

White-Collar Crime & Corporate Investigations Monthly Newsletter

PREVENTION OF MONEY LAUNDERING ACT

PRE-COGNIZANCE HEARING TO ACCUSED MANDATORY EVEN FOR COMPLAINTS FILED BEFORE JULY 1, 2024 IF COGNIZANCE TAKEN UNDER BNSS

The **Punjab and Haryana High Court** set aside an order of the Prevention of Money Laundering (PMLA) Special Court taking cognizance after the enactment of Bharatiya Nagarik Suraksha Sanhita (BNSS) of a PMLA complaint filed by Enforcement Directorate (ED) before the BNSS came into force as a hearing was not provided to the accused prior to

taking cognizance, which is mandated under Section 223 of the BNSS. The High Court held that the inquiry for cognizance had not begun upon the filing of the complaint so as to exclude the applicability of BNSS in terms of Section 531, which provides that any appeal, application, trial, inquiry or investigation pending before the BNSS comes into force, shall be governed by the Code of Criminal Procedure (CrPC).

[Sikander Singh vs. Directorate of Enforcement, Gurugram](#)

BHARATIYA NAGARIK SURAKSHA SANHITA

SUPREME COURT ISSUES GUIDELINES ON APPEALS AGAINST BAIL ORDERS

While clarifying that appeals against bail orders are distinct from applications for cancellation of bail applications, the Supreme Court laid down principles regarding the appeal against grant of bail:

- An appeal against grant of bail may be entertained by a superior Court on grounds such as perversity, illegality, inconsistency with law, relevant factors overlooked such as gravity of the offence and impact of the crime.
- However, the Court may not take the conduct of an accused subsequent to the grant bail into consideration while considering such appeals. Such grounds must be taken in an application for cancellation of bail.

[Ashok Dhankad v. State NCT of Delhi](#)

DETENTION BEYOND 24 HOURS WITHOUT MAGISTRATE'S SANCTION IS ILLEGAL

The **Orissa High Court** held that detention of an accused beyond 24 hours without producing him before a magistrate violates Article 22(2) of the Constitution and Section 58 of BNSS (Section 57 CrPC). The Court clarified that while "arrest" and "custody" are not identical, both involve restriction of liberty, and any custody beyond 24 hours without

authorisation under Section 187 of BNSS (Section 167 CrPC) is illegal. The court reiterated that personal liberty under Articles 21 and 22 is sacrosanct and cannot be curtailed except in strict compliance with law. The court further held that once detention is found illegal, bail must be granted.

[Jati @ Susanta Rout & Anr. v. State of Odisha](#)

24-HOUR PERIOD FOR PRODUCTION BEFORE MAGISTRATE BEGINS FROM EFFECTIVE DETENTION AND NOT FORMAL ARREST

The **Kerala High Court** held that the constitutional requirement under Article 22(2) and Section 58 of BNSS of production of an accused before a magistrate within twenty-four hours operates from the moment of the effective restraint on liberty, and not from the time when the arrest is formally recorded. The High Court observed that the failure, refusal or omission to record an arrest or continuation of interrogation for unrecorded period of custody constitutes illegal detention, and techniques of delaying the recording of arrest cannot defeat the constitutional guarantee of personal liberty. The Court held that continued detention beyond this period without magistrate's authorisation is unconstitutional and entitles the accused to bail.

[Biswajith Mandal v. Inspector, Narcotic Control Bureau](#)

MAGISTRATE IS EMPOWERED TO HEAR BAIL APPLICATION WHILE COMMITTING A CASE TO SESSIONS COURT UNDER SECTION 232, BNSS

The **Kerala High Court** has held that the Magistrate, while committing a case exclusively triable by the Sessions Court to it under Section 232 of BNSS, is empowered to hear the accused's bail application. He is not prohibited from

considering such bail application under the second proviso to Section 232, which provides that any pending applications filed by the accused or victim before the Magistrate shall be forwarded to the Court of Session with the committal of the case.

[Vishnu vs. State of Kerala](#)

CODE OF CRIMINAL PROCEDURE

NON-FILING OF AFFIDAVIT WITH SECTION 156(3) CRPC APPLICATION A CURABLE DEFECT IF SUBMITTED BEFORE MAGISTRATE'S ORDER.

The Supreme Court clarified that non-filing of an affidavit affirming the genuineness of the complaint and disclosure of prior litigation by the applicant in support of an application

under Section 156(3) CrPC for direction to the police to file a First Information Report (FIR), as mandated in **Priyanka Srivastav v. State of Uttar Pradesh, (2015) 6 SCC 287**, is a curable defect if the affidavit is filed before the passing of the order by the magistrate.

[S. N. Vijayalakshmi & Ors. v. State of Karnataka & Anr](#)

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White-Collar Crime and Corporate Investigations Practice

We have a skilled team specialized in criminal law, corporate/ transactional law, Intellectual Property and technology law, with considerable experience in criminal defence and regulatory enforcement.

Our knowledge of the enforcement landscape and understanding of the approach employed by regulators and investigating agencies enables us to anticipate the litigation trajectory and take steps to avoid/mitigate liability where possible.

The WCC team also works closely with the larger litigation practice to combat the substantial civil litigation risks that often accompany criminal and regulatory issues.

Competencies

Our subject matter competencies include the following:

- Fraud and Business Crime
- Money Laundering and FEMA
- Anti-Bribery, Anti-Corruption, and Investigations
- Securities Fraud
- Data Protection and Cyber Security
- Licensing Control
- Sanctions

Agencies/Authorities

We have represented clients before the following agencies:

- Directorate of Enforcement (ED)
- Central Bureau of Investigations (CBI)
- Serious Fraud Investigation Office (SFIO)
- Crime Branch/ Economic Offence Wing (EOW)
- Police Cyber Units
- Adjudicating Authorities and Appellate Tribunals under PMLA
- State Adjudicating Authorities (appointed under the Information Technology Act, 2000)
- Securities and Exchange Board of India (SEBI)
- Reserve Bank of India (RBI)
- Directorate of Revenue Intelligence (DRI)

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