2025:BHC-AS:27479

VRJ

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.728 OF 2025

Nagani Akram Mohammad Shafi
Age :- 33 years, Occ.: Service
Having permanent residence at:
Village Dhoraji, District- Rajkot,
State- Gujrat.
(Presently in judicial custody, lodged at
Mumbai Central Prison, Mumbai) ... **Applicant**

V/s.

1 **The Union of India**
Through Assistant Director,
Directorate of Enforcement, Mumbai,
Mumbai Zonal Office, Zone-II, Mumbai

2 **The State of Maharashtra,**
Through Public Prosecutor,
High Court of Bombay, Mumbai

... **Respondents**

Mr. Ajay Bhise with Ms. Deepali Kedar, Mr. Sandeep Salonkhe and Mr. Tejas Dhotre for the applicant.

Mr. H. S. Venegavkar with Mr. Aayush Kedia and Ms. Leepika Basant for respondent No.1.

Ms. Supriya I. Kak, APP for the State.

CORAM : AMIT BORKAR, J.

DATED : JULY 8, 2025

ORAL JUDGMENT:

1. The present bail application involves a substantial question of law, which, though uncommon in the context of bail proceedings, assumes considerable importance for the proper

adjudication of the present case. The core issue that arises for consideration is whether the references made in the Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'PMLA'), to the provisions of the Indian Penal Code, 1860 (IPC) and the Code of Criminal Procedure, 1973 (CrPC), stand vitiated or rendered ineffective by virtue of the repeal of those enactments through the coming into force of the Bharatiya Nyaya Sanhita, 2023 (BNS) and the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). A further question that necessarily follows is whether such references in the PMLA are now to be construed as referring to the corresponding provisions under the new legislative regime embodied in the BNS and BNSS.

2. By this application filed under Section 483 of the BNSS and Section 45 of the PMLA, the applicant seeks regular bail in connection with ECIR/MBZO-II/20/2024 registered by the Directorate of Enforcement, Mumbai Zonal Office-II. The said ECIR corresponds to Special Case (PMLA) No. 191 of 2025, concerning offences punishable under Sections 318(4), 338, and 340(2) of the BNS, the new penal code which has replaced the IPC. The applicant has been in custody since 20th November 2024 in relation to this case.

3. The prosecution case, in brief, is that during the period in question a huge amount of over ₹100 crore was deposited in fourteen newly opened accounts at the Nashik Merchant Co-operative Bank, Malegaon, District Nashik. These transactions were allegedly layered and routed in a manner to conceal their illicit origin, giving rise to suspicion of money laundering. FIR No.

295 of 2024 was registered on 7th November 2024 at the local police station for offences under the BNS. On 11th November 2024, the Enforcement Directorate registered the above ECIR, treating the offences disclosed in the FIR as scheduled offences under the PMLA, and commenced investigation under the PMLA. The applicant was arrested on 20th November 2024 in connection with the money laundering probe.

4. The applicant had earlier moved an application for bail before the Special Court (PMLA), Mumbai. However, by an order dated 6th February 2025, the Special Court rejected that bail plea. Having been unsuccessful before the lower court, the applicant has approached this Court by way of the present bail application under Section 439 Cr.P.C./BNSS and the special provisions of PMLA.

5. Mr. Bhise, learned Advocate for the applicant, has assailed the maintainability of the PMLA prosecution against the applicant. His primary contention is that the Enforcement Directorate cannot invoke the PMLA in the present case because the predicate offences are registered under the BNS, 2023 which, according to him, is not yet included as a scheduled offence in the PMLA. He pointed out that the Schedule to the PMLA enumerates various offences under certain statutes, prominently, the IPC, as “scheduled offences”, also known as predicate offences. With effect from 1st July 2024, the IPC has been repealed and replaced by the BNS, 2023. Learned counsel argued that since Parliament has not amended the PMLA to expressly substitute or add the BNS offences in place of the repealed IPC offences in the Schedule, any offences alleged under the BNS cannot be treated as scheduled

offences for the purposes of money laundering charges. In other words, the prosecution's attempt to proceed under PMLA by treating BNS provisions as if they were in the Schedule is said to be ultra vires the Act.

6. Learned counsel for the applicant submitted that the reference to scheduled offences in the definition of "proceeds of crime" under Section 2(1)(u) of the PMLA must be taken as a specific reference to the offences as listed in the Schedule of the PMLA, and not a general reference that can automatically accommodate offences under a new law. He emphasized that inclusion of any offence in or exclusion of any offence from the PMLA Schedule is a matter of legislative policy reserved for Parliament. Absent a legislative amendment to the Schedule, the Enforcement Directorate cannot, by executive action, treat an offence under the BNS as one of the scheduled offences under the PMLA. The notification dated 16th July 2024 issued by the Ministry of Law and Justice was characterized by the learned counsel as ineffective to alter the PMLA. He submitted that such a notification cannot be equated with an Act of Parliament.

7. In support of his legislation by incorporation argument, Mr. Bhise placed reliance on several judicial precedents. He cited the judgment of the Supreme Court in *Mahindra & Mahindra Ltd. vs. Union of India & Anr., (1979) 2 SCR 1038*, wherein the distinction between legislation by reference and legislation by incorporation was discussed. He urged that the Supreme Court held that when one statute incorporates provisions of another statute by specific reference, the incorporated provisions become a part of the former

as they existed at that time, and subsequent amendments in the latter statute would not automatically affect the former. Learned counsel contended that the PMLA's Schedule "incorporated" the IPC offences as they were at the time of enactment; therefore, the replacement of the IPC by the BNS would not automatically extend to the PMLA unless Parliament itself intervenes. He also referred to *Insolvency and Bankruptcy Board of India vs. Satyanarayan Bankatlal Malu & Ors. (2024) 5 SCR 1*, submitting that the principles in that case fortify his view that the reference to the IPC in the PMLA is by way of incorporation, not a continuous adaptation. Additionally, he relied upon *Vijay Madanlal Choudhary & Ors. vs. Union of India & Ors., (2022) 6 SCR 382*, particularly to emphasize that an explanation inserted in a statute cannot travel beyond the main provision of the law. He argued that the Explanation added to Section 2(1)(u) of the PMLA cannot be invoked to expand the definition of scheduled offence; it must be confined to clarifying the scope of "proceeds of crime" in relation to offences already legitimately part of the Schedule. If BNS offences are not in the Schedule by law, no explanation or interpretation can create their inclusion, according to the applicant.

8. Per contra, Mr. Venegavkar, learned Public Prosecutor appearing for the Directorate of Enforcement, opposed the application and supported the actions taken under PMLA. He submitted that the coming into force of the BNS, 2023 does not render the PMLA otiose with respect to offences committed post-July 2024. He drew the Court's attention to Section 8(1) of the

General Clauses Act, 1897, which deals with the construction of references to repealed enactments. Invoking the principle embodied in that provision, the learned PP contended that whenever an Act is repealed and re-enacted, then unless a different intention appears, any reference in any other enactment to the provisions of the repealed Act shall be construed as a reference to the provisions of the new Act. In the present context, with the IPC being repealed and substantially re-enacted as the BNS, any reference in the PMLA or its Schedule to an IPC provision should be read as referring to the corresponding provision of the BNS, so long as the new provision is the re-enacted version of the old.

9. Mr. Venegavkar submitted that there is no "different intention" in the PMLA that would exclude the operation of Section 8 of the General Clauses Act in this situation. On the contrary, he argued, the very functioning of the PMLA depends on continuity of its predicate offences. The BNS, 2023 is essentially a revision and reorganization of the IPC as it carries forward the same core offences such as cheating, criminal conspiracy, etc. though with some amendments and re-numbering. There is nothing to indicate that Parliament, by enacting the BNS, intended to drop those offences from the ambit of anti-money laundering law. Learned PP urged the Court to adopt an "updating construction" of the PMLA, meaning that the law should be interpreted in light of the current enactments. This doctrine of updating construction has been recognized by courts to ensure that statutes are not applied in a manner that freezes them in time

when the legislature makes formal updates without altering the substance of the law. He submitted that the offences alleged in this case under BNS Sections 318(4), 338, 340(2) are in substance the same as offences under the IPC which were listed in the PMLA Schedule, and thus treating them as predicate offences is in full conformity with the legislative intent and the text of the General Clauses Act.

10. The learned PP further highlighted that the Supreme Court in *Vijay Madanlal Choudhary & Ors. (supra)* has underscored the interdependence of the PMLA offence on the existence of a predicate offence. In that judgment, it was explained that the offence of money laundering is attached to the scheduled offence, without a scheduled/predicate offence, there can be no "proceeds of crime" and thus no offence of money laundering. Given this legal position, Mr. Venegavkar argued that it would be contrary to the object of the PMLA to interpret its Schedule in a rigid, frozen manner so as to create a break whenever the underlying penal law is amended or re-enacted. If the applicant's view were accepted, then from 1st July 2024 onwards, no matter how serious the crime, a money launderer could escape just because the label of the predicate offence changed from "IPC" to "BNS", an outcome that the law cannot countenance. He contended that the principle of substantial continuity must be applied as long as the BNS covers the same field of offences with no change in substance or policy, the Court should read the PMLA Schedule in a purposive way to include those corresponding offences.

11. Inviting the Court's attention to a notification dated 16th July 2024 issued by the Central Government, Mr. Venegavkar submitted that the Government has already clarified the transition by exercising its power under Section 8(1) of the General Clauses Act. Through this notification, it was notified inter alia that any reference to the "Indian Penal Code, 1860", the "Code of Criminal Procedure, 1973" or the "Indian Evidence Act, 1872" in any existing law shall be read as a reference to the Bharatiya Nyaya Sanhita, 2023, the Bharatiya Nagarik Suraksha Sanhita, 2023, or the corresponding new Evidence Act, respectively, along with their corresponding provisions. Learned PP argued that this executive notification has the force of law since it derives its authority from the General Clauses Act and the Constitution. The notification is clarificatory in nature, intended to ensure a smooth legal transition, and does not itself amount to legislation. He submitted that the Central Government was competent to issue such a notification to prevent a legal vacuum, and doing so is consistent with the executive's duty to faithfully execute Parliament's enactments, relying on the principle elucidated in *Rai Sahib Ram Jawaya Kapur & Ors. vs. State of Punjab, (1955) 2 SCR 225* that the executive power extends to fulfilling the mandate of legislation in the absence of specific prohibitions. Thus, he maintained that the PMLA proceedings in the present case are well-founded in law despite the change in nomenclature of the penal law.

12. On the aspect of merits of the case, Mr. Venegavkar submitted that the Enforcement Directorate has gathered significant material indicating the applicant's involvement in

laundering the proceeds of the scheduled offence. However, since the applicant's counsel did not address the factual merits or make submissions on the evidence during the hearing having focused purely on the legal issue of the BNS not being in the Schedule, the prosecution refrained from elaborating on those aspects. He stated that, if required, the Department was prepared to demonstrate that the applicant had a key role in the creation and operation of the bank accounts through which ₹100 crore were laundered. In any event, learned PP urged that no case for bail is made out on facts or in law, and the application deserves to be rejected outright.

13. I have given my anxious consideration to the submissions of both sides and perused the record. The central issue that arises for determination is whether, in the wake of the Indian Penal Code's repeal and replacement by the Bharatiya Nyaya Sanhita, 2023, the offences alleged against the applicant, now described under BNS provisions, can be recognized as scheduled offences under the PMLA without a specific amendment of the PMLA Schedule. Resolving this issue requires examining the interpretive framework provided by the General Clauses Act, as well as the intent and purpose of the PMLA's Schedule, against the backdrop of the legislative changes.

14. The PMLA, is a special law enacted with the objective of preventing money laundering and providing for attachment and confiscation of property derived from or involved in money laundering. The foundational concept under the PMLA is the "proceeds of crime", which is defined under Section 2(1)(u) to mean any property derived or obtained directly or indirectly as a

result of criminal activity relating to a "scheduled offence". The PMLA is mainly built around the idea of tracking and punishing the use of "proceeds of crime". In simple terms, "proceeds of crime" means any kind of property or money that comes from criminal activity, whether directly or through other means. But for this to apply under PMLA, the crime must be related to a "scheduled offence", also called a predicate offense. This means that before anyone can be accused or prosecuted for money laundering under PMLA, there must be some underlying crime that is already listed in the Schedule of the Act. If there is no such scheduled offense, then the case under PMLA cannot stand on its own. This requirement is very clear in Section 2(1)(y) of the PMLA, which defines "Scheduled offence" as the offences given in Part A or Part C of the Schedule attached to the Act. This makes it very clear that the PMLA is directly connected to and dependent upon the specific offences listed in the Schedule.

15. The term "scheduled offence" is defined under Section 2(1)(y) of the Act to mean: "(i) the offences specified under Part A of the Schedule; (ii) the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more; and (iii) the offences specified under Part C of the Schedule."

16. It is evident that for a prosecution under the PMLA to be initiated, there must necessarily be the commission of an offence specified in the Schedule to the Act, commonly referred to as a predicate offence. Without such predicate offence, the offence of money laundering under Section 3 of the PMLA cannot be

independently sustained.

17. The Schedule attached to the PMLA carefully lists out various serious offences taken from different laws, especially from the IPC, under Part A. Some examples of these are: Section 120B (which deals with *Criminal Conspiracy*), Section 302 (for *Murder*), Section 304 (for *Culpable Homicide Not Amounting to Murder*), Section 307 (for *Attempt to Murder*), and Section 308 (for *Attempt to Commit Culpable Homicide*). It also includes several sections related to extortion, robbery, dacoity, cheating, forgery, and counterfeiting. The listing of these specific IPC sections by their numbers and title is not accidental, it is important because it shows the exact legal link between the PMLA and the serious crimes mentioned in the Indian Penal Code. These section numbers help us clearly identify which crimes, if committed, can lead to a money laundering case under PMLA.

18. With effect from 1st July 2024, the IPC, 1860 has been repealed and substituted by the BNS. Consequently, the offences previously defined under IPC are now re-enacted and codified under different section numbers in the BNS. For example, the offence of cheating, which was earlier under Section 420 IPC, is now covered under Section 318(4) of the BNS. Similarly, murder under Section 302 IPC is now defined under Section 103(1) of the BNS.

19. In this context, the provisions of Section 8(1) of the General Clauses Act, 1897 become relevant. The said provision reads as follows:

> *"Where this Act, or any Central Act or Regulation made after the commencement of this Act, refers to a Central Act or Regulation which is repealed and re-enacted by a Central Act or Regulation, then the reference shall, unless a different intention appears, be construed as a reference to the provision so re-enacted."*

20. The effect of Section 8(1) is to statutorily mandate that wherever a Central Act, such as PMLA refers to another Act, such as IPC, and the latter is subsequently repealed and re-enacted, the reference is to be construed as a reference to the new enactment, unless a different legislative intention is apparent. In the absence of any express contrary intention in the PMLA, and given that the Schedule merely refers to the IPC sections without incorporating their text, the interpretation must be governed by this general rule of construction.

21. To begin with, there are some facts which are not disputed. The IPC was repealed by the Parliament and brought back in a new and changed form as the BNS, which came into effect from 1st July 2024. The offences for which the applicant has been charged are Sections 318(4), 338, and 340(2) of the BNS which were not there in the statute before that date in those exact numbers. However, it is clear that these new sections 420, 467 and 471 relate to the same offences which were earlier part of the IPC. The Schedule to the PMLA, as it stood in 2024, had included various offences under the IPC like cheating, forgery, criminal breach of trust, criminal conspiracy, and so on, as scheduled offences under Paragraph 1 of Part A of the Schedule. Now, because the IPC is repealed and BNS has been enacted, the

numbers and placement of these offences have changed, but their substance remains the same.

22. Understanding the effect of repealing and re-enacting a law on other existing laws depends on a careful understanding of two important legal rules of interpretation: "legislation by reference" and "legislation by incorporation." Telling the difference between these two is very important to decide whether the provisions of the BNS and BNSS will automatically take the place of the earlier IPC and CrPC for the purpose of the PMLA.

23. Where there is mere reference to or citation of one enactment in another without incorporation. Section 8(1) applies and the repeal and re-enactment of the provision referred to or cited has the effect set out in that section and the reference to the provision repealed is required to be construed as reference to the provision as re-enacted. If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act just as if they had been actually written in it with the pen, or printed in it, and, the moment you have those clauses in the later Act, you have no occasion to refer to the former Act at all.[See: *Collector of Customs, Madras vs Nathella Sampathu Chetty and Anr. (1962) 3 SCR 786 and Mahindra & Mahindra Ltd. v. Union of India, (1979) 2 SCC 529*]

24. Legislation by Reference occurs when a statute refers to the provisions of another existing statute without physically reproducing them within its own text. In such cases, the referred

provisions are considered part of the referring statute, but they maintain their independent existence. A key characteristic of this doctrine is its dynamic nature: any subsequent amendments, modifications, or even the repeal of the referred statute will directly affect the referring statute. This is because the referring statute dynamically points to the current version of the referred law. For instance, a general reference to a provision implies the exclusion of specific references. If there is a mere reference to a provision of one statute in another without incorporation, then, unless a different intention clearly appears, Section 8(1) of the General Clauses Act, 1897, would apply, and the reference would be construed as a reference to the provision in the former statute, as it may be in force from time to time.

25. Conversely, Legislation by Incorporation involves the physical "bodily lifting" of provisions from one enactment and making them an integral, fixed part of another. Once incorporated, these provisions become a static component of the incorporating statute, as if they were originally enacted within it. Consequently, subsequent amendments or the repeal of the original statute from which the provisions were drawn do not affect the incorporated provisions, as they have lost their independent existence within the context of the incorporating statute. The effect of incorporation means that the repeal of the former leaves the latter wholly untouched.

26. The main legal difference between legislation by reference and legislation by incorporation is seen when the original law, which is referred to or incorporated, gets changed later. In the case

of legislation by reference, the law that makes the reference keeps getting automatically updated, so it always stays in line with the latest version of the referred law. But in legislation by incorporation, the law only takes a fixed version, like a snapshot, of the other law at the time it was incorporated. That fixed version does not change, even if the original law is changed or repealed later. Though legislation by incorporation has some clear exceptions in law, legislation by reference generally does not allow any exceptions. The Supreme Court has clearly said many times that when only specific provisions of one law are both referred to and incorporated into another law, then only those specific provisions apply. Any later changes made to the original law do not become part of the new law.

27. Section 8(1) of the General Clauses Act, 1897, is a foundation for ensuring legal continuity when enactments are repealed and re-enacted. This statutory provision mandates that where a Central Act or Regulation repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or instrument to the repealed provision shall, unless a different intention appears, be construed as a reference to the re-enacted provision. This section thus provides for the automatic substitution of references to repealed laws with their re-enacted equivalents, unless a contrary legislative intent is explicitly demonstrated. Section 8(1) plays an important role in making sure that the law continues to work smoothly when a law is repealed and re-enacted. This means that, unless a contrary intention is shown, the law will automatically replace the

reference to the old law with the reference to the new re-enacted law.

28. Applying the aforesaid principles to the present case, it becomes imperative to examine whether the references to offences under the IPC, as contained in the Schedule to the PMLA, are now to be construed as references to the corresponding provisions under the BNS. The necessity of such adjudication arises for the reasons elaborated hereinafter:

PMLA refers to IPC offences by section numbers and not by incorporation

29. The applicant's primary contention rests on the doctrine of "legislation by incorporation," asserting that the PMLA's Schedule, by specifically enumerating IPC sections, incorporated those provisions as if they were physically written into the PMLA. Consequently, the repeal of the IPC by the BNS would, under this doctrine, render the PMLA inoperative for BNS offences unless a specific legislative amendment is made to the PMLA. Reliance was placed on *Mahindra & Mahindra Ltd. (Supra)*.

30. While the distinction between "legislation by incorporation" and "legislation by reference" is a well-recognized principle of statutory interpretation, its application is not absolute and must be viewed in the context of legislative intent and the nature of the repealing and re-enacting statutes. In *Mahindra & Mahindra Ltd.*, the Supreme Court found an instance of incorporation where Section 55 of the MRTP Act referred to Section 100 of the CPC, implying a fixed reference to the CPC as it stood at that time.

However, the present case involves a fundamentally different legislative exercise. The BNS, is not a mere amendment to a few sections of the IPC; it is a comprehensive re-codification and replacement of the entire Indian Penal Code. The legislative intent behind the BNS, BNSS, and BSA is to overhaul and consolidate the criminal laws, largely retaining the substance of the repealed codes while updating language and addressing new forms of crime. This is a wholesale legislative overhaul, not a selective incorporation of specific provisions.

31. When an entire enactment is repealed and re-enacted, even with modifications, the presumption is in favour of continuity, especially when the substance of the law remains largely the same. To apply the doctrine of "legislation by incorporation" rigidly in such a scenario would lead to an absurd and unintended consequence, the PMLA, a crucial anti-money laundering statute, would be rendered toothless for all predicate offences committed after the commencement of the BNS, thereby creating a massive lacuna in the legal framework. This Court finds that the legislative exercise here is one of "repeal and re-enactment" with modifications, rather than a simple "incorporation" of specific provisions.

32. The PMLA refers to various offences listed under the Indian Penal Code, 1860 (IPC) by mentioning their section numbers in the Schedule appended to the Act. For example, it includes references such as *Section 120B* (criminal conspiracy), *Section 420* (cheating), and so on. However, these sections are not reproduced word-for-word in the PMLA. Instead, the PMLA only makes a

mention or citation of those IPC sections. This method of reference is what is legally known as “legislation by reference”, and it is different from “legislation by incorporation”. In the case of legislation by reference, one law points to another law without copying its contents, thereby leaving the referred law dynamic, any changes or updates made to the referred statute automatically apply to the referring law. On the other hand, if a statute incorporates the exact text of another provision, it becomes frozen in time. In such a situation, future amendments to the original statute do not affect the referring law unless it is separately amended.

33. The applicant’s reliance on the concept of legislation by incorporation is, in my view, misplaced in the context of the PMLA Schedule. That doctrine typically applies when one law borrows specific provisions or text of another law texually, as was the case in *Mahindra & Mahindra*, where the MRTP Act incorporated the text of Section 100 of the Civil Procedure Code as it stood then. In contrast, what the PMLA does is refer to offences under various laws as categories or heads. The scheme is one of reference by subject-matter rather than incorporation of the text of those penal provisions. This is evident from the structure of the Schedule, it lists the name of the statute, the section numbers of offences and description of offences therein. Such listing is indicative of referral to those offences as defined in that statute from time to time, unless explicitly limited. Indeed, if the Legislature intended a static incorporation of the IPC offences as they stood in 2002, it would mean that any amendment in the IPC, even prior to its repeal,

would also have had no effect on the PMLA's scope. That would be an illogical result, for instance, if IPC got amended to include new offences or changed the ingredients of existing ones, the money laundering law would absurdly remain fixed to the old definitions. Fortunately, that is not how the PMLA was understood or applied in practice; the schedule's references have always been read in sync with the current form of the law defining the offence. The doctrine of "updating construction" buttresses this reasoning, courts may interpret an ongoing statute in such manner that it accommodates changes in related laws, especially where the alternative is to let the statute fall into desuetude or ineffectiveness.

34. Applying well-settled principles to the context of PMLA, it is clear that the references to IPC offences in its Schedule are dynamic and must be interpreted in light of the current law in force, which is now the Bharatiya Nyaya Sanhita, 2023, replacing the IPC. The nature of reference in the PMLA is such that the repeal and substitution of IPC by BNS does not disrupt or invalidate the operation of the Schedule. The offences that were earlier specified by their IPC section numbers must now be read as referring to their corresponding provisions in the BNS, by applying Section 8 of the General Clauses Act, 1897. Thus, the PMLA Schedule continues to remain operational and meaningful, even after the IPC has been repealed, because the legal mechanism of legislation by reference ensures continuity by treating references as living and dynamic, not static or frozen in time.

Legislation by reference is dynamic in nature:

35. When one law simply refers to another law without copying its exact words, such a method of drafting is legally called "legislation by reference". In such cases, the reference is not frozen in time but is treated as living and dynamic, meaning, it keeps pace with any changes or amendments made to the law it refers to.

36. This legal position has been firmly laid down by the Supreme Court in the case of Mahindra & Mahindra Ltd. (Supra). In that case, the Court held that when a statute refers to another enactment, and there is no indication in the language of the law that the reference is to be fixed as it stood at the time of enactment, then such a reference must be understood to be dynamic. That is, any future amendment, substitution, or even complete re-enactment of the referred statute will automatically apply to the referring statute. The Supreme Court further clarified that this interpretation flows directly from Section 8(1) of the General Clauses Act, 1897, which provides a guiding rule, whenever one Central law refers to another, and the second law is later repealed and re-enacted, then the reference must be read as pointing to the new law, unless a contrary intention is evident. This ensures continuity in law and prevents legal loopholes from emerging due to repeal and substitution.

37. In simpler terms, if Law 'A' says that it depends on Section 'X' of Law 'B', and later on, Law 'B' is replaced by a new version where Section 'X' is now called Section 'Y', then Law 'A' will automatically read Section 'Y' instead of Section 'X', without the need for any

amendment, unless Law 'A' itself had made it clear that it only wants to stick to the old version.

38. Applying this to the present context, it is clear that the PMLA refers to various offences under the IPC in its Schedule, but does not incorporate the actual text of those IPC sections. Hence, this is a classic case of legislation by reference. Now that the IPC has been repealed and replaced by the BNS, the references in the PMLA must be read dynamically, that is, as referring to the corresponding new sections in BNS. To interpret otherwise would create an unintended legal vacuum, rendering the PMLA toothless with respect to those scheduled offences. That would be against public interest and legislative intent. Therefore, in view of the settled principle of law, and particularly relying on the judgment of the Supreme Court in *Mahindra & Mahindra Ltd.*, it must be held that legislation by reference continues to operate dynamically, and the references in the PMLA Schedule to IPC offences now stand substituted by the corresponding provisions of the BNS, by automatic operation of law under Section 8(1) of the General Clauses Act.

Section 8 of the General Clauses Act applies to such dynamic references:

39. When one central law makes a reference to another law, and that second law is later repealed and re-enacted with some changes, then the rule laid down in Section 8(1) of the General Clauses Act, 1897 comes into operation. This provision says that such references must be read as pointing to the new law, unless

the language of the original statute clearly shows a different intention.

40. In the present context, the PMLA still contains references to various sections of the IPC in its Schedule. For example, it refers to Section 420 of IPC which deals with the offence of cheating. However, with effect from 1st July 2024, the IPC has been repealed and replaced by the BNS. Under BNS, the offence of cheating is now defined under Section 318(4).

41. This raises the question: does the reference to IPC Section 420, 467 and 471 in the PMLA Schedule become meaningless now? The clear legal answer is no, and that answer flows directly from Section 8(1) of the General Clauses Act.

42. As per this provision, even if the IPC has been repealed and replaced, the references in PMLA to IPC sections must now be interpreted as referring to the corresponding sections in BNS, so long as the substance of the offence remains the same. That is to say, if the definition and ingredients of the offence under the new law are substantially similar, then the reference remains legally valid and binding.

43. Even if the new enactment has a different structure or numbering, what matters is the substance and continuity of the offence. If the same offence is now found under a different section number in the re-enacted law, then that new section is to be read in place of the old one in all laws which referred to it, including special Acts like PMLA.

44. This ensures that the operation of laws like PMLA does not get disrupted just because of changes in numbering or restructuring of the penal code. It also prevents legal uncertainty or technical loopholes, which could otherwise be misused to defeat the objectives of special laws dealing with serious offences like money laundering. Therefore, in view of the above settled legal position, and applying Section 8(1) of the General Clauses Act, it is held that the references to IPC offences in the Schedule to PMLA must now be read as references to the corresponding offences under the Bharatiya Nyaya Sanhita, 2023, including Section 318(4) of BNS in place of Section 420 of IPC, since both provisions deal with the same offence of cheating in substance. This approach preserves the legislative intent, upholds the rule of law, and ensures that the enforcement of the PMLA continues without interruption or ambiguity.

No different intention appears in the PMLA:

45. While the applicant has relied on one principle of interpretation, the court has to consider the entire legal and legislative context. It is important to examine what was the real intention of Parliament when it referred to IPC offences in the PMLA Schedule. The PMLA is a special law, and its purpose is to prevent and punish money laundering, which happens when money earned from certain crimes is converted into seemingly legal assets. The Schedule to the PMLA is a crucial part of the law. It lists the crimes, also called scheduled or predicate offences which, if committed, can lead to money laundering prosecution. At the time when the PMLA was enacted, the only way for Parliament

to identify these serious crimes was by using IPC section numbers, because those were the offences in force. That was a matter of practical drafting, not an intention to make the law permanently tied to IPC section numbers or the title “IPC.” More importantly, there is nothing in the PMLA that shows that Parliament’s focus was on the section numbers or code name (IPC) itself. What matters is the type of offences, such as cheating, criminal breach of trust, forgery, extortion, murder, dacoity, terrorism, etc. These are the kinds of crimes Parliament wanted to target for money laundering cases. The real object was to include these categories of criminal activity as scheduled offences, not to preserve the exact legal labels or numbering from the IPC. Therefore, when read in this proper context, it becomes clear that the Schedule must be interpreted in a dynamic way, that is, the references to IPC offences should be understood as referring to the corresponding offences in BNS, which now defines the same crimes under different section numbers. The PMLA refers to various offences under the IPC in its Schedule, for the purpose of identifying predicate or scheduled offences. These references are made by mentioning section numbers, such as Section 120B (Criminal Conspiracy), Section 420 (Cheating), and others. However, it is important to note that nowhere in the PMLA is it stated or implied that these references to IPC sections are to be fixed or frozen as per the IPC as it stood at the time of enactment. There is no clause in the PMLA saying that an offence must be under the IPC and no other law to qualify, the IPC was mentioned because it was the operative penal law then. Likewise, the statutes that introduced

the new BNS and BNSS in 2023 do not contain any provision suggesting that ongoing or future references to IPC in other laws should be treated as nullities.

46. The prosecution's reliance on Section 8(1) of the General Clauses Act, 1897, is well-founded. This section provides a statutory rule of construction to ensure continuity of laws when an enactment is repealed and re-enacted. It mandates that references in any other enactment or instrument to the repealed provision shall be construed as references to the re-enacted provision, "unless a different intention appears".

47. The crucial inquiry, therefore, is whether a "different intention" appears in the BNS or the PMLA that would negate the application of Section 8. As extensively argued by the learned Public Prosecutor, the BNS, while introducing some new offences and modernizing language, largely retains the core criminal acts and their essential ingredients from the IPC. There is no express or implied intention within the BNS to disrupt the operation of other special statutes like the PMLA. The legislative objective was to update and consolidate, not to create a legal vacuum or to grant immunity from existing special laws. The offences under BNS Sections 318(4), 338, and 340(2) are substantially similar to their IPC counterparts, Sections 420, 467, and 471 respectively. Therefore, the "simple test" for the application of Section 8 is met, as no "different intention" is discernible. This interpretation affirms the principle of continuity of legal effect despite legislative changes, unless a contrary intention is explicitly manifested.

48. This view is fully supported by Section 8(1) of the General Clauses Act, 1897, which says that when a law refers to another enactment, and that other enactment is repealed and re-enacted, the reference must, unless the law says otherwise, be taken to mean the new enactment. This rule is meant to prevent exactly the kind of legal deadlock or confusion that the applicant's argument would create. To explain simply: if Law X refers to an offence defined in Law Y, and later Law Y is replaced by Law Z, where the same offence is still recognised but now given a new number or wording, then Law X's reference is understood to be to the new section in Law Z, unless there is something in Law X that shows the Legislature wanted to break that link.

49. Since there is no such different intention in the PMLA, the legal reference must be treated as continuing and updated, and the offences under BNS must be treated as valid scheduled offences under the PMLA.

50. Because the PMLA is silent on the point of different intention, and does not contain any contrary language, the general legal rule under Section 8(1) of the General Clauses Act, 1897 becomes applicable. This provision says that where a Central Act refers to another enactment, and that other enactment is later repealed and re-enacted, then the reference must be read as referring to the new law, unless a different intention appears. Here, since no different intention appears in the PMLA, the law must be interpreted in a way that ensures its effective and continuous operation. That means the references to IPC offences in the PMLA Schedule must now be understood as referring to the

corresponding offences under the BNS, which has replaced the IPC from 1st July 2024.

51. Therefore, in the present legal framework, it is held that since no different or contrary intention appears in the PMLA, the application of Section 8(1) of the General Clauses Act is fully justified and necessary to preserve the intent and function of the law. The references to IPC offences must now be read as referring to the corresponding provisions under the BNS, in order to maintain legal continuity and prevent any disruption in enforcement of the PMLA.

Avoiding absurdity and upholding legislative intent:

52. When interpreting any law, the courts are guided by the principle that the law should be given a meaningful and workable interpretation, and not one that leads to absurd or unreasonable results. In the present case, if it is argued that the repeal of the IPC has made the references in the Schedule to the PMLA ineffective or invalid, then such a view would result in a serious legal absurdity.

53. Such an interpretation would mean that, although the substance of the offences remains the same under the new law, namely the BNS, the PMLA cannot be enforced merely because the section numbers or names of offences have changed. This would effectively mean that serious offences like cheating, forgery, criminal conspiracy, murder, extortion, and dacoity, which were earlier listed as scheduled offences under the IPC, can no longer be used as the basis for prosecuting money laundering offences under the PMLA. This result would be contrary to common sense, public

interest, and the purpose for which both statutes were enacted.

54. Additionally, if the applicant's argument were accepted, it would lead to an anomalous and absurd situation: from 1st July 2024 onwards, the PMLA would be practically inapplicable to any money laundering arising from offences under the new penal code until Parliament convened to amend the Schedule. As the learned Prosecutor rightly noted, this would open a dangerous lacuna where potentially all criminals could launder money with impunity during the interregnum, defeating the very object of the PMLA. Courts generally eschew interpretations that produce absurd or stultifying consequences which could never have been intended by the law-makers. The Supreme Court in *Mahindra & Mahindra's* case itself observed that an interpretation which "might result in denial of the right, altogether and thus defeat the plain object and purpose of the section" must be avoided. Here, an interpretation that PMLA lost all its predicate offences after the IPC's repeal would defeat the purpose of the Act; hence, a sensible construction aligning with Section 8 of the General Clauses Act is warranted.

55. The object of the PMLA, as stated in its Statement of Objects and Reasons and reflected throughout its scheme, is to prevent and punish the laundering of proceeds of crime, and to attach and confiscate property derived from such criminal activity. The Act is intended to be strict and continuous in its operation, targeting those who use money generated from criminal activity for legitimate-looking business or investments. If the enforcement of the PMLA is disrupted just because the IPC has been replaced with a new code, the entire mechanism would come to a halt, and

offenders would escape liability due to a technicality. That is clearly not what Parliament intended.

56. It is a well-settled rule of interpretation that the court must avoid any construction of a statute that leads to absurd, anomalous, or unjust consequences, especially when a sensible, lawful, and purposive interpretation is available. The Supreme Court in multiple decisions has emphasized that laws must be interpreted to give effect to their purpose and not in a manner that frustrates their operation. In *K.P. Varghese v. ITO*, (1981) 4 SCC 173, the Court observed that where two interpretations are possible, one which leads to absurdity and the other which leads to a just, fair, and sensible result, the latter must be preferred.

57. Therefore, in the present case, if the court were to hold that the PMLA Schedule became ineffective merely because the IPC has been repealed and re-enacted, it would produce an unreasonable and illogical outcome, namely, that a central penal statute like PMLA would become partly inoperative even though the same offences still exist under the new law. This would defeat the very object and spirit of the PMLA, which is to fight the menace of money laundering by linking it with specified predicate offences.

58. Such an interpretation must be avoided. Instead, the references to IPC offences in the Schedule to PMLA must be read as dynamically updating to their corresponding provisions in the BNS, in light of Section 8(1) of the General Clauses Act, 1897, and the settled judicial principle of purposive construction. This ensures that the law remains functional, effective, and in tune with

its intended purpose, even after legislative changes.

59. Coming to the Government's notification of 16th July 2024, it is essentially an application of the General Clauses Act to all laws of the Union. The Central Government, after the coming into force of the BNS, issued a clarification stating that in all Central enactments where provisions of the IPC are mentioned, such references shall now be construed as references to the corresponding provisions of BNS, by virtue of Section 8 of the General Clauses Act. The Applicant challenges legal character of such notification, contending that it does not have the force of law, has not been authenticated in accordance with Article 77, and was not issued under any statutory authority delegating legislative power. The questions that arise for determination are: (i) Whether such a notification amounts to "law" within the meaning of Article 13(3)(a) of the Constitution of India; (ii) Whether Section 8 of the General Clauses Act empowers the Government to issue such a substitution notification; (iii) Whether Articles 73 and 77 of the Constitution can be invoked to support the legal status of such a clarification.

60. Section 8 of the General Clauses Act, 1897 lays down a general principle of interpretation that helps in reading and understanding laws when there has been a repeal and re-enactment of any statute. It states that where any Central Act refers to another law, and that referred law is later repealed and re-enacted, then, unless the context of the original law suggests otherwise, such reference shall be read as a reference to the re-enacted law. This provision is automatic in nature. It works like a

presumption or default rule. Courts and statutory authorities can apply it to harmoniously interpret the law, especially when the original statute does not itself specify how to deal with such repeal-and-replacement situations. The purpose is to avoid confusion and ensure continuity in legal interpretation. However, it is crucial to understand that Section 8 does not give any power to the Executive or the Government. It is not a power-conferring provision. It does not authorise the Central Government to issue any notification, circular, or order to amend the text of existing laws or to substitute one set of penal provisions for another across statutes. It is for the Courts to apply this interpretative rule, when required, and not for the Executive to issue directives under the guise of clarifying the law.

61. The scheme of separation of powers under the Constitution makes it clear that law-making is the function of the Legislature, interpretation is the function of the Judiciary, and implementation is the function of the Executive. If the Executive were permitted to issue binding interpretations of statutory provisions, particularly when penal consequences are involved, it would amount to indirect legislation, which is not permissible under the constitutional framework. Moreover, any clarification or notification issued by the Executive that seeks to apply Section 8 across various statutes cannot override the role of the Court in determining whether the context permits such substitution or whether the statute had incorporated a fixed reference to the old law. The doctrine of legislation by incorporation, as recognised in various judgments of the Supreme Court, would still need to be

applied to decide if Section 8 can operate in a given statute. Hence, while Section 8 of the General Clauses Act plays an important role in statutory construction, it cannot be used by the Executive as a tool to enact or modify law, nor can the Executive act upon it independently by issuing clarificatory directions. The provision remains a passive aid to interpretation, and not an active source of authority.

62. The Central Government has placed reliance on Article 73 of the Constitution, which describes the scope of the executive power of the Union. Article 73 provides that the executive power of the Union extends to matters on which Parliament has the power to make laws, subject to any express provision in the Constitution or any law made by Parliament that places such power in another authority.

63. It is no doubt true that the Union Executive can act on matters within the legislative competence of Parliament, particularly when legislation is silent or there is no conflicting law. However, the nature and limits of this executive power have been clearly explained by the Supreme Court in the landmark case of *Rai Sahib Ram Jawaya Kapur (Supra)*. In that case, the Court clarified the constitutional boundaries between the three organs of the State, i.e. legislature, executive, and judiciary. The Court held that the executive cannot trespass into the domain of legislation. While the executive is empowered to implement laws and take policy decisions, it cannot make or alter the law. The judgment holds that the executive cannot encroach upon the functions of the Legislature. It can only issue administrative directions and take

such steps as are permissible under existing laws.

64. This makes it clear that executive power is not law-making power, and cannot be used as a substitute for legislative action. The executive may act within the framework of existing laws, but cannot change the meaning or operation of a law by issuing a clarification or circular that effectively rewrites or substitutes statutory provisions. Therefore, the attempt of the Central Government to use Article 73 as a source of authority for issuing a clarification that references to the IPC in various Central laws should now be read as references to the BNS goes beyond the permissible scope of executive power. Substituting penal provisions across multiple legislations, even if for administrative convenience, is not an administrative function, but a legislative act. Such substitution affects substantive rights and obligations under statutory laws, including penal consequences, and can only be done by amendment through Parliamentary legislation. The Constitution does not permit the executive to indirectly amend or interpret laws made by Parliament merely by issuing circulars or notifications, even under the garb of administrative clarification. Accordingly, executive power under Article 73 cannot be stretched to justify substitution of legislative references through notifications. That would amount to legislation by executive fiat, which is constitutionally impermissible. Any such exercise would be ultra vires the Constitution and in direct violation of the separation of powers enshrined therein.

65. Article 77(1) of the Constitution of India clearly provides that all executive actions of the Government of India shall be taken

in the name of the President. This constitutional mandate ensures that executive decisions carry the formal authority and accountability of the Union Government, acting through the President as the head of the executive. Further, Article 77(2) empowers the President to make rules for the authentication of orders and instruments made and executed in the name of the President. These rules, known as the Rules of Business, are necessary to ensure that executive actions are properly authorised and traceable to lawful decision-making channels. Under Article 77(3), the President has made rules allocating the business of the Government among various ministries and departments. These rules also lay down the manner in which executive actions are to be processed and authenticated.

66. In the present case, the notification in question, through which the Central Government seeks to clarify or substitute references from IPC to BNS, has not been shown to have been issued in the name of the President, as required under Article 77(1). Nor has it been established that the notification has been authenticated by an authorised officer in accordance with the procedure laid down under the Rules of Business framed under Article 77(3). Such authentication is not a mere formality. It is a constitutional safeguard designed to ensure that executive decisions are taken through proper legal procedure and carry the necessary legitimacy and authority of the Union. In the absence of such authentication, the document remains an unverified executive communication and does not acquire the binding character of an official act of the Government of India. Therefore, in the absence

of compliance with the requirements of Article 77, the impugned notification cannot be treated as law. It does not satisfy the test of valid executive action, and cannot be enforced as a legally binding instrument having the force of law. It may, at best, reflect the internal understanding of the executive departments, but it cannot be treated as an official legal clarification or amendment applicable to the public at large or to statutory interpretation. As such, this notification is not covered under the definition of “law” under Article 13(3)(a) of the Constitution, as it neither carries statutory authority nor is it issued through a constitutionally mandated process.

67. Article 13(3)(a) of the Constitution of India explains what is meant by the term "law" for the purpose of protecting fundamental rights. It includes not only Acts of Parliament but also any Ordinance, order, bye-law, rule, regulation, notification, custom or usage that has the force of law in the territory of India. This inclusive definition is important because it brings within its scope all kinds of instruments or actions that have a binding legal effect and can affect the rights of citizens. However, the crucial phrase here is “having the force of law”. Merely giving a document the title of a "notification" is not enough to make it law under Article 13. The Court must look at the substance of the document, whether it has been issued under proper legal authority, and whether it is capable of creating, modifying, or extinguishing legal rights or liabilities. Only those instruments which derive their authority from a valid statute or from delegated legislative power can be said to have the force of law.

68. In the present case, the notification issued by the Central Government, which claims that references to IPC in existing laws shall now be read as references to BNS, is not shown to have been issued under any valid statutory provision. It is not based on any rule-making power conferred by a specific law, nor is it a delegated legislation passed under authority given by Parliament. The notification also does not amend or repeal any law, nor does it flow from any legislative competence delegated to the executive. Instead, it only reflects an executive opinion or understanding of how laws should be interpreted after the repeal of IPC. Such an understanding, however well-intentioned, cannot bind the Courts or override the principles of statutory interpretation. The interpretation of statutes, especially criminal statutes, is the exclusive function of the judiciary and must be done according to settled legal doctrines such as legislation by incorporation and legislation by reference. Therefore, this notification does not have the force of law, and hence, it cannot be treated as "law" within the meaning of Article 13 of the Constitution. It does not have the status of a law that can affect, limit, or expand the fundamental rights of citizens, nor can it be used to support any action that impacts an individual's legal status under existing statutes.

69. In view of the above discussion, the Court answers the legal questions as follows: (i) A notification issued by the Central Government dated 16th July 2024, seeking to substitute references to IPC with BNS by invoking Section 8 of the General Clauses Act and Article 73, does not amount to "law" within the meaning of Article 13 of the Constitution of India. (ii) Section 8 of the General

Clauses Act is merely a tool of interpretation, not a source of legislative or executive power. (iii) Article 73 does not authorise the executive to alter legislative references or create binding legal norms without legislative sanction. (iv) The absence of authentication under Article 77 further deprives the said notification of any legal effect.

70. In view of the above discussion, this Court is satisfied that offences under the Bharatiya Nyaya Sanhita, 2023 which correspond to offences listed in the PMLA Schedule, as erstwhile IPC provisions, are to be regarded as scheduled offences for the purposes of PMLA, 2002. The absence of a textual amendment of the Schedule does not disable the prosecution so long as the new law covers the same field of criminality. Therefore, the contention of the applicant that the Enforcement Directorate had no jurisdiction to register the ECIR or proceed under PMLA due to the change in law is devoid of merit. The prosecution is lawfully maintaining the case treating the BNS offences as predicates, and there is no illegality in the invocation of PMLA on this ground.

71. Since the only contention urged on behalf of the applicant pertains to a pure question of law, which has already been answered by this Court as discussed above, and no submissions on merits have been advanced, in view of the conclusion already recorded on the said question of law, the present application does not merit any further consideration.

72. Accordingly, the application stands rejected.

(AMIT BORKAR, J.)