IN THE HIGH COURT AT CALCUTTA
APPELLATE SIDE

CRM (M) 932 OF 2025
With
CRAN 1 OF 2025

BASUDEB BAGCHI & ANR.
VS
ENFORCEMENT DIRECTORATE

BEFORE:

THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
AND
THE HON'BLE JUSTICE UDAY KUMAR

For the Petitioners	: Ms. Misha Rahotgi Mohta Ms. Shahina Haque Mr. Amulya Upadhyay Ms. Ayesha Hussain
For the Enforcement Directorate	: Mr. Arijit Chakrabarti Mr. Debsoumya Basak Ms. Swati Kumari Singh
For the Prayag Group of Companies	: Mr. Ashok Kumar Jena
For the One Man Committee	: Mr. Neguive Ahmed
For the SEBI	: Mr. Prasanta Kumar Dutt Mr. Susanta Kumar Dutt Mr. Syamantak Banerjee
Hearing concluded on	: 06.01.2026
Judgment on	: 15.01.2026

Uday Kumar, J:-

1. This is an application for regular bail preferred under Section 439 of the Code of Criminal Procedure, 1973 (now Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023) by Basudeb Bagchi (68 years) and

Avik Bagchi (42 years). The petitioners are the principal directors and "guiding spirits" of the 'Prayag Group' of companies and are currently in custody in connection with ML Case No. 10 of 2024 (arising out of ECIR/KLZO-I/15/2024) for offenses punishable under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002 (PMLA).

2. The Enforcement Directorate (ED) alleges that the petitioners defrauded thousands of investors of approximately ₹2,862 Crore through a deceptive veneer of "Time Share," Real Estate, and Gold-based investment schemes. While the petitioners claimed partial restitution of ₹1,140 Crore, the ED identified an untraced deficit of ₹1,906 Crore, alleging these are "Proceeds of Crime" layered through shell entities. Notably, the present prosecution focuses on the allegation that the petitioners generated fresh proceeds post-2016, even while a prior investigation (ECIR/RNSZO/01/2016) was active.

3. Ms. Misha Rohatgi Mohta, Learned Counsel for the petitioners, primarily challenged the maintainability of this proceeding on the anvil of Article 20(2) of the Constitution. She contended that the current ECIR is a "mirror copy" of the 2016 investigation, as both originate from the same predicate offense and the common CBI Final Report (RC.35/S/2014).

4. Relying on the principles established in *Manish Sisodia v. Directorate of Enforcement [2024 INSC 595]*, Ms. Mohta contended that the stringent conditions of Section 45 of the PMLA must be read in harmony with the right to a speedy trial; where an accused has undergone prolonged incarceration and the trial is delayed, the right to bail remains intact.

5. She further invoked *Arvind Kejriwal v. Directorate of Enforcement [2024 INSC 512]*, emphasizing that the sanctity of personal liberty under Article 21 is not diminished by an individual's status and requires strict adherence to arrest procedures under Sections 41 and 41A of the Cr.P.C.

6. Finally, citing *V. Senthil Balaji v. Deputy Director [2024 INSC 739]*, she asserted that given the 3,500-page record and 29 witnesses, the trial has no prospect of immediate conclusion, rendering their eight-month incarceration a form of "pre-trial punishment."

7. Ms. Mohta further maintained that the petitioners' 8-odd month incarceration has effectively transitioned from a legal necessity into a form of "pre-trial punishment," violating the sacrosanct right to life and liberty.

8. Citing *Tarsem Lal v. ED (2024) 7 SCC 61*, Ms. Mohta argued that since the petitioners were not arrested during the initial Ranchi probe, the current arrest is a punitive attempt to circumvent settled legal principles. She maintained that the Prayag Group was a legitimate business entity and its collapse was a result of market panic following the "Saradha Scam" rather than a Ponzi design.

9. To demonstrate *bona fides*, counsel noted that all assets are currently under the custody of a High Court-appointed One-Man Committee (MAT No. 559 of 2015) and that the petitioners have facilitated refunds exceeding ₹1,140 Crore. Furthermore, invoking the first proviso to Section 45(1) of the PMLA, she submitted that Petitioner No. 1 is a 68-

year-old senior citizen suffering from Type-II Diabetes and Hypertension, requiring specialized medical supervision.

10. *Per contra*, the Enforcement Directorate resisted the prayer, asserting that the current ECIR targets fresh "Proceeds of Crime" and distinct layering activities, making it a disjunctive and continuing offense not hit by the bar of Double Jeopardy. The Ld. Counsel underscored that the petitioners were declared Proclaimed Offenders after evading judicial process, thus failing the "Tripod Test" (flight risk, tampering with evidence, and influencing witnesses) and distinguishing their conduct from the facts in *P. Chidambaram v. Directorate of Enforcement (2019) 9 SCC 24*.

11. It was further asserted that the mandatory "Twin Conditions" under Section 45 of the PMLA remain unfulfilled. Given the staggering, untraced deficit of ₹1,906 Crore, the ED argued that the Court cannot record a satisfaction that the petitioners are "not guilty." Counsel maintained that economic offenses involving the life savings of the public constitute a "class apart" (*Y.S. Jagan Mohan Reddy v. CBI, 2013 7 SCC 439*), necessitating custodial presence to trace the ultimate destination of the siphoned funds.

12. Therefore, Ld. Counsel concluded that the "gravity of the offense" outweighs the plea for personal liberty. It was argued that the magnitude of the financial siphoning requires the petitioners to remain in custody to ensure the integrity of the evidence and to prevent further defrauding of the public interest. As such, the petition is unmeritorious and deserves to be dismissed.

13. The primary thrust of the petitioners' challenge—that the present prosecution is hit by the bar of Article 20(2)—is, in our considered view, legally fragile. The protection against Double Jeopardy (*nemo debet bis vexari pro una et eadem causa*) is triggered only upon the conclusion of a prior trial resulting in conviction or acquittal. Since the trial of the prior ECIR is still pending, the threshold for a constitutional bar remains unmet.

14. Furthermore, we must distinguish between a static criminal act and a "continuing offense." As elucidated in *Vijay Madanlal Choudhary v. Union of India (2022)*, the offense of money laundering under Section 3 of the PMLA is not a frozen event but a persistent process. It continues as long as the accused is involved in any activity connected with the "Proceeds of Crime." If the petitioners utilized their previous liberty to generate fresh illicit funds post-2016, such acts constitute a distinct cause of action. Article 20(2) is a shield for the innocent; it is not a license for prospective criminalitynor does it provide an umbrella of immunity for subsequent illegalities committed during the pendency of a prior investigation.

15. The "Twin Conditions" under Section 45 of the PMLA are not mere formal hurdles but a statutory command. As held in *Gautam Kundu v. Enforcement Directorate (2015) 16 SCC 1*, these conditions override the general provisions of the Cr.P.C. In the face of an unaccounted deficit of nearly ₹1,906 Crore and evidence of fresh layering post-2017, we are unable to record a satisfaction that there are "reasonable grounds" to believe the accused are not guilty.

16. It is reiterated in *P. Chidambaram* (2019) 9 SCC 24 that the staggering magnitude of the siphoning—affecting the life savings of thousands—necessitates a stringent application of these provisions.

17. While sensitive to Article 21, we note that the petitioners' status as "Proclaimed Offenders" deals a decisive blow to their prayer. An accused who ignores judicial warrants disentitles themselves from equitable consideration. By systematically evading Non-Bailable Warrants, they have demonstrated a clear propensity to circumvent the legal process, thereby failing the "Tripod Test" as held by Supreme Court in *Deepak Yadav v. State of UP* (2022) 8 SCC 559, *Manish Sisodia (supra)*, *V. Senthil Balaji, Deputy Director, ED (2024) SCC OnLine SC 2626 and other cases.*

18. It is a settled legal principle that economic offenses involving public money constitute a "class apart" and must be viewed through a different judicial prism as held in *Y.S. Jagan Mohan Reddy v. CBI (2013) 7 SCC 439that* Same is reiterated in*Tarun Kumar v. Assistant Director, ED (2023)* SCC OnLine SC 1486.

19. It is a settled principle that economic offenses involving public money constitute a "class apart." As held in *Y.S. Jagan Mohan Reddy*, that *"The economic offences having deep-rooted conspiracies and involving loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole,"*the economic such offenses need to be viewed seriously as they affect the economy of the country as a whole. This was reiterated in *Tarun Kumar v. Assistant Director, ED (2023).*In such cases, the "gravity of the offense" is a significant factor that must be weighed in the scale of justice to ensure

that white-collar criminals do not treat the law with disdain. *[ref. P. Chidambaram* (supra)]

20. The petitioners' reliance on *Manish Sisodia* and *Arvind Kejriwal* is misplaced. In those instances, the Court considered the absence of criminal antecedents or the peculiar circumstances of a sitting public official. Here, the magnitude of the siphoning and the petitioners' history of evading process necessitate custodial presence to trace the "Proceeds of Crime."

21. Regarding the first proviso to Section 45(1), while the Court has discretion to release an elderly or infirm person, it is not an automatic mandate. Given the flight risk, the petitioner's health can be adequately managed through comprehensive medical supervision within the custodial framework.

22. In summation, the liberty of an individual cannot be viewed in isolation from the collective interests of thousands of defrauded investors. The petitioners' failure to discharge the "Twin Conditions," coupled with their conduct as Proclaimed Offenders, creates a formidable legal barrier to their release.

23. In light of the foregoing, we find no merit in the petition. This is not a fit case for the grant of regular bail.

24. In light of the foregoing discussions and having found no merit in the contentions raised by the petitioners, we are of the firm opinion that this is not a fit case for the grant of regular bail.

25. Accordingly, the prayer for bail is rejected.

26. Consequently, the petition, C.R.M. (M) No. 932 of 2025, is dismissed.

27. CRAN 1 of 2025 is disposed of accordingly.

28. To ensure that the petitioners' right to a speedy trial is not further compromised, the Learned Trial Court is directed to expedite the proceedings on a day-to-day basis.

29. The Enforcement Directorate is specifically directed to ensure the production of its witnesses on every scheduled date without fail, ensuring no unnecessary adjournments are sought.

30. All parties shall act on a server copy of this order.

I AGREE

(RAJARSHI BHARADWAJ, J.) **(UDAY KUMAR, J.)**