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## Case Comment: Arvind Dham v Directorate of Enforcement – Striking a Balance Between Statutory Embargoes and Constitutional Liberty

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### INTRODUCTION

Bail is the rule, and jail is an exception; this is one of the most general principles of criminal jurisprudence. Nevertheless, economic offences have grown to reverse this principle by imposing tough statutory embargoes through special statutes. This case comment is an examination of the pioneer decision of *Arvind Dham v Directorate of Enforcement*,<sup>1</sup> which is an important constitutional correction of the reflex denial of bail in financial offences.

The case was chosen to be analysed as it deals directly with the increasing tension between the draconian twin requirements of the bail according to Section 45 of the Prevention of Money Laundering Act 2002 (PMLA)<sup>2</sup> and the fundamental right to life and personal liberty enshrined in Article 21 of the Constitution of India.<sup>3</sup> The ruling possesses a massive modern-day importance because it established that the mere size or the business scope of an economic

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<sup>1</sup> *Arvind Dham v Directorate of Enforcement* (2026) INSC 12

<sup>2</sup> Prevention of Money Laundering Act 2002, s 45

<sup>3</sup> Constitution of India 1950, art 21

crime cannot be weaponised by the state agencies to condone indefinite pre-trial detention when the prosecuting agency itself is a factor in the lapse.

The main aim of the comment is to critically analyse the reason for the Supreme Court to reconcile statutory inflexibility and constitutional freedoms. It seeks to look at how the Court intervened to ensure that pre-trial detention does not transform into a punitive tool. Through examining the decision of the Court, this comment will identify how the judiciary upheld the principle of a delayed trial, which is stalled considering massive unexamined evidence and hundreds of witnesses, and overrides statutory restrictions and a requirement that an accused has his liberty restored.

## **BACKGROUND**

The jurisprudence surrounding bail in economic offences has historically swung from absolute statute control to constitutional liberty. Section 45 of the Prevention of Money Laundering Act 2002 (PMLA) put in force stringent 'twin conditions' that are required for the courts to be convinced that the accused is not guilty and devoid of any possibility of committing further offences during his stay on bail. Initially struck down in *Nikesh Tarachand Shah*,<sup>4</sup> these conditions were reinstated through legislative amendment in 2018,<sup>5</sup> which strengthens the power of the State to hold back the accused in prolonged custody.

Bail-in money laundering cases, therefore, became extremely rare. However, the Supreme Court managed to develop a series of constitutional exceptions to this statutory embargo. In the *Union of India v KA Najeeb*,<sup>6</sup> a landmark case where the question is: 'Does the statute under a special act melt away in the event of violation of fundamental rights by violation of articles 21'. The court held that statutory restrictions incurred under special acts melt away under violations of fundamental rights under Article 21 by unconscionable trial delays. This principle was later reiterated in *Satender Kumar Antil*,<sup>7</sup> where 'prolonged incarceration in pre-trial without a foreseeable view of the trial completion is inherently offensive to the right to speedy trial' and hence laid the jurisprudential foundation to intervene in *Arvind Dham*.

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<sup>4</sup> *Nikesh Tarachand Shah v Union of India and Anr* AIR 2017 SC 5500

<sup>5</sup> Finance Act 2018, s 208

<sup>6</sup> *Union of India v KA Najeeb* AIR 2021 SC 712

<sup>7</sup> *Satender Kumar Antil v Central Bureau of Investigation and Anr* (2022) 10 SCC 51

## **ANALYSIS**

**Bench and Advocates:** The matter was adjudicated upon by a Supreme Court Division Bench headed by Justice Sanjay Kumar and Justice Alok Aradhe, with the judgment being authored by Justice Aradhe. The appellant was represented by Senior Advocates, Mr Mukul Rohatgi and Mr Niranjan Reddy. The respondent is the Directorate of Enforcement (ED) represented by Additional Solicitor General (ASG) Mr Suryaprakash V Raju.

## **FACTS OF THE CASE**

The appellant is a 64-year-old, a former promoter of Amtek Auto Ltd with several age-related ailments, who was arrested by the Enforcement Directorate because of an alleged bank fraud and money laundering scheme of over ₹2700crores in nature. At the time of approaching the Supreme Court, the appellant was languishing in pre-trial custody for over sixteen months. The trial got paralysed at the preliminary stage of document scrutiny. Furthermore, well over 200 witnesses had been cited by the prosecution, and several thousand pages of documentary evidence had been submitted, making the commencement, let alone the timely conclusion, of the trial a practical impossibility.

## **LEGAL PROVISION CHALLENGED**

The core conflict is that the strict Prevention of Money Laundering Act 2002 (PMLA) Section 45 rules make it nearly impossible to get bail, often causing long pre-trial imprisonment. This clashes with Article 21 of the Indian Constitution, which guarantees personal liberty and the right to a speedy trial, creating a standoff between preventing serious financial crimes and protecting fundamental human rights.

## **ISSUES AND ARGUMENTS**

The core question of law was the questionability of the accused's constitutional right to liberty being thwarted by the statutory restrictions contained in section 45 of PMLA in cases of inordinate and systemic delays in the trial.

**For the Appellant:** The defence argued that the delay of more than sixteen months in the commencement of the trial, in view of the advanced age and failing health of the appellant, constituted a gross violation of Article 21. Counsel argued that there was sufficient evidence

and witnesses to make it inevitable that the trial would be years long to conclude. Furthermore, it was pointed out that the delay was to a great extent due to the prosecution's own sprawling investigation.

**For the Respondent (ED):** The ASG strenuously opposed the bail application on the ground that there is a distinct class of offences economically, which causes systematic destruction of the national economy. The respondent strictly relied on the statutory embargo of section 45 of the PMLA, arguing that the commercial proportion of the fraud was so great that continued detention was justified and that the legislative intent of the statute must be strictly obeyed.

## **PRECEDENTS AND MATERIALS RELYING UPON**

**Indian Cases (Relied and Referred To):** The Court used recent, progressive rulings, such as *Manish Sisodia v Directorate of Enforcement*,<sup>8</sup> to emphasise that the constitutional right to life and personal liberty (Article 21) overrides statutory restrictions like Section 45 of the PMLA when there are long delays. The bench also alluded to the basic principle that 'bail is the rule, jail is an exception', which distinguishes for the lower courts mechanically applied statutory bars without looking at the practical time frame of the trial.

**Foreign and Extra-Legal Literature:** When discussing general rules for pre-trial detention, the court also often relied on international human rights standards, such as Article 9(3) of the International Covenant on Civil and Political Rights (ICCPR),<sup>9</sup> which requires that people be tried within a reasonable time or released.<sup>10</sup> Reports showing very low conviction rates and high case backlogs under the PMLA also explain this judicial intervention.

## **DECISION**

**Courts Below:** The Special Court and the Delhi High Court had earlier rejected bail applications of the appellant. These lower levels of judges espoused a course of strict construction based on statutes and gave primary consideration to the seriousness of the

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<sup>8</sup> *Manish Sisodia v Directorate of Enforcement* (2024) INSC 595

<sup>9</sup> International Covenant on Civil and Political Rights 1976, art 9(3)

<sup>10</sup> *Ibid* art 9(3)

economic crime and the strict words of section 45, rather than the appellant's constitutional rights.

**Judges (Holding) in the Present Case:** In a reversal of the lower courts, Bail was granted to the appellant by the Supreme Court.

**Ratio Decidendi:** The Court held that the practice of pre-trial incarceration for a prolonged period of time without having a reasonable chance that the trial would commence or end in the near future is a breach of the right to speedy trial in Article 21. The statutory restrictions of section 45 of the PMLA are not available to justify indefinite detention. Furthermore, that economic offences have been declared a 'special class' does in no way give the State a general license to deny bail in cases where fundamental rights are evidently violated.

**Obiter Dicta:** The Court observed in its point of decision was very sharp about why the system of the 'pre-trial detention' must not be allowed to become a form of premature punishment. It critically stated that a prosecuting agency cannot vehemently oppose bail on the pretext of statutes if it is contributing to the delay caused to trial proceedings due to the massive amount of unmanageable evidence.

**Judges' Perception:** The judgment represents an extremely liberal and rights-based judicial philosophy. The bench specifically rejected a purely retributive approach to the pre-trial custody issue in commercial crimes. The style of writing judgments is analytical and is based strongly on constitutionalism, deliberately taking constitutional supremacy over procedural rigidity.

**Social and Penological Philosophy:** The philosophy espoused by the bench was liberal and rights-centric. It categorically rejected the retributive penological efficacy of pre-trial custody as a tool of punishment, which establishes that the right to constitutional liberty of an individual cannot be suspended indefinitely, regardless of the commercial dimension of the alleged crime.

## SUGGESTIONS

To stop lower courts from routinely ignoring the constitutional right to life and liberty, Article 21, by blindly following strict legal restrictions, it is necessary to change both the laws and the court procedures in several different ways. Firstly, there should be an express

'Doctrine of Proportionality'<sup>11</sup> built into the PMLA framework. Rather than retrospectively relying on the Supreme Court, to declare whether delays are unconstitutional or not, the law should stage it so that if an accused is to remain in pre-trial custody for a specific fraction (like one-third) of the maximum possible sentence, without the trial beginning, the rigor of 'twin conditions' of section 45, shall be made to automatically step-down to normal bail criteria, only considering flight risk and witness tampering. Trial courts must be expressly enabled and actively encouraged by appellate courts to utilise this doctrine in its suo moto form, in order to bridge this divide between progressive judgments of the higher courts and the ground-level enforcement.

Furthermore, to fight against the prosecution's design to 'drown the court in paper' (as it did in the case with 210 witnesses and 63,000 pages of court files), special PMLA courts must implement mandatory triage of evidence before trial. Said investigating agencies must then be legally bound to distinguish between 'core' witnesses and 'corroborative' ones at the time of registration of the complaint. This dual approach is necessary to prevent an artificially inflated evidentiary record from being used by the State to indefinitely abrogate the liberty of an accused person, thereby ultimately also obviating the unnecessary burden on the Supreme Court to enforce fundamental civil rights.

## CONCLUSION

The judgment on the issue of Arvind Dham is a legally sound and constitutionally important intervention. By claiming that the right to a speedy trial under Article 21 cannot be 'eclipsed' by the seriousness of the allegations, the Supreme Court has rightly broken down the routine by treating economic offences as a homogenous class, exempt from the fundamental liberties. The Court's rejection of indefinite pre-trial detention under section 45 of the PMLA - more so because the trial requires more than 210 witnesses, tens of thousands of pages of evidence and delays caused by the prosecuting agency itself - reasserts that bail procedures cannot be weaponised as a form of substantive punishment. The avouching of bail in line with section 483 of the recently enacted Bharatiya Nagarik Suraksha Sanhita (BNSS)<sup>12</sup> in conjunction with

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<sup>11</sup> Aharon Barak, *Proportionality: Constitutional Rights and their Limitations* (CUP 2012)

<sup>12</sup> Bharatiya Nagarik Suraksha Sanhita 2023, s 483

the PMLA, underlines the current shifting procedural trends; however, the Court rightly ensured that the main finding was held rooted in time immemorial constitutional guarantees.