

Supreme Court Sets New Precedent

# Bail Provisions for Women Under PMLA

*A Tale of Judicial Grace and Discretion*



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## 1. Introduction

In a landmark decision, the Supreme Court of India reversed a Delhi High Court ruling that had rejected the bail application of K Kavitha under the Prevention of Money Laundering Act (PMLA), 2002. The case, titled [\*Kalvakuntla Kavitha v. Directorate of Enforcement \[2024\] 165 taxmann.com 794 \(SC\)\*](#), ignited significant discourse on the interpretation and enforcement of legal standards concerning bail under Section 45(1) of the PMLA, particularly with regard to women.

## 2. The Backstory – A Challenged Bail Plea

K Kavitha, a prominent political figure and accomplished individual, became embroiled in allegations of money laundering. Following her arrest, she applied for bail, citing the first proviso to Section 45(1) of the PMLA, 2002, which permits conditional bail for certain demographics, including women, minors, and the infirm. Despite this, the Delhi High Court's Single Judge denied her bail, arguing that her influential status and capabilities rendered her ineligible for consideration under the "vulnerable" category.

## 3. Section 45(1) of PMLA – A Legal Overview

Section 45(1) of the PMLA stipulates strict prerequisites for granting bail to individuals charged under this statute. Nevertheless, the first proviso introduces exceptions, granting courts the authority to approve bail for women, minors, the ill, or those implicated in laundering amounts below ₹1 crore. The central issue in Kavitha's case was whether this proviso was applicable to a well-educated and politically involved woman like K Kavitha.

### 3.1 Section 45(1) of the Prevention of Money Laundering Act, 2002 read as follows

*Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence under this Act, shall be released on bail or on his own bond unless—*

- (a) the Public Prosecutor has been given an opportunity to oppose the application for such release; and*
- (b) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail.*

#### 3.1.1 First Proviso to Section 45(1) of the PMLA read as follows

The proviso, which allows the court discretion to grant bail, where the appellant is a woman or belongs to any of the other categories mentioned, states that:



*"Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees, may be released on bail, if the Special Court so directs"*

## 4. The Case Unfolds – A Closer Look

In this case, the appellant sought to challenge the ruling of the High Court of Delhi, where the Single Judge had rejected her bail plea under the first proviso to Section 45(1) of the Prevention of Money Laundering Act (PMLA), 2002. The contention was rooted in her arrest related to charges of money laundering, with her bail application asserting her eligibility for special consideration as a woman under the said proviso.

Despite her plea, the Single Judge issued an adverse order, declining to grant bail. In dismissing the application, the judge referenced the precedent set in *Saumya Chaurasia v. Directorate of Enforcement*. The interpretation that emerged was that the proviso applied exclusively to 'vulnerable women.' Given the appellant's extensive educational background and her significant political roles, including service as a Member of Parliament and Member of the Legislative Council, the court ruled that she did not fit the criteria of being 'vulnerable' as defined in the precedent, thus denying her the special provisions for bail under the PMLA.

## 5. High Court's Reasoning – A Flawed Interpretation

The Single Judge acknowledged that K. Kavitha was a highly educated and accomplished individual with notable contributions to politics and social work in Telangana, as detailed in her legal submissions. Her educational background and societal efforts were impressive and uncontested by the investigating agencies.

However, the core of the bail decision hinged on the severe allegations and evidence presented by the prosecution, which purportedly outlined her involvement in the offenses under scrutiny. Despite her laudable accomplishments, the court had to consider these serious charges which prima

facie implicated her as a key figure in the scheme related to the implementation of Delhi's new Excise Policy. It was suggested that other accused acted under her directives, reinforcing her central role in the alleged conspiracy.

In her bail application, the appellant herself emphasized her educational and professional stature. The court, drawing upon the Supreme Court's rationale in *Saumya Chaurasia*, concluded that the special bail provisions under Section 45(1) of PMLA were designed to protect 'vulnerable women'—a category that the court ruled did not apply to Kavitha. Vulnerable women, as intended by the legislature, are those who might be exploited to commit offenses, rather than those in positions of power and influence like Kavitha.

Therefore, the Single Judge decided that K. Kavitha did not qualify for the bail relief provided under the proviso to Section 45(1) of the PMLA, given her prominent and influential status, which did not align with the legislative intent of the proviso.

## 6. Supreme Court's Intervention – Setting the Record Straight

The Supreme Court, revisiting its observations in the case of *Saumya Chaurasia*, underscored the necessity for courts to approach the first proviso to Section 45(1) of the Prevention of Money Laundering Act (PMLA) with sensitivity and sympathy. The proviso aims to protect certain vulnerable groups, such as young individuals and women, who might be exploited by malevolent actors and wrongfully implicated in crimes. This emphasis contrasts sharply with the narrower interpretation that the proviso applies solely to 'vulnerable women.'

Initially, the Supreme Court highlighted that the proviso allows for bail for specified categories, including women, without necessarily meeting the stringent conditions set under Section 45 of the PMLA, contingent on the specifics of each case. Importantly, the court pointed out that when legislation affords special consideration to a particular group, any decision to deny such benefits must be accompanied by well-founded reasons.

The Supreme Court criticized the Delhi High Court's Single Judge for a misapplication of the principles established in the Saumya Chaurasia case. It noted that contemporary society sees educated and prominent women actively participating in business and sometimes, whether intentionally or not, becoming involved in unlawful activities. This reality calls for a prudent and judicious exercise of discretion by the courts in such matters.

Additionally, the Supreme Court clarified that being highly educated or holding significant political office, such as being a Member of Parliament or the Legislative Assembly, does not automatically disqualify a woman from the protections intended by the proviso to Section 45(1) of the PMLA. This interpretation ensures that the law's protective measures are applied equitably and based on the substantive merits and circumstances of each case.

## 7. Supreme Court Ruling

The Supreme Court determined that the Single Judge had fundamentally erred in interpreting the first proviso to Section 45(1) of the Prevention of Money Laundering Act (PMLA) as applicable only to a 'vulnerable woman'. Consequently, the judgment to deny bail was deemed incorrect and the order was set aside. The appellant was granted immediate release on bail upon submitting bail bonds worth Rs. 10 lakhs.

Moreover, the Court emphasized the principle that 'bail is the rule, and refusal is the exception', affirming that the right to liberty under Article 21 of the Constitution prevails over statutory limitations. Additionally, the Court mandated that the appellant surrender her passport and refrain from any actions that could tamper with evidence or influence witnesses.

## 8. Key Takeaways – Judicial Prudence and Fairness

This judgment illustrates the critical balance the judiciary must maintain between enforcing statutory mandates and upholding fundamental rights. The Supreme Court's decision highlights the necessity for the law to be applied consistently, regardless of an individual's social, educational, or political status. By overturning the High Court's decision, the Supreme Court reinforced that the discretionary powers provided by the first proviso to Section 45(1) of the PMLA, 2002, should be exercised with careful judgment, avoiding narrow and subjective interpretations of who qualifies as vulnerable.

This case serves as a reminder that while the courts can take into account the personal achievements and character of an individual, these should not detract from the entitlements established under the law. The ruling underscores the fundamental nature of the right to bail, particularly where statutes expressly permit it, insisting that any refusal must be justified with solid legal rationale.

Overall, this ruling fortifies the judiciary's role in protecting individual rights against potential misuse of authority, ensuring that fairness and justice remain central in the application of the law.

