

'IN PMLA, BAIL CONDITIONS, BURDEN OF PROOF INFRINGE RIGHTS'

THE Supreme Court's review of its decision to uphold key provisions of the Prevention of Money Laundering Act (PMLA), 2002, has reignited debate over balancing stringent anti-money laundering measures with individual rights. This review, currently before a three-judge bench of Justices Surya Kant, C.T. Ravikumar, and Ujjal Bhuyan, follows the court's landmark verdict in *Vijay Madanlal Choudhary v. Union of India* (2022). In July 2022, the Supreme Court endorsed several PMLA provisions, enhancing the Enforcement Directorate's (ED) powers and tightening the legal framework for combating money laundering. Critics, however, argue that the ruling infringes on fundamental rights, particularly regarding bail conditions, the reversal of the burden of proof, and the ED's extensive powers.

Shekhar Singh spoke with legal practitioner **Akshat Khetan** to explore the complexities of the PMLA and the implications of the Supreme Court's review.

Can you summarise the July 2022 Supreme Court decision in *Vijay Madanlal Choudhary v. Union of India*? What key PMLA provisions did the court uphold?

The July 2022 decision was a pivotal moment for PMLA enforcement. The Supreme Court upheld key provisions, reinforcing its stringent framework against money laundering. The court maintained broad definitions of "proceeds of crime" and "money laundering" and supported the ED's extensive powers, including search, seizure, arrest, and property attachment. This ruling emphasised the seriousness of money laundering but also raised concerns about its impact on individual rights.

What prompted the Supreme Court to review its PMLA decision, and why is this significant?

The review was prompted by criticism of the July 2022 ruling, which some experts and advocates argued granted excessive powers to the ED, potentially leading to misuse and infringing on fundamental rights. The contentious bail conditions and the reversal of the burden of proof, which could undermine the presumption of innocence, were key concerns. The review signifies the judiciary's readiness to reconsider its rulings in response to these issues and highlights the need to balance anti-money laundering measures with constitutional protections.



How does the reverse burden of proof under the PMLA impact the rights of the accused?

The reverse burden of proof under the PMLA is contentious as it requires the accused to prove that their assets are not proceeds of crime, contrary to the general principle where the prosecution must prove guilt beyond a reasonable doubt. This shift challenges the presumption of innocence and can make it difficult for the accused to defend themselves, particularly in complex financial cases.

The petitioners argue that the ED has been granted police-like powers, despite the Supreme Court's ruling that ED officers are not police officers. How does

this distinction affect the legal process?

The distinction between ED officers and police officers is significant because, although ED officers are not classified as police officers, they wield similar powers, such as arrest and seizure. This distinction allows statements made to the ED to be used as evidence in court, unlike confessions to the police, which are generally inadmissible unless made before a magistrate. This raises concerns about potential coercion during ED investigations.

What are the implications of the Supreme Court's decision to uphold the admissibility of statements made to the ED under Section 50 of the PMLA?

Upholding the admissibility of statements made to the ED under Section 50 of the PMLA means these statements can be used directly in court, unlike statements to the police, which require magistrate approval to be admissible. This reduces protections against self-incrimination for individuals under ED investigation.

What could be the consequences if the Supreme Court overturns or modifies its previous PMLA ruling?

Overturning or modifying the previous ruling could lead to stricter judicial oversight of the ED's powers, reintroducing stronger protections for individual rights, such as the presumption of innocence and protection against self-incrimination. This could tighten bail conditions and procedural safeguards, affecting money laundering prosecutions and potentially reducing misuse of the law.

How might the review outcome affect the ED's powers and its role in investigating economic offences?

The review outcome could either limit or reinforce the ED's powers. Stricter procedural safeguards or limits on the admissibility of compelled statements could lead to more rigorous judicial oversight, making it harder for the ED to secure convictions based on potentially flawed evidence. Conversely, reaffirming the earlier ruling would maintain the ED's broad powers, supporting its role in investigating economic offences with minimal judicial interference, potentially leading to more aggressive enforcement actions.