

WCC WATCH

Your Monthly Digest to Stay Ahead in the Evolving Realm of White Collar Crime



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Editor's Note



Won't Stick, our cover story this month examines the Supreme Court's clarification on director liability under Section 141 of the NI Act, reinforcing that vicarious liability cannot be fastened through vague or general allegations and must be supported by clear, specific averments.

This edition's pivotal issues explore key developments across white collar enforcement. We analyse how courts are addressing evidentiary gaps in cheque dishonour cases, including the limits of **hearsay and assumed authority**, and the evolving application of **Article 21 in PMLA bail**, where personal liberty continues to be weighed against statutory rigour.

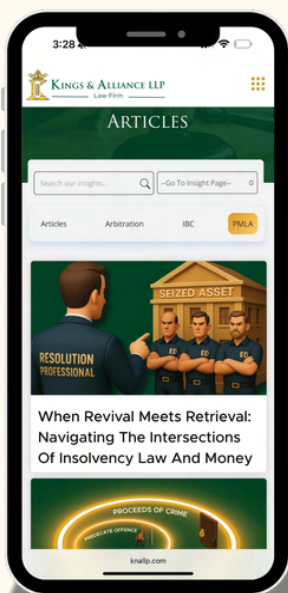
We also examine the boundaries of statutory interpretation under Section 138, including whether **instruments such as withdrawal slips** can attract cheque dishonour liability, and the judiciary's continued scrutiny of **prolonged incarceration under stringent criminal frameworks**.

Across these developments, a consistent approach emerges: courts are refining the thresholds of **liability, evidence, and procedural fairness**, ensuring that enforcement remains both effective and constitutionally aligned.

To cap it off, this edition brings you key case law updates along with curated events and trainings shaping white collar crime practice.

Let's dive in.

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COVER STORY

04

Director Liability under Section 141 NI Act: Supreme Court Clarifies Requirement of Specific Averments in Saroj Pandey v. Govt. of NCT of Delhi



PIVOTAL ISSUES

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Can a "Withdrawal Slip" Be a "Cheque"? How the Kerala High Court Redefined Section 138 Liability in Clara Dominic v. Tomy Eapen



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Conduct Filter in PMLA Bail: Can Article 21 Override the Twin Conditions under Section 45?



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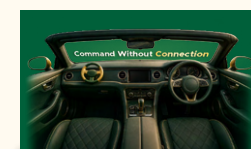
Article 21 Overrides NDPS Rigours in Cases of Prolonged Incarceration



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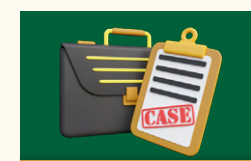
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- Samani and Another v. Shardaben Prabhudas Samani and Another
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COVER STORY

Director Liability under Section 141 NI Act: Supreme Court Clarifies Requirement of Specific Averments in Saroj Pandey v. Govt. of NCT of Delhi

False Attribution of Control



Can a director of a company be held criminally liable for a dishonoured cheque solely because they signed a Board Resolution, or does the law require a more substantial link to the day-to-day operations of the business? In the case of *Saroj Pandey v. Govt. of NCT of Delhi* (2026), the Supreme Court of India addressed this question through a Division Bench comprising Justice Sanjay Karol and Justice Augustine George Masih. In the judgment delivered on April 7, 2026, the Court answered with a definitive no, clarifying that merely holding the position of a director or signing formal board documents does not satisfy the "vicarious liability" requirements under Section 141 of the Negotiable Instruments Act, 1881. The Court emphasized that for a director to be prosecuted, there must be a specific averment in the complaint proving they were "in charge of" and "responsible to" the company for the conduct of its business at the time the offence was committed.

The dispute began when the accused company, Projtech Engineering Private Limited, issued three cheques on April 20, 2021, totaling 50 lacs (15, 20, and 15 lacs respectively) as payment for iron and steel supplies. Despite assurances of funds, the cheques were returned unpaid due to signature differences and unauthorized alterations. Following a legal notice sent via speed post on May 18, 2021, criminal proceedings were initiated on June 25, 2021, leading the Metropolitan Magistrate to issue summons on September 23, 2021. The appellant, Saroj Pandey, challenged these summons, but her pleas were rejected by both the Sessions Court and the Delhi High Court on August 7, 2025, on the grounds that her signature...

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PIVOTAL ISSUES

Can a "Withdrawal Slip" Be a "Cheque"? How the Kerala High Court Redefined Section 138 Liability in Clara Dominic v. Tomy Eapen

Withdrawal Slip or Cheque?



Can a mere withdrawal slip, typically an internal banking tool, trigger the criminal rigors of Section 138 of the Negotiable Instruments Act? This pivotal question was at the heart of the Kerala High Court's decision in Clara Dominic v. Tomy Eapen, where the petitioner sought to quash a criminal complaint by arguing that a withdrawal slip from a co-operative society lacked the statutory character of a "cheque" and that the society itself was not a licensed banking institution. The Court answered in the affirmative, reinforcing a significant legal precedent: the definition of a "banker" is of wide amplitude, and the substance of a transaction, rather than its technical nomenclature, determines legal liability.

The factual matrix of the case centers on a dispute involving a document dated July 1, 2025, issued by the Kanjirappally Central Service Co-operative Bank Ltd. The petitioner, a 65-year-old woman, was accused in S.T. No. 5023 of 2025 after the instrument was dishonored upon presentation. She contended that the 1st respondent had surreptitiously obtained the withdrawal slip and manipulated it into a cheque, further asserting that the society was not a "banker" under Section 3 of the N.I. Act because it was not licensed by the Reserve Bank of India. On March 26, 2026, the High Court scrutinized these claims to determine if the foundation of the prosecution was legally untenable. In dismissing the petitioner's challenge, Justice C.S. Dias articulated a rationale rooted in the Doctrine of Substance over Form. This doctrine dictates that the true nature of a document is determined by its intended effect and the underlying rights it creates, rather than the label...

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Conduct Filter in PMLA Bail: Can Article 21 Override the Twin Conditions under Section 45?

Article 21 vs. Section 45

PMLA



Does a stringent special statute like the Prevention of Money Laundering Act (PMLA), designed to safeguard the nation's economic integrity, have the power to indefinitely suspend the fundamental right to life and liberty? This question lies at the heart of the recent judgment delivered by Hon'ble Mr. Justice Tribhuvan Dahiya of the Punjab and Haryana High Court in *Dharam Singh Chhoker vs. Directorate of Enforcement* (2026). The Court addressed this by affirming that while the "twin conditions" of Section 45 PMLA are mandatory, they exist in a delicate balance with Article 21 of the Constitution. In *Chhoker's* case, the Court determined that the petitioner failed to tip the scales in his favor, as his own conduct marked by evasion and procedural delays undermined his plea for constitutional protection against prolonged incarceration.

The factual matrix of the case centers on a massive alleged fraud involving the Mahira Group, a conglomerate controlled by Dharam Singh Chhoker and his family. The group, through its entity M/s Sai Aaina Farms Pvt. Ltd. (SAFPL), launched an affordable housing project in Sector 68, Gurugram, in 2017, collecting approximately ₹363 crores from 1,500 home buyers. However, instead of constructing the promised flats by the 2021-22 deadline, the Enforcement Directorate (ED) alleged that the group siphoned off and laundered proceeds of crime totaling ₹616 crore. The investigation, formalised in an ECIR dated November 16, 2021, revealed a complex web of money laundering where funds were allegedly diverted through associate companies like M/s DS Home Construction Pvt...

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PIVOTAL ISSUES

Article 21 Overrides NDPS Rigours in Cases of Prolonged Incarceration

PMLA-fication of NDPS

ARTICLE 21



Can a disclosure statement from a co-accused, coupled with a financial transaction, justify the indefinite incarceration of an individual under the NDPS Act when the trial shows no sign of concluding? In *Sunil Kumar v. State of Himachal Pradesh*, the High Court of Himachal Pradesh addressed this pivotal conflict between the rigors of the Narcotic Drugs and Psychotropic Substances (NDPS) Act and the fundamental right to liberty. The Court answered this by asserting that Article 21 of the Constitution serves as a "higher constitutional edict" that overrides statutory restrictions on bail when the right to a speedy trial is compromised. It held that prolonged pre-trial detention must not be allowed to devolve into "punishment without trial," regardless of the seriousness of the offense.

The factual matrix of the case began on May 24, 2025, when FIR No. 22 of 2025 was registered at Police Station Mcleodganj after the alleged recovery of 1.24 kg of charas from a co-accused, Kalu Ram. Kalu Ram claimed he purchased the contraband from the petitioner, Sunil Kumar, for ₹49,000 paid via cheque. On the basis of this disclosure, Sunil Kumar was arrested on September 20, 2025. Despite the passage of nearly a year since the FIR and the filing of the challan, the prosecution proposed to examine 38 witnesses, and the trial had not yet commenced. Facing indefinite incarceration with no physical recovery made from his person, the petitioner sought regular bail under Section 483 of the Bharatiya Nagrik Suraksha Sanhita. The Court's rationale centered on the evidentiary weakness of the prosecution's primary lead and the constitutional necessity of a speedy trial Justice Sandeep Sharma...

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PIVOTAL ISSUES

Phantom Authority & Hearsay Witnesses: Unmasking the Section 138 Acquittal in Kanta Kapoor case



Can a corporation be held liable for a debt incurred by an individual who had severed ties with the entity nearly two decades prior? This central question of agency and authority sits at the heart of *Kanta Kapoor and Others v. Him Khadi Gramodyog and Another* (2026). The High Court of Himachal Pradesh, through Justice Rakesh Kainthla, answered with a definitive "no," clarifying that the statutory protections of the Negotiable Instruments (NI) Act cannot be weaponized to enforce liabilities rooted in unauthorized or fraudulent transactions. The court's ruling serves as a stark reminder that while Section 138 of the NI Act offers a streamlined path for debt recovery, it remains tethered to the fundamental requirement of a "legally enforceable debt" a requirement that collapses when the claimant relies on uninformed witnesses and phantom authority.

The factual matrix of this dispute traces back to an agreement for the purchase of land, specifically Plot No. 10 at DIC, Industrial Area Baddi. The complainants alleged that after the accused failed to deliver on the land deal, a cheque for ₹3,00,000 was issued to refund the consideration amount. When the cheque was returned with the remark "payment stopped by drawer," a criminal complaint was initiated. However, the defense presented a narrative that fundamentally shifted the trial's trajectory: they asserted that the entire transaction was a fraud orchestrated by Devender Mohan. Evidence revealed that Mohan had resigned from the accused company as early as 1996 years before the purported agreement, a fact substantiated by public notices in *The Indian Express* and *Jansatta*. By the time the...

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SIGNIFICANT CASE LAWS

High Court Rejects Intervention in Benami Proceedings– Matrimonial Disputes Deemed Irrelevant

The judgment delivered by the Delhi High Court in *Smt. Rama Rani Hota v. Sh. Prasanna Kumar Hota and Ors.* centers on the principle that matrimonial disputes are irrelevant to the adjudication of property matters under the Prohibition of Benami Property Transactions Act, 1988. The Division Bench, comprising Justice Navin Chawla and Justice Ravinder Dudeja, upheld the Appellate Tribunal's decision to dismiss an intervention application by the appellant, who claimed to be the respondent's legally wedded wife and alleged that he had misrepresented his marital status to improperly claim a statutory exemption under Section 2(9)(A)(b)(iii). The Court clarified that proceedings under the Act are regulatory in nature, primarily involving the Department's burden to prove a benami transaction and the respondent's defense against it, making the appellant neither a "necessary" nor a "proper" party to the litigation. By referencing the procedural shifts following the Supreme Court's recall of the *Ganpati Dealcom* judgment, the Bench emphasized that specialized tribunals must not be used as forums to settle inter-se family grievances or criminal allegations of bigamy. Ultimately, the Court ruled that while the appellant's claims regarding HUF funds and marital fraud could be pursued in appropriate civil or criminal courts, they could not be used to expand the scope of a summary financial inquiry, thus ensuring that the findings of the Tribunal would not prejudice the parties' rights in their separate legal battles.



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SIGNIFICANT CASE LAWS

Jurisdictional Bar under Section 430: High Court Dismisses Injunction Pleas Over NCLT's Exclusive Domain

In *Samani and Another v. Shardaben Prabhudas Samani and Another*, the High Court of Bombay addressed the jurisdictional boundary between civil courts and the National Company Law Tribunal (NCLT) under Section 430 of the Companies Act, 2013. The Plaintiffs, legal heirs of the deceased Rajiv Samani, sought various injunctions and declarations to restrain the transfer of properties, specifically the "Harileela Property" owned by Panache Securities Private Ltd. alleging that the removal of directors and the transfer of 50% of the company's shareholding were achieved through fraud and forgery following Rajiv's death. While the Plaintiffs argued that complex allegations of fraud required full adjudication by a civil court, the Court held that the core reliefs sought, including the rectification of the register of members and the removal of directors, fell squarely within the exclusive statutory domain of the NCLT. The Court further determined that the presence of fraud allegations does not automatically override the statutory bar of Section 430. Consequently, the Court protected the rights of the third-party purchasers (Defendants 4-6), who were found to be bona fide purchasers for value who had exercised due diligence through public notices and title searches. Ultimately, the Notices of Motion were dismissed as the civil court lacked the jurisdiction to grant the primary corporate reliefs requested.



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SIGNIFICANT CASE LAWS

Grant of Bail on Grounds of Parity, Prolonged Custody, and Delayed Trial in PMLA Proceedings

In the landmark ruling of *Shashi Prakash v. Directorate of Enforcement*, the High Court of Jharkhand addressed the complex intersection of the Prevention of Money-Laundering Act (PMLA), 2002, and the constitutional right to liberty. The case involved a 70-year-old former Executive Engineer, Shashi Prakash, who was implicated in ECIR/03/2018 for allegedly bypassing official channels to disburse project funds to a Junior Engineer in exchange for illegal commissions. The Petitioner sought bail primarily on the grounds of parity and prolonged incarceration, noting that he had already spent more than three years in judicial custody, a duration meeting the minimum sentence prescribed under Section 4 of the PMLA. The Court meticulously examined the principle of parity, citing Supreme Court precedents like *Tarun Kumar v. Assistant Director Directorate of Enforcement* and *Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana* to emphasize that parity is not an automated right but must focus strictly on the specific role and culpability of the accused. Upon reviewing the supplementary charge-sheet, the Court observed that the allegations against Shashi Prakash namely, allowing commissions to be paid to higher officials like the then-DC Pooja Singhal were fundamentally similar to the roles of co-accused individuals like Ram Binod Prasad Sinha and Suman Kumar, both of whom had already been granted bail by the Supreme Court. Furthermore, the Court highlighted the "totality of circumstances," including the petitioner's advanced age and the sluggish pace of the trial, where only 17 out of 47 witnesses had been examined.



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SIGNIFICANT CASE LAWS

Affirmation of Liberty: The Judicial Refusal to Interfere with the Discretionary Grant of Bail in PMLA Proceedings

In the landmark matter of Assistant Director, Directorate of Enforcement v. Yatin Yadav and Another, the High Court of Jammu and Kashmir and Ladakh addressed a critical challenge filed by the Directorate of Enforcement (ED) seeking the cancellation of bail previously granted to the respondents by a Special PMLA Court. The prosecution's primary legal grievance centered on the assertion that the lower court had failed to strictly adhere to the "twin conditions" mandated by Section 45 of the Prevention of Money Laundering Act (PMLA), 2002, which require a judicial satisfaction that there are reasonable grounds to believe the accused is not guilty and is unlikely to commit further offences while at liberty. The High Court, however, meticulously observed that the Special Court had acted within its jurisdiction by assessing the "broad probabilities" of the case rather than conducting a premature "mini-trial" or a meticulous weighing of evidence, which is a standard reserved for the final trial stage. A pivotal factor in the High Court's refusal to interfere was the factual observation that, despite the respondents being held in ED custody for a duration of fourteen days, the investigating agency was unable to recover any "proceeds of crime" or extract incriminating financial evidence directly from them or at their behest. While the ED alleged a substantial money trail of approximately ₹2.52 crore involving the leakage of Jammu & Kashmir Services Selection Board (JKSSB) examination papers, the court noted that the lack of direct recovery significantly weakened the prosecution's immediate grounds for incarceration. Furthermore, the judgment reaffirmed the settled legal precedent that the cancellation of bail is a distinct and more serious legal maneuver than the initial grant of bail; it requires "very cogent and overwhelming circumstances" such as the evasion of justice, the misuse of liberty, or the actual tampering of prosecution evidence.



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SIGNIFICANT CASE LAWS

Dismissal of Writ Appeals Challenging Statutory Inaction Amidst Allegations of Unauthorized Data Access and Sub Judice Civil and Criminal Proceedings

The Madras High Court, in the case of Himanshu Pathak v. Ministry of Electronics and Information Technology, dismissed the writ appeals primarily because the appellant's actions were deemed an unauthorized intrusion rather than a legitimate act of whistleblowing. While the appellant, a cyber security expert and policyholder, claimed he discovered website vulnerabilities to protect public data, the court found he had accessed the private profiles of other customers without any authorization or request from the 7th respondent Insurance Company. The court highlighted a lack of bona fides in the appellant's conduct, noting that he had attempted to negotiate a commercial contract with the company proposing a one-time fee of \$65,000 USD and a monthly charge of \$3,000 USD for security services before filing his complaints only after the company initiated civil and criminal proceedings against him. Furthermore, the court emphasized that the matter is currently sub judice, with a civil injunction in place and a criminal case pending under Sections 66 and 43(b) of the Information Technology Act, 2000, for illegal data access and breach. From a regulatory standpoint, the court observed that the Insurance Company had proactively reported the incident to CERT-In, IRDAI, and SEBI as early as December 2022, and these authorities confirmed that the vulnerabilities had been resolved. Ultimately, since the appellant failed to show that his own personal data was compromised and did not follow the proper procedure for a Public Interest Litigation (PIL), the court held that no statutory infringement was established that would warrant judicial interference with the Single Judge's order.

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SIGNIFICANT CASE LAWS

Judicial Reinforcement of Constitutional Protections Against the Arbitrary and Indefinite Freezing of Bank Accounts during Cybercrime Investigations

In the significant legal matter of *Ashish Rawat v. Union of India and Others*, the High Court of Allahabad adjudicated upon a comprehensive batch of writ petitions filed by various individuals who were aggrieved by the arbitrary, mechanical, and often indefinite freezing of their bank accounts by investigating authorities. The core of the dispute involved the exercise of power by law enforcement agencies under the guise of cybercrime investigations, which the Court found was frequently being carried out without sufficient statutory authority or procedural fairness. The Court highlighted a disturbing trend where accounts were being summarily blocked without the provision of prior notice, a specified duration for the freeze, or even a clear articulation of the reasons behind such drastic measures. A particularly striking observation made by the Court was that many of these accounts were frozen due to remarkably negligible transaction amounts, some as low as ₹1 or ₹60 yet the resulting freeze caused a disproportionate impact on the petitioners' livelihoods and their fundamental right to carry on trade and business. Consequently, the High Court emphasized that while the power to freeze accounts is a necessary investigative tool, it must be exercised with judicial discipline and recorded legal justifications. The judgment provided a much-needed framework for the de-freezing of accounts in instances where no direct evidence of criminal involvement was established, thereby ensuring that the investigative process remains a pursuit of justice rather than an instrument of undue harassment or administrative overreach.

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SIGNIFICANT CASE LAWS

Judicial Hardline on "Digital Arrest" and International Cyber-Fraud Conspiracies

In the case of *Naveen Temani v. State of Rajasthan*, the High Court of Rajasthan dismissed the petitioner's second anticipatory bail application, prioritizing the gravity of organized cybercrime over a private settlement. The Court's decision was primarily based on the serious nature of the "digital arrest" fraud, where an 83-year-old victim was coerced into transferring ₹80 lakhs, leading to her severe mental trauma and hospitalization. The Court noted that the petitioner appeared to be a "key conspirator" in an international racket involving 34 mule accounts, 187 related complaints, and the laundering of proceeds through hawala channels and cryptocurrency. Furthermore, the Court rejected the plea based on a purported compromise, observing that the settlement was signed under medical and financial duress by the elderly victim and that serious economic offences have far-reaching societal impacts that cannot be compounded merely by private agreements. Emphasizing the need for custodial interrogation to recover electronic devices and unearth the transnational conspiracy, the Court held that granting bail would severely impede the investigation and fail to safeguard the interests of justice.



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TRAINING AND EVENTS

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Organized By: Eastern India Regional Council (EIRC) of ICAI



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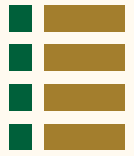
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