NATIONAL JUDICIAL ACADEMY

REPORT ON REFRESHER COURSE FOR PMLA COURTS
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The two day National Conference was attended by 48 District and Sessions Court judges from 20 High Court of India. The conferences delved into examination of critical themes relating to the substantive and procedural aspects of money laundering. The refresher course focused primarily on the evolving legal landscape surrounding money laundering and associated financial frauds. Seminal topics on concept and modalities of money laundering; nuances and intricacies of bail jurisprudence in money laundering cases; the substantive and procedural aspects of the power to arrest in such cases; appreciation of evidence and burden of proof; and search, seizure, attachment and disposal of property, formed part of the discourse.

Session 1 - Money Laundering: Concept and Modalities
Speakers*: Justice Sonia Gokani & Justice Pushpendra Singh Bhati*

The session initiated by explaining the evolution of the concept of "Money Laundering" (ML). Simplifying the meaning of ML and its *modus operendi*, it was explained as a process by which illicitly generated "dirty" money is disguised and projected as legitimate "clean" money, typically by concealing its "origin" through complex financial transactions and "layering", "integration" and "use" in the mainstream economy. Reference was made to the statute, *Prevention of Money Laundering Act, 2002* (PMLA), wherein ML is recognized as an offence which occurs when any person directly or indirectly attempts to indulge, knowingly assists, or is involved in activities connected with the "proceeds of crime" such as concealment, possession, acquisition, use or projecting it as untainted property.

ML is closely associated with "organized crime" because it is commonly used by structured criminal enterprises, those which generally would include narcotics trafficking, fraud, corruption, terrorism financing and economic offences, etc. to convert illegal profits or gains into seemingly lawful assets. Laundering enables these networks to reinvest such illicit proceeds out of predicate offences back into legitimate markets, sustain criminal operations, and evade law enforcement scrutiny. This systemic exploitation of financial systems makes ML both a transnational and organized criminal challenge that undermines economic integrity and governance. Section 3 of PMLA defines ML as an offence. *Vijay Madanlal Choudhary v. Union of India*, (2022) 10 SCC 24, was referred to explain the interpretation and scope of Section 3 of PMLA.

It was explained using the Supreme Court decision in *Vijay Madanlal Choudhary v. Union of India*, that money laundering is a continuous offence. It continues as long as proceeds remain concealed, used or projected as untainted property and therefore the PMLA can apply to conduct occurring after its commencement even if the underlying predicate offence predates the notification of the statute or its schedule(s). This principle was reaffirmed by later judicial commentary noting that the offence does not conclude with a single act, but persists while the illicit gains are handled. It was further clarified that, where the predicate offence itself is discharged or quashed, the basis for money-laundering prosecution may collapse in the absence of a valid scheduled offence, as there can be no proceeds of crime left.

Internationally the Financial Action Task Force (FATF) sets the global standards for combating money laundering and related threats like terrorism financing, encouraging member states to align domestic laws with best practices for surveillance, reporting (e.g., KYC norms) and cross-border cooperation. India's PMLA regime reflects these norms by criminalizing laundering conduct, imposing rigorous reporting obligations on financial institutions, and providing for asset attachment and confiscation. In India enforcement is led by the Enforcement Directorate (ED), which is empowered to investigate and prosecute offences under PMLA. ED employs judicially sanctioned powers of attachment and adjudication, and cooperates internationally under treaties and mutual legal assistance mechanisms (under the MLAT) as provided under Section 56 of PMLA. Earlier, in *P. Chidambaram v. Directorate of Enforcement*, (2020) 13 SCC 791 the apex court dealt with procedural aspects of PMLA investigations. In that case the Supreme

Court affirmed that ML offences are "distinct from predicate offences" and reinforced the seriousness of evidentiary standards in complex financial crime cases.

Session 2 - Nuances and Intricacies of Bail
Speakers*: Justice Sonia Gokani, Justice Pushpendra Singh Bhati & Justice G.R. Swaminathan*

The session focused on the jurisprudence of bail in relation to offences under the PMLA. The discourse delved into examining carefully the delicate balance between the imperatives of personal liberty and the compelling State interest in combating serious economic offences. ML is treated as a grave offence with transnational ramifications, justifying a distinct and stringent bail framework. Courts have consistently recognised that while the right to bail flows from Article 21 of the Constitution of India, offences under the PMLA stand on a different footing due to their complex nature, societal impact, and linkage with organized crime and economic destabilization. Section 45 of the PMLA lays down special conditions for the grant of bail, commonly referred to as the "twin bail conditions". The court under the "twin condition" needs to be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offence, and is not likely to commit any offence while on bail. Initially, these conditions were read down by the Supreme Court in *Nikesh Tarachand Shah v. Union of India*, (2018) 11 SCC 1, on the ground that they were unconstitutional and violative of Articles 14 and 21. However, Parliament subsequently amended Section 45 to cure the defect, and the validity of the provision was upheld in *Vijay Madanlal Choudhary v. Union of India*, (2022) 10 SCC 1, where the Court reaffirmed the legislative intent to impose a stricter bail regime for money laundering offences.
The doctrine of "twin conditions" significantly constrains judicial discretion, yet it is not absolute. The Supreme Court in *Vijay Madanlal Choudhary* clarified that the satisfaction required under Section 45 is only *prima facie* in nature, and does not amounts to a mini-trial. The court must assess the material placed by the prosecution to determine whether reasonable grounds exist, without conclusively adjudicating guilt. Earlier, in *Gautam Kundu v. Directorate of Enforcement*, (2015) 16 SCC 1, the Court had underscored that economic offences constitute a class apart and warrant a different approach in bail matters. At the same time, judicial pronouncements caution against mechanical denial of bail and stress that prolonged incarceration without trial itself offends constitutional guarantees. Moreover, is was asserted that, the Supreme Court has reiterated that the seriousness of the offence alone cannot be the sole ground for denial of bail. In *P. Chidambaram v. Directorate of Enforcement*, (2019) 9 SCC 24, the Court granted bail after noting that the investigation was substantially complete and that continued custody was not warranted merely as a punitive measure. Similarly, in *Rohit Tandon v. Directorate of Enforcement*, (2018) 11 SCC 46, the Court emphasised the need to consider the nature of allegations, the role attributed to the accused, and the likelihood of tampering with evidence while deciding bail under PMLA.
While discussing on the issues of "anticipatory bail" under the PMLA, it was explained that, the PMLA does not expressly bar anticipatory bail, and courts have held that relief under Section 438 of the Code of Criminal Procedure is not excluded. However, given the stringent framework of Section 45, anticipatory bail is granted sparingly. The general principles governing anticipatory bail, as laid down in *Gurbaksh Singh Sibbia v. State of Punjab*, AIR 1980 SC 1632, continue to apply, subject to the rigours of the PMLA. Courts assess factors such as the gravity of the offence, the necessity of custodial interrogation, and the conduct of the accused. Broader bail guidelines articulated in *Satender Kumar Antil v. CBI*, (2022) 10 SCC 51, (although not applicable specifically to PMLA) would also influenced judicial thinking, and hence, the arrest and detention should not be treated as a routine under PMLA too.

Session 3- Power of Arrest: Substantive and Procedural Aspects
Speakers*: Justice Sonia Gokani & Justice G.R. Swaminathan*

The session rolled out with the assertion that, since power or sanction to arrest depicts the might of State to refrain or deny one's Constitutional and often fundamental Rights to freedom, the Indian jurisprudence has consistently emphasized that arrest is not to be used as a matter of course but must be exercised with

restraint, fairness, and accountability. The courts have sought to balance the legitimate interests of investigation and enforcement with the fundamental rights to personal liberty and dignity guaranteed under Article 21 of the Constitution. It was underscored that the power of arresting must strike a balance between societal interest in effective law enforcement and the individual's right to liberty. In *Joginder Kumar v. State of U.P*., AIR 1994 SC 1349, the Supreme Court held that arrest cannot be made merely because it is lawful to do so under a statute; the necessity of arrest must be justified. This principle was reinforced in *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273, where the Court cautioned against routine and mechanical arrests, emphasizing that arrest should be the last resort and must be backed by reasons demonstrating its necessity.

The session saw a spirited discussion discerning Enforcement Case Information Report (ECIR) *versus* First Information Report *(*FIR) especially in the light of economic offenses recognized under PMLA. A critical distinction in economic offence jurisprudence, particularly under the Prevention of Money Laundering Act, 2002 (PMLA), lies between an ECIR and a FIR. The Supreme Court in *Vijay Madanlal Choudhary v. Union of India*, (2022) 10 SCC 1, clarified that an ECIR is an internal document of the Enforcement Directorate and is not equivalent to an FIR under the Code of Criminal Procedure. Consequently, non-supply of the ECIR to the accused does not ipso facto violate constitutional rights, provided the grounds of arrest are duly communicated in compliance with statutory and constitutional requirements. The jurisprudence has evolved to mandate that prior to arrest it must be preceded by the formation of a "reason to believe" based on material in possession of the arresting authority. Under general criminal law, this requirement flows from Sections 41 and 41A CrPC, while under the PMLA it is specifically embedded in Section 19. In *P. Chidambaram v. Directorate of Enforcement*, (2019) 9 SCC 24, the Supreme Court reiterated that arrest in economic offences must be justified by custodial necessity and cannot be used as a punitive or investigative shortcut. The requirement of communicating the grounds of arrest is a constitutional mandate under Article 22(1). Courts have emphasized that such communication must be meaningful and effective, enabling the arrested person to seek legal remedies. In *Madhu Limaye v. Sub-Divisional Magistrate*, AIR 1971 SC 2486, the Supreme Court stressed that the grounds must be communicated with sufficient clarity. More recently, in *Pankaj Bansal v. Union of India*, (2023) 7 SCC 1, the Court held that under PMLA, the grounds of arrest must be furnished in writing, reinforcing transparency and procedural fairness. The interplay between Sections 19 and 50 of the PMLA has been a subject of significant judicial scrutiny. Section 19 governs the power of arrest, while Section 50 confers powers of summons, inquiry, and recording of statements. In *Vijay Madanlal Choudhary*, the Supreme Court clarified that statements recorded under Section 50 are not hit by Article 20(3) at the stage of inquiry, but this does not dilute the safeguards applicable once arrest is effected under Section 19. The Court emphasized that the exercise of arrest power must remain distinct from the inquisitorial powers under Section 50 and must independently satisfy statutory thresholds.

Session 4 - Burden of Proof and Appreciation of Evidence
Speakers*: Justice S. Nagamuthu & Mr. E.V. Chandru*

The session underpinned the departure from the regular procedures practiced under the Criminal Procedure Code, especially while dealing with topics such as appreciation of evidence; and burden of proof. Under section 24 of the PMLA, introduces a "reverse burden" to address the inherent challenges of tracing illicit financial flows, judicial interpretation has ensured that such provisions operate within constitutional boundaries. The admissibility of statements recorded by Enforcement Directorate officers, coupled with rebuttable presumptions, underscores the importance of careful judicial evaluation of evidence. Section 24 of the PMLA marks a significant departure from traditional criminal law by shifting the burden of proof onto the accused. Once the prosecution establishes that the property in question is linked to a scheduled offence, the accused is required to prove that such property is not "proceeds of crime". The Supreme Court has upheld the constitutional validity of this reverse burden, observing that money laundering is a distinct and serious offence with international ramifications. In *Vijay Madanlal Choudhary v. Union of India*, (2022) 10 SCC 1, the Court held that Section 24 operates only after the prosecution discharges its initial

burden and does not dispense with the requirement of foundational facts. The provision was thus interpreted as a rule of evidence rather than a presumption of guilt.

The appreciation of evidence under the PMLA demands a contextual and holistic approach. Courts have emphasized that mere registration of a scheduled offence is not sufficient; there must be material demonstrating a nexus between the accused and the proceeds of crime. In *B. Rama Raju v. Union of India*, (2011) 164 DLT), it was observed that money laundering is an independent offence, and evidence must establish involvement in laundering activities beyond the predicate offence. This approach reinforces that the reverse burden does not dilute judicial scrutiny of evidence.

A contentious issue in PMLA jurisprudence concerns the admissibility of statements recorded by officers of the Enforcement Directorate under Section 50 of the Act, particularly in light of Article 20(3) of the Constitution. The Supreme Court has consistently held that officers of the Enforcement Directorate are not "police officers" for the purpose of Section 25 of the Evidence Act. In *K.T.M.S. Mohammed v. Union of India*, (1992) 3 SCC 178, the Court ruled that confessional statements made to such officers are admissible, provided they are voluntary. This position was reaffirmed in *Vijay Madanlal Choudhary*, where the Court clarified that the protection against self-incrimination applies at the stage of accusation, and statements recorded during inquiry do not automatically violate Article 20(3). However, courts have cautioned that voluntariness remains a *sine qua non*, and any evidence of coercion or compulsion would render such statements unreliable. Moreover, presumptions and reverse burden clauses under the PMLA has been justified on the ground of compelling state interest in tackling complex economic crimes. Similar to statutory presumptions under other special laws, these provisions are viewed as rebuttable and not conclusive. In *Noor Aga v. State of Punjab*, (2008) 16 SCC 417, though arising under the NDPS Act, the Supreme Court laid down principles that continue to guide PMLA cases, holding that reverse burden provisions must be applied strictly and only after the prosecution establishes foundational facts. This reasoning has informed the interpretation of Section 24, ensuring that constitutional safeguards are not eclipsed by statutory presumptions.

Session 5 - Search, Seizure, Attachment and Disposal of Property
Speakers*: Justice S. Nagamuthu & Mr. E.V. Chandru*

The last session for the day was interactive. The participating judges posed several questions, sought clarifications, and shared best practices. The law relating to search, seizure, attachment and disposal of property reflects the State's effort to effectively investigate and deter serious economic offences while safeguarding constitutional guarantees of property and personal liberty. Although PMLA confers wide powers on enforcement agencies (ED), but these powers are circumscribed by procedural safeguards and judicial oversight. The evolving jurisprudence demonstrates a consistent attempt to balance investigatory efficacy with fairness, proportionality, and due process. Search and seizure powers under the PMLA are primarily governed by Sections 17 and 18, which authorize designated officers to conduct searches and seize records or property upon recording a "reason to believe" that proceeds of crime are involved. The Supreme Court has emphasized that such powers, though expansive, are not unfettered. In *Vijay Madanlal Choudhary v. Union of India*, (2022) 10 SCC 1, the Court upheld the validity of these provisions, while stressing that the requirement of recording reasons and subsequent reporting to the Adjudicating Authority serves as an important procedural safeguard. Earlier, constitutional principles articulated in *Pooran Mal v. Director of Inspection*, (1974) 1 SCC 345, affirmed that while illegally obtained evidence is not per se inadmissible, the exercise of search and seizure must conform to statutory mandates to prevent arbitrariness. Provisional attachment under Section 5 of the PMLA is a preventive measure aimed at preserving property suspected to be proceeds of crime so that it does not dissipate during investigation. The attachment is temporary and subject to confirmation by the Adjudicating Authority. In *B. Rama Raju v. Union of India*, (2011) 164 DLT 149, principles later endorsed by the Supreme Court, it was held that provisional attachment cannot be mechanical and must be founded on tangible material establishing a nexus between the property and the scheduled offence. The Supreme Court in *Vijay Madanlal Choudhary* reiterated that

attachment proceedings are civil in nature and distinct from criminal prosecution, thereby reinforcing the layered safeguards built into the statutory scheme. The receipt, management, and disposal of confiscated property are governed by Sections 8 and 9 of the PMLA, read with the rules framed thereunder. Once confiscation is ordered after trial, the property vests absolutely in the Central Government. Courts have emphasized that until final adjudication, authorities act as custodians and must ensure proper management to preserve value. In *Union of India v. Hassan Ali Khan*, (2011) 10 SCC 235, the Supreme Court underscored the importance of safeguarding attached assets to prevent loss or mismanagement. The statutory framework thus seeks to ensure that confiscation is not punitive in anticipation, but consequential upon due adjudication. Judicial scrutiny of asset seizure powers has consistently underscored proportionality and reasoned exercise of discretion. In *Teesta Atul Setalvad v. State of Gujarat*, (2018) 2 SCC 372, though not under PMLA, the Supreme Court reaffirmed that seizure of property must have a clear nexus with the alleged offence and cannot be used as an instrument of coercion. Within the PMLA context, *Vijay Madanlal Choudhary* clarified that seizure and attachment are justified only when linked to "proceeds of crime" as statutorily defined, and that mere possession of property by an accused does not automatically warrant attachment without such linkage.

The program concluded with active participation of the judges. A very successful discourse culminated by discussing various best practices and discerning the exceptions under the PMLA, 2002.