



KINGS & ALLIANCE LLP
LAW FIRM

 www.knallp.com
 info@knallp.com
 +91 981 981 5818

Right to Access Investigative Material Under PMLA: Supreme Court on Fair Trial and Disclosure Obligations



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Introduction

The bedrock of any equitable legal system rests upon the principles of a fair trial and due process, fundamentally ensuring an accused's informed participation in their defense. At the core of this lies the undeniable right to access pertinent information collected during an investigation. In a landmark pronouncement, the Supreme Court of India in *Sarla Gupta & Another Versus Directorate of Enforcement*¹, through a bench comprising Justices Abhay S Oka, Ahsanuddin Amanullah, and Augustine George Masih, meticulously addressed this critical facet within the formidable framework of the PMLA².

The Court unequivocally held that an accused individual is entitled to receive a comprehensive list of all documents and statements gathered by the ED³ during its investigation, extending even to those materials the prosecution ultimately opted not to rely upon when filing its complaint. This pivotal judgment stemmed from an appeal challenging a High Court of Delhi order, with the Supreme Court grappling with the central question: What is the true extent of an accused's right to pre-trial disclosure of investigative material under the PMLA, especially concerning documents and statements collected but subsequently omitted from the prosecution's formal case?



This pronouncement carries profound implications for the transparency and fairness of proceedings under the stringent PMLA, necessitating a thorough analysis of its legal underpinnings and far-reaching consequences. To fully grasp its impact, we must first understand the compelling contentions presented by both sides.

The Accused's Plea for Transparency: A Constitutional Imperative

The appellants, confronting the formidable machinery of the PMLA, mounted a compelling challenge before the Supreme Court. Their arguments, eloquently articulated by seasoned senior counsel, championed a robust interpretation of **Section 207 of the CrPC (and the contemporary relevance of Section 230 of the BNSS⁴)**. They asserted this provision was not a narrow gateway solely for the prosecution's chosen evidence, but rather a broad mandate demanding the disclosure of all investigative material gathered by the ED. This, they passionately argued, transcended a mere procedural nicety, emerging as a cornerstone of the constitutional guarantee of a free and fair trial under **Article 21**. Their arguments transcended national borders, drawing parallels with legal practices in **the USA** and **the UK**, suggesting a universal acknowledgment of comprehensive pre-trial disclosure.

Adding another layer of intrigue, a related appeal further amplified the call for transparency. Counsel emphasized that the prosecution's obligation extended beyond the documents intended for court presentation, encompassing all material in their possession, accompanied by a detailed inventory. A particularly compelling argument arose from the unique **reverse burden of proof for bail under Section 45(1)(ii) of the PMLA**. It was argued that compelling an accused to demonstrate their innocence while withholding potentially exculpatory information was anathema to justice. Highlighting the streamlined procedures of the PMLA, such as the absence of a committal stage under **Section 44(1)(b)**, they underscored the critical need for early and comprehensive access to all investigative documents. With each citation of judicial precedent, they painted a vivid picture of a legal system striving to maintain equilibrium, ensuring the stringent provisions of the PMLA did not inadvertently tilt the scales of justice against the accused.

The Prosecution's Counter-Argument: A Restrictive Interpretation

The courtroom then turned to the voice representing the Directorate of Enforcement, the learned ASG⁵, who presented a starkly contrasting view. Bearing the weight of the prosecuting agency, he asserted a clear and concise position: the accused were entitled solely to the evidence the ED had chosen to present—the documents forming the bedrock of their complaint—which had already been furnished. He portrayed a legal process where



the focus at the charge-framing stage was sharply defined by the prosecution's case as it stood. To demand more, he suggested, was to overstep the boundaries of established legal procedure, especially when investigative wheels were still turning in related matters. He firmly anchored his argument in the very text of **Section 204 of the CrPC**, portraying it as a clear directive limiting the initial disclosure to the complaint and its accompanying documents.

Drawing strength from the Supreme Court's own pronouncements, the ASG cited **Criminal Trials Guidelines Regarding Inadequacies and Deficiencies, In Re v. State of Andhra Pradesh & Ors⁶**, arguing that this precedent, in his view, drew a clear distinction: the accused were entitled to a mere inventory of the discarded documents, not the documents themselves, with the possibility of seeking their production reserved for the later trial phase. He deftly navigated the procedural landscape of the PMLA, pointing out the absence of the traditional committal stage, thereby rendering **Section 208 of the CrPC** irrelevant in this context. Finally, he addressed the authority of the Special Court, emphasizing its distinct and limited jurisdiction, lacking the expansive inherent powers vested in the High Court. To him, the Special Court's orders were interim steps in a larger process, warranting judicial restraint from higher courts unless absolutely necessary.

The Court's Definitive Pronouncements: Rights Amplified

The Entitlement to Copies of Seized Records and Documents (Sections 17 & 18 PMLA)

Contrasted against the ASG's arguments stood the court's clear pronouncement regarding the entitlement to copies of records and documents seized under **Sections 17 and 18 of the PMLA**. These sections empower authorities to conduct searches and seize a wide array of items, from physical books and digital data ("records") to diverse assets, including crucial title deeds ("property"). **Rule 4 of the Prevention of Money Laundering (Forms, Search and Seizure or Freezing and the Manner of Forwarding the Reasons and Material to the Adjudicating Authority, Impounding and Custody of Records and the Period of Retention) Rules, 2005**, mandates the creation of a seizure memo, and significantly, **sub-rule (4)** dictates the provision of a copy of this list to the person from whom the property is seized. Adding further weight, **Section 21(2) of the PMLA** explicitly entitles the person whose records are seized to receive copies thereof.

The court firmly established that individuals subjected to seizures under these sections possess a right to receive true copies of the seized documents and records. The court reasoned that denying these copies, particularly for title deeds, would be arbitrary and



contravene the fundamental guarantee of equality enshrined in **Article 14 of the Constitution**. Importantly, this right extends even to documents not directly relied upon in the initial complaint, ensuring the accused's comprehensive understanding of the seized materials and facilitating their defense, even if immediate use of un-relied upon documents is restricted at the charge framing stage. Consequently, the court found that both the Special Court and the High Court had erred in rejecting requests for these essential copies.

The Accused's Right to Copies of Relied-Upon Documents in the Complaint (Section 44(1)(b) PMLA)

The court then meticulously delved into the specific right of an accused to receive copies of documents relied upon in a complaint filed under **Section 44(1)(b) of the PMLA**, along with any documents produced alongside it. Appeals challenging a Special Court's dismissal of applications for these documents, referencing a Delhi High Court precedent (*Dharambir v. CBI*), were at the heart of this discussion. While the Special Court and High Court had reasoned that Sections 207 and 208 of the CrPC might not automatically apply to PMLA proceedings before charge framing, the Supreme Court firmly established the applicability of certain CrPC provisions.

Citing its earlier judgment in **Yash Tuteja & Anr. v. Union of India & Ors**⁷. The court reiterated that **Sections 200 to 204 of the CrPC** apply to such complaints. Crucially, **Section 204(3) of the CrPC** mandates that every process issued upon a complaint must be accompanied by a copy of the complaint. The court therefore reasoned that if any documents are annexed to or produced with the complaint upon which cognizance is taken, copies of these documents must also be furnished to the accused as a matter of right, forming an integral part of the basis for the court's cognizance. This principle extends to supplementary complaints and their accompanying documents, as well as statements of the complainant and witnesses recorded by the Special Judge before taking cognizance under **Section 200 CrPC**. Ultimately, while acknowledging that **Sections 207 and 208 of the CrPC** might not directly apply to PMLA complaints, the court held that the underlying principles of fair play and the accused's right to a fair trial under **Article 21 of the Constitution** necessitate the supply of crucial documents. The court explicitly rejected the notion that the ED could withhold documents produced with the complaint by labeling them as "not relied upon" after cognizance is taken, emphasizing the mandatory nature of supplying these documents alongside the complaint as per **Section 204(3) CrPC**.





Beyond the Complaint: Access to Un-Relied Upon Documents

Can an accused seek production of documents not relied upon by the prosecution?

The court then turned its attention to the crucial right of an accused to seek the production of documents not relied upon by the prosecution during the investigation. This pivotal point was illuminated by the Supreme Court's decision in Criminal Trials Guidelines Regarding Inadequacies and Deficiencies⁷. The court recognized that accused individuals are often only furnished with the materials the prosecution intends to use, remaining unaware of other potentially exculpatory evidence. To address this, the court directed that alongside the list of relied-upon documents under Sections 207/208 CrPC, a list of other materials (statements, seized objects/documents not relied upon) must also be provided. This ensures the accused, if they deem such materials necessary for a just trial, can invoke Section 91 of the CrPC (or Section 94 of the BNSS) to seek their production at the appropriate stage. This directive was subsequently incorporated into Rule 4(i) of the DCRP⁸, explicitly requiring the supply of a list specifying both relied-upon and not relied-upon materials. This principle was further endorsed in *Manoj & Ors. v. State of Madhya Pradesh*⁹, which reiterated the importance of the prosecution furnishing a list of all seized materials, including those not relied upon, in the interest of fairness.

At what stage can an accused legitimately demand copies of these un-relied upon documents?

The court then addressed the specific question of whether an accused is entitled to seek copies of documents not relied upon by the prosecution at the stage of framing of charge. Referring to its precedent in *Debendra Nath Padhi*¹⁰, the court observed that an accused's entitlement to seek production of un-relied upon documents under Section 91 CrPC ordinarily arises at the stage of defense, as the defense is not relevant during charge framing. While *Debendra Nath Padhi* doesn't impose an absolute bar on applying under Section 91 CrPC before the defense stage, it establishes that this is not the typical or expected time for such applications. The court also distinguished *Assistant Collector of Customs, Bombay v. L.R. Melwani*¹¹ and *Om Prakash Sharma v. CBI*¹², noting their limited applicability to this specific issue. Drawing from these precedents, including *Nitya Dharmananda v. Gopal Sheelum Reddy*¹³ and *V.K. Sasikala v. State*¹⁴, the court concluded that at the stage of framing charge in a PMLA case, reliance is primarily placed on the complaint and its accompanying documents. While the accused is entitled to receive a list of all documents, objects, and





exhibits, including those not relied upon by the ED, the ordinary course of legal procedure does not grant the accused the right to demand copies of these un-relied upon documents specifically at the stage of framing of charge.

The Crucial Stage of Defense: Empowering the Accused

The court then decisively shifted its focus to the right of an accused to seek documents not relied upon by the prosecution at the stage of entering upon their defense. It highlighted **Section 233 of the CrPC (and the corresponding Section 256 of the BNSS)**, applicable to trials before a Court of Session, which explicitly grants the accused the right to adduce evidence in their defense.

Crucially, **sub-section (3) of Section 233 mandates** that if the accused applies for the issuance of process to compel the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless the application is deemed to be for vexation, delay, or defeating the ends of justice, with reasons recorded for refusal. A similar provision exists for warrant trials by Magistrates under **Section 243(2) CrPC (Section 266 BNSS)**.

The court emphasized that this right is more robust than the discretionary power under **Section 91 CrPC**, as it uses the word “shall” and limits the grounds for refusal. Consequently, in a PMLA trial before a Court of Session, the accused can invoke **Section 233 CrPC** to seek the production of any document or thing, even those in the custody of the prosecution but not initially produced.

The court underscored that a fair trial, guaranteed under **Article 21 of the Constitution**, includes the right to a proper defense, encompassing the ability to lead evidence and produce documents. Relying on *Directorate of Enforcement v. Bibhu Prasad Acharya & Ors.*, The court affirmed that the CrPC applies to PMLA proceedings where not inconsistent with the PMLA, and no such inconsistency exists with **Section 233 CrPC**. Furthermore, considering the unique **burden of proof placed on the accused under Section 24 of the PMLA**, as upheld in *Vijay Madanlal Choudhary & Ors. v. Union of India & Ors*¹⁵, the court stressed that **Section 233(3) CrPC** should be liberally construed in favor of the accused. Denying a legitimate request for document production at the defense stage could impede the accused’s ability to discharge this onerous burden and effectively rebut the statutory presumption against them. Thus, the accused has a significant right at the defense stage to



compel the production of necessary documents, subject only to the limited grounds for refusal specified in **Section 233(3) CrPC**.

A Special Consideration for Bail Applications under PMLA

The court then turned its attention to the specific context of bail applications under the stringent provisions of **Section 45(1)(ii) of the PMLA**. This section imposes a unique burden on the accused seeking bail, requiring the court to be satisfied that there are reasonable grounds to believe the accused is not guilty and is unlikely to commit further offenses while on bail. Recognizing this extraordinary burden, the court considered whether an accused, at the stage of a bail hearing, can invoke **Section 91 of the CrPC (or Section 94 of the BNSS)** to seek the production of documents not relied upon by the ED. The court reasoned that denying this opportunity could hinder the accused's ability to discharge the onus placed upon them by **Section 45(1)(ii)**, potentially infringing upon their right to liberty under **Article 21 of the Constitution**.

Consequently, the court held that at the stage of a bail application governed by the stringent conditions of **Section 45(1)(ii) of the PMLA**, the accused must be allowed to invoke **Section 91 CrPC** to seek the production of documents not relied upon by the ED. However, acknowledging the sensitivity of ongoing investigations, the court stipulated that when such an application is made during the pendency of the investigation, the ED is entitled to resist the production of these un-relied upon documents by demonstrating to the court that their disclosure at that stage could prejudice the investigation. While the ED can raise such an objection, it must present the documents to the court, which will then decide whether to deny production based on recorded reasons, only if satisfied that disclosure would indeed impede the ongoing investigation. The court clarified that the ED cannot raise such objections once the investigation is complete.

Finally, the court emphasized the drastic nature of provisions like **Section 45(1)(ii) and Section 24 of the PMLA**, noting their deviation from traditional penal statutes and the significant burden they place on the accused. Drawing upon the transformative constitutionalism principle highlighted in the Central **Board of Dawoodi Bohra Community and Anr. v. State of Maharashtra and Anr**¹⁶, the court stressed the judiciary's duty to interpret laws, including **Article 21**, in a manner that safeguards the accused's right to a fair trial, especially when faced with such reverse burden clauses. Thus, for the purpose of discharging the burden under **Section 45(1)(ii)** during a bail hearing, the accused has the





the right to invoke **Section 91 CrPC** to seek the production of relevant documents, balancing this right with the need to prevent prejudice to an ongoing investigation, a balance to be assessed by the court.

Conclusion

This landmark judgment by the Supreme Court significantly fortifies the principles of fair trial within the context of the stringent PMLA, unequivocally establishing the accused's right to a comprehensive list of all investigative materials and a clear pathway to access even un-relied upon documents, particularly at the crucial stages of defense and bail. This ruling promises greater transparency in PMLA proceedings, empowering the accused to mount a more informed defense and potentially easing the onerous burden imposed by provisions like Section 45(1)(ii). However, a question that may arise in future deliberations is the precise threshold and the procedural mechanisms that Special Courts will adopt to balance the accused's right to access un-relied upon documents during the pendency of investigation with the legitimate concerns of the ED regarding potential prejudice to ongoing inquiries.

Citations

1. *Sarla Gupta & Another Versus Directorate of Enforcement Criminal Appeal No.1622 of 2022*
2. *Prevention of Money Laundering Act, 2002*
3. *Directorate of Enforcement*
4. *The Bharatiya Nagarik Suraksha Sanhita, 2023*
5. *Additional Solicitor General*
6. *Criminal Trials Guidelines Regarding Inadequacies and Deficiencies, In Re v. State of Andhra Pradesh & Ors.*
7. *Yash Tuteja & Anr. v. Union of India & Ors. (2024) 8 SCC 465*
8. *Draft Criminal Rules of Practice, 2021*
9. *Manoj v. State of M.P. (2023) 2 SCC 353*
10. *State of Orissa v. Debendra Nath Padhi (2005) 1 SCC 568*
11. *Assistant Collector of Customs, Bombay v. L.R. Melwani (1969) 2 SCR 438*
12. *Om Prakash Sharma v. CBI (2000) 5 SCC 679*
13. *Nitya Dharmananda v. Gopal Sheelum Reddy (2018) 2 SCC 93*
14. *V.K. Sasikala v. State (2012) 9 SCC 771*
15. *Vijay Madanlal Choudhary & Ors. v. Union of India & Ors. 2022 INSC 757*
16. *Board of Dawoodi Bohra Community and Anr. v. State of Maharashtra and Anr. (2023) 4 SCC 541*

Expositor(s): Adv. Anuja Pandit

