidiaries without RBI approval	<a href="#"><u>[LSI-254-AT PMLA-2020(ND EL)]</u></a>	AT PMLA upheld the penalty of Rs. 70 lakh and Rs. 20 lakh each imposed on Appellant Co. and its Chairman and MD respectively, for making investments in its step-down subsidiaries incorporated overseas, without obtaining RBI's prior approval, and refused to reduce penalty as well as prayer for alternate reliefs.
<b><u>District Court Rulings</u></b>			
45.	Delhi Dist. Court directs presentation of PMLA complaint to proper Court, given lack of territorial-jurisdiction, for offence committed in Mumbai	--	Delhi District Court held that it has no territorial jurisdiction over a complaint under PMLA instituted by the ED against a company and 2 individuals who were its Director and Executive Director respectively during the period of commission of the alleged scheduled offences under PMLA.

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