
KUSHAL KUMAR AGARWAL V. DIRECTORATE OF ENFORCEMENT: PROCEDURAL SAFEGUARDS UNDER BNSS, 2023 AND PMLA, 2002

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INTRODUCTION

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)² it came into force on 1 July 2024 that represents a significant change in India's criminal procedural framework which replaced the Code of Criminal Procedure, 1973.³ The BNSS was introduced with the objective of enhancing procedural safeguards and strengthening fairness and due process within the criminal justice system as well as its interaction with special statutes has generated interpretative challenges. One such question that it concerns the extent to which BNSS provisions apply to proceedings under specialized legislations like the Prevention of Money Laundering Act, 2002 (PMLA)⁴, particularly in view of Section 65 of the PMLA⁵, which provides for the application of general criminal procedure only insofar as it is not inconsistent with the Act. In this context, the Supreme Court's decision in Kushal Kumar Agarwal v. Directorate of Enforcement⁶ assumes considerable importance, as it examines whether procedural safeguards under BNSS specifically the requirement of a pre-cognizance hearing can be invoked in prosecutions initiated under the PMLA.

CASE DETAILS

CASE NAME	Kushal Kumar Agarwal v. Directorate of Enforcement
CITATION	2025 SCC OnLine SC 1221
YEAR OF JUDGEMENT	2025

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² Bharatiya Nagarik Suraksha Sanhita 2023 (India)

³ Code of Criminal Procedure 1973 (India)

⁴ Prevention of Money Laundering Act 2002 (India).

⁵ Prevention of Money Laundering Act 2002 (India) s 65

⁶ Kushal Kumar Agarwal v Directorate of Enforcement 2025 SCC OnLine SC 1221 (India)

COURT	Supreme Court of India
JUDGES	Justice Abhay S. Oka and Justice Ujjal Bhuyan

FACTS

- The appellant, Kushal Kumar Agarwal, was proceeded against the Directorate of Enforcement (ED) in connection with an alleged offence under the Prevention of Money Laundering Act, 2002 (PMLA)⁷. As part of its authorities in the PMLA, the Enforcement Directorate submitted a prosecution complaint to the Special Court established under Section 43 of the PMLA⁸ with the view to prosecuting the appellant in the offence of money laundering.
- Section 44(1)(b) of the PMLA⁹ under which the prosecution complaint has been filed authorizes the Special Court to assume the cognizance of the offence of money laundering on instruction of the complaint by an authorised officer of the Enforcement Directorate. The prosecution complaint filed by the ED was taken into consideration by the Special Court, the coming into force of the Bharatiya Nagarik Suraksha Sanhita, 2023, (BNSS)¹⁰ of which takes effect on 1 July 2024.
- The Special Court accepted the offence through prosecution complaint without giving any notice to the appellant and without giving him a chance to be heard before the cognizance. The appellant complained that the order that had been taken in cognizance was against the law, and therefore appealed the order, on the basis that the process followed in taking cognizance of a complaint was inconsistent with Section 223 of the BNSS¹¹, which stipulates that in taking cognizance in a complaint the accused should be afforded a hearing opportunity.

⁷ Prevention of Money Laundering Act 2002 (India)

⁸ Prevention of Money Laundering Act 2002 (India) s 65

⁹ Prevention of Money Laundering Act 2002 (India) s 44(1)(b)

¹⁰ Bharatiya Nagarik Suraksha Sanhita 2023 (India)

¹¹ Bharatiya Nagarik Suraksha Sanhita 2023 (India) s 223

- The appellant argued that due to Section 65 of the PMLA¹², the procedural provisions of the BNSS are applicable to the PMLA proceedings so far as they do not contradict the Act and thus the requirement to comply with Section 223 BNSS¹³ was compulsory. It was contended that not giving a pre-cognizance hearing equated to infringement of principles of natural justice and procedure laid out by the constitution in Article 21 of India Constitution.¹⁴
- The Directorate of Enforcement resisted the challenge arguing that the PMLA is a special Act and that the Special Court had the authority to assume the cognizance of the offence on the complaint made by the ED directly without the procedure under Section 223 BNSS.¹⁵
- The issue was taken to the Supreme Court of India where a critical question was raised on whether the procedural safeguards that have been introduced under the BNSS apply when complaints have been made under the PMLA, specifically during the taking cognizance stage.

ISSUE

- Whether the Special Court under PMLA can take cognizance of the complaint without granting an opportunity of hearing the accused which is mandatory under Section 223 of BNSS, 2023?
- Whether the procedural safeguards of the BNSS, 2023 extend to prosecution complaints filed under PMLA, 2002?
- Whether such cognizance without hearing violates the principles of fair procedure and natural justice?

RULE

1. Constitutional Provisions

¹² Prevention of Money Laundering Act 2002 (India) s 65

¹³ Bharatiya Nagarik Suraksha Sanhita 2023 (India) s 223

¹⁴ Constitution of India 1950, art 21

¹⁵ Bharatiya Nagarik Suraksha Sanhita 2023 (India) s 223

- **Article 14** - Equality before law and equal protection of laws.¹⁶
- **Article 21** - Protection of life and personal liberty (due process).¹⁷

2. Prevention of Money Laundering Act, 2002 (PMLA)

- **Section 3** - Offence of money laundering.¹⁸
- **Section 44(1)(b)** - Filing of prosecution complaint by Enforcement Directorate before Special Court.¹⁹
- **Section 45** - Non-bailable offences and stringent bail conditions.²⁰
- **Section 50** - Summons, recording statements, production of documents.²¹
- **Section 65** - Applicability of BNSS provisions “insofar as not inconsistent with PMLA.”²²

3. Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023

- **Section 223** - Examination of complainant / hearing before taking cognizance.²³
- **Sections 479, 482** - General bail provisions (for comparison with Section 45 PMLA)²⁴

ANALYSIS

- The decision made by the directorate of enforcement strengthens the established jurisprudence that the Prevention of money laundering act 2002²⁵ is a special and self-contained legislation, where the procedural framework of the act cannot be capped under the general provisions of the Bharatiya Nagarik Suraksha Sanhita, 2023.²⁶ The Supreme

¹⁶ Constitution of India 1950, art 14

¹⁷ *Constitution of India 1950, art 21*

¹⁸ Prevention of Money Laundering Act 2002 (India) s 3

¹⁹ Prevention of Money Laundering Act 2002 (India) s 44(1)(b)

²⁰ Prevention of Money Laundering Act 2002 (India) s 45

²¹ Prevention of Money Laundering Act 2002 (India) s 50

²² Prevention of Money Laundering Act 2002 (India) s 65

²³ Bharatiya Nagarik Suraksha Sanhita 2023 (India) s 223

²⁴ Bharatiya Nagarik Suraksha Sanhita, No 46 of 2023 (India) ss 479-482

²⁵ Prevention of Money Laundering Act 2002 (India)

²⁶ Bharatiya Nagarik Suraksha Sanhita 2023 (India)

Court relied on the Section 65 of the PMLA²⁷ in clarifying that the provisions of the BNSS only apply to the proceedings in PMLA to the extent that it does not conflict with the special scheme of the Act and thus to give a preservation of the legislative intent underpinning a strict and specialised regime of the economic offences.

- The fact that the Court refused to import the parameter of a pre-cognizance hearing into the Section 223 of the BNSS²⁸ is doctrinally consistent with *Vijay Madanlal Choudhary v. Union of India*²⁹ where the Supreme Court described the PMLA to be a codified code of its own substantive and procedural protections to suit the specific issues of money laundering. This decision is based on the post-Vijaya Madanlal jurisprudence and is an obvious break with the previous liberty-based jurisprudence that was taken in *Nikesh Tarachand Shah v. Union of India*,³⁰ is now substantially diluted in the circumstances of economic offences.
- The rationale of the Court is also enhanced by the use of the legal maxim *lex specialis derogat legi generali* that requires that a special law prevails over a general law in case of inconsistency. In *R.S. Raghunath v. State of Karnataka*³¹ and *Solidaire India Ltd. v. Fairgrowth Financial Services Ltd.*³², which held that even where the latter is enacted later, special enactment prevails over general procedural laws. By this maxim, the BNSS in its capacity as a general procedural statute cannot have the effect of subjugating the specific cognizance mechanism prescribed in Section 44(1)(b) of the PMLA,³³ especially bearing in mind the express restriction in Section 65 of the PMLA.³⁴
- In differentiating between an Enforcement Directorate prosecution complaint under Section 44(1)(b) of the PMLA³⁵ and a police report under the general criminal procedure, the Court followed the same line of reasoning that had been established in earlier cases like

²⁷ Prevention of Money Laundering Act 2002 (India) s 65

²⁸ *Bharatiya Nagarik Suraksha Sanhita 2023* (India) s 223

²⁹ *Vijay Madanlal Choudhary v Union of India* (2022) 10 SCC 353 (India)

³⁰ *Nikesh Tarachand Shah v Union of India* (2018) 11 SCC 1 (India)

³¹ *R.S. Raghunath v State of Karnataka* (1992) 1 SCC 335 (India)

³² *Solidaire India Ltd v Fairgrowth Fin Servs Ltd* (2001) 3 SCC 71 (India)

³³ Prevention of Money Laundering Act 2002 (India) s 44(1)(b)

³⁴ Prevention of Money Laundering Act 2002 (India) s 65

³⁵ Prevention of Money Laundering Act 2002 (India) s 44(1)(b)

Union of India v. Hassan Ali Khan³⁶ and SFIO v. Both Rahul Modi³⁷ and are aware that economic offences are a special category that should be handled differently, in terms of process by virtue of being complex, transnational, and significantly affecting the financial system.

- Constitutionally, the Court reconciled the lack of pre-cognizance hearing with the provisions of Articles 14 and 21 of the Constitution³⁸ by restating its view that the principles of natural justice were not fixed and universal, but not inflexible or universal as in the case of Canara Bank v. Debasis Das.³⁹ Judicial scrutiny, the provision of bails, and protections during the trial stage as provided in the BNSS are some of the post-cognizance safeguards which prevent procedural fairness being a fallacy.
- Thus, the judgment adopts a context-sensitive and purposive interpretation of procedural fairness, striking a careful balance between individual liberty and collective economic security, and affirming that equality under Article 14⁴⁰ does not require identical procedures where legislative classification is reasonable, intelligible, and purpose-driven

CRITICAL ANALYSIS & IMPACT

- This ruling offers the procedural clarity sorely lacking by confirming that PMLA is a special and self-instructional law and that the prosecutions against money laundering are not held on the importation of general procedural protections under the BNSS.
- Using the principle of *lex specialis derogat legi generali*, the Court emphasizes efficiency and uniformity in Special Court practice, and at the same time, the narrow applicability of early-stage protection of the accused due to the strict PMLA framework is objected to.

³⁶ Union of India v Hassan Ali Khan (2011) 10 SCC 235 (India)

³⁷ SFIO v Rahul Modi (2019) 5 SCC 266 (India)

³⁸ Constitution of India 1950, arts 14, 21

³⁹ Canara Bank v Debasis Das (2003) 4 SCC 557 (India)

⁴⁰ Constitution of India 1950, art 14

- The ruling has significant future impact, as it standardizes the approach to cognizance in PMLA cases and aligns India's anti-money laundering regime with its international obligations, particularly under FATF standards.

CONCLUSION

- The decision in *Kushal Kumar Agarwal v. Directorate of Enforcement*⁴¹ restates the established fact that the Prevention of Money Laundering Act, 2002⁴² is a special and self-contained statute, operating through a different procedural framework. The Supreme Court clarified that a prosecution complaint filed by the Enforcement Directorate against the accused under Section 44(1)(b) of the PMLA⁴³ cannot be equated with a police report under the Bharatiya Nagarik Suraksha Sanhita, 2023⁴⁴, and that such complaint could be made by the Special Court itself without allowing the accused to be heard on pre-cognizance.
- The Court interpreted the provisions of Section 65 of the PMLA⁴⁵ in unison and the provisions of BNSS are applicable to the extent they are not inconsistent with the scheme and objectives of the PMLA. As such, the procedural protections which the contemplated provisions of Section 223 of BNSS⁴⁶ would afford themselves cannot be robotically transferred to PMLA proceedings because of its detrimental effect on the intent of the legislature to establish a strict anti-money laundering framework.
- Meanwhile, the judgment acknowledges a constitutional equilibrium because the extraordinary powers granted to the Enforcement Directorate are open to judicial review and must be consistent with the provisions of fairness in Articles 14⁴⁷ and 21⁴⁸ of the

⁴¹ *Kushal Kumar Agarwal v Directorate of Enforcement* (2025) SCC OnLine SC 1221 (India)

⁴² Prevention of Money Laundering Act 2002 (India)

⁴³ Prevention of Money Laundering Act 2002 (India) s 44(1)(b)

⁴⁴ Bharatiya Nagarik Suraksha Sanhita 2023 (India)

⁴⁵ Prevention of Money Laundering Act 2002 (India) s 65

⁴⁶ Bharatiya Nagarik Suraksha Sanhita 2023 (India) s 223

⁴⁷ Constitution of India 1950, art 14

⁴⁸ Constitution of India 1950, art 21

Constitution. This decision is affirmed, therefore, to provide procedural clarity and prevents dilution of the powers of the PMLA; and it is also leading to add to the developing jurisprudence of the interface between special criminal statutes and the general criminal procedural model.

TABLE OF COMPARISON BETWEEN INDIA, USA & UK

Factor	India	USA	UK
Governing law	BNSS, 2023 and PMLA, 2002	Due Process Clause (5th & 14th Amendments)	Criminal Procedure Rules; Human Rights Act, 1998
Pre-cognizance safeguard	Cognizance under Section 223 BNSS	Probable cause determination / Grand Jury indictment	Prima facie assessment before issuance of process
Core principle	Fair procedure & natural justice	Due process of law	Right to fair trial (Article 6 ECHR)
Applicability to special laws	General procedure applies unless inconsistent (Sec.65 PMLA)	Due process applies even to special statutes	Procedural fairness mandatory, subject to statutory limits



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