

# PMLA VERDICT A HURDLE FOR UNDERTRIALS

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**Law and order:** Both PM Narendra Modi and CJI N.V. Ramana have stressed the need to make justice easy for undertrials. PTI-

A 545-page judgment of the Supreme Court which upheld provisions of an anti-money laundering law rendering bail virtually impossible contrasts with the anxious urging of the Prime Minister, the Chief Justice of India and the Union Law Minister to make justice easy for undertrials.

Nearly 4,700 cases are being investigated by the Enforcement Directorate, the agency under the Prevention of Money Laundering Act (PMLA). Of the 6.1 lakh prisoners across the country, 80% are undertrials.

The judgment, authored by Justice A.M. Khanwilkar on July 27, had upheld the PMLA's controversial "twin conditions" for bail.

That is, the trial court needs to give bail only if the accused proves he is not guilty of money laundering. And on the slim chance he does get bail, the accused has to prove that he is "not likely to commit any offence while on bail".

For an undertrial, who is under incarceration and with whom the ED has not shared the Enforcement Case Information Report, to prove that he is not guilty may be, to say the least, a herculean if not impossible task. The same 'twin' conditions apply even if the accused seeks anticipatory bail. In short, the accused has to prove he is not guilty even to seek protection from arrest.

The judgment has also said that an undertrial who has already spent half the punishment term in prison cannot seek bail as an "absolute right".

The Supreme Court found the bail conditions under the PMLA well-suited to combat the menace of money laundering, which it called an "aggravated form of crime world over".

It dismissed arguments made by the petitioners that an accused could be detained unconditionally once the trial court frames charges under the PMLA.

The petitioners had contended that bail conditions in TADA and the UAPA were not as stringent as the PMLA.

But Justice Khanwilkar rejected these arguments, saying money laundering was as heinous an offence as terrorism. The PMLA was unique and a necessarily stringent law to fight money laundering which attacks the sovereignty and integrity of India. The Supreme Court's stamp of approval to the 'restrictive' conditions of bail and almost blanket powers of arrest, search and seizure under the PMLA comes even as the Prime Minister urged the judiciary, at an event during the weekend, to speed up the release of undertrials languishing in jails.

The PMLA verdict has also contradicted the spirit of an earlier judgment of the Supreme Court, delivered in July itself, which said a democracy should not give "the impression that it was a police state".

Bail and not jail should be the rule. "Jails in India are flooded with undertrial prisoners... more than two-thirds of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, the majority may not even be required to be arrested..." the court had said in its order on July 11.

Chief Justice of India N.V. Ramana had on July 16 condemned hasty arrests and prolonged incarceration. "In our criminal justice system, the process is the punishment," he said.

Supreme Court judge, Justice D.Y. Chandrachud, had said that "deprivation of liberty for even a single day, is a day too many".

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