2026:AHC:193719

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**CRIMINAL MISC. BAIL APPLICATION No. - 40366 of 2025**

Anil Mithas

…..Applicant(s)

Versus

Directorate of Enforcement

…..Opposite Party(s)

| | | |
|---|---|---|
| Counsel for Applicant(s) | : | Niraj Kumar, Pankaj Sahni, Saumitra Dwivedi, Sr. Advocate |
| Counsel for Opposite Party(s) | : | Sushant |

**Reserved On: 25.8.2026**
**Delivered On: 16.9.2026**

**Court No. - 68**

**HON'BLE KRISHAN PAHAL, J.**

1. Heard Sri Vinay Saran, learned Senior Advocate assisted by Sri Saumitra Dwivedi and Sri Pankaj Sahni, learned counsel for applicant as well as Sri Sushant Chandra, learned counsel appearing for Directorate of Enforcement and perused the material placed on record.

2. The present bail application has been filed by the applicant in ECIR/LKZO/19/2024, under Section 3 r/w 4 of PMLA, Police Station Enforcement Directorate, District Ghaziabad with the prayer to enlarge him on bail.

**PROSECUTION STORY:**

3. The ECIR of the present case was registered on 23.12.2024 at Lucknow. It mentioned the scheduled offences as follows:

| Sl. No. | FIR No. & Date | Scheduled Acts | Section of Acts | Agency investigating scheduled offence | FATF category |
|---|---|---|---|---|---|
| 1 | 0030<br>24/11/2022 | | 120-B<br>420 | State Special Investigation Team (SIT), Uttar Pradesh UP Police | |

| | | | | | |
|---|---|---|---|---|---|
| 2 | 0285 04/03/2019 | Indian Penal Code (IPC), 1860 | 420 | Phase-3 Police Station Gautam Budh Nagar UP Police | (9) Fraud |
| 3 | 0735 01/07/2019 | | 420 | | |
| 4 | 1034 26/08/2019 | | 420 | | |
| 5 | 1618 05/11/2018 | | 420 | | |

4. The main source of information and material was FIR No.0030 of 2022, instituted at Police Station SIT, Lucknow, on 24.11.2022. The allegations in the said ECIR are that the applicant collected Rs.522.90 crore from home buyers for 1,468 units in the Aranya Project. However, out of them, the possession was given to only 35 home buyers. The audit report clearly revealed a divergence of Rs.107 crore.

5. The investigation under Section 3 of the Prevention of Money Laundering Act, 2002, was taken up. Subsequently, a prosecution complaint was filed against the present applicant as PMLA-SC No.08/2025 on 13.06.2025. The said complaint case also mentions six scheduled offences.

**ARGUMENTS ON BEHALF OF APPLICANT:**

6. At the outset, learned counsel for the applicant has submitted that the aforesaid ECIR is vague and ambiguous and has been registered with ulterior motives.

7. The arrest of the applicant is in violation of the mandate provided under Article 22 of the Constitution of India as well as Sections 47 and 48 of the BNSS, being mandatory. As such, the same is in clear violation of the judgments of the Supreme Court in ***Vihann Kumar v. State of Haryana, 2025 (5) SCC 799,*** and ***Prabir Purukyastha v. State (NCT of Delhi), 2024 (8) SCC 254***.

8. The applicant has preferred Criminal Misc. Writ Petition No. 11384 of 2025, challenging the aforesaid violations.

9. The ECIR mentions five predicate offences, whereas the complaint filed indicates six predicate offences. The two documents are self-

contradictory and, therefore, cannot be relied upon. The prosecution is not sure about the offence against the applicant being made out.

10. The applicant is a reputed builder and has vast experience in the construction of flats and commercial properties. The cases mentioned in the ECIR have either been settled between the parties, or a closure report has been filed therein due to lack of evidence.

11. In the complaint case, Crime No. 63 of 2017 dated 17.04.2017 has deliberately been shown as an added scheduled offence, without any evidence.

12. After the investigation and filing of the complaint case, the Special Judge, Prevention of Corruption CBI, Ghaziabad, has taken cognizance on 18.08.2025.

13. In the project titled as “Aranya”, possession has been handed over to 950 allottees.

14. The instant company ran into financial trouble and the NCLT, Delhi, appointed an Interim Resolution Professional (hereinafter referred to as IRP), who is handling the management of the company, namely, M/s Unnati Fortune Holdings Ltd, since 27.03.2019.

15. The ECIR was instituted after a delay of about five years and eight months from the date of appointment of IRP, which indicates malice and ulterior motive.

16. No offence of cheating or criminal conspiracy to cheat is made out from the ECIR or the prosecution complaint filed in the instant case.

17. The applicant cooperated with the investigating agency and personally appeared before it on 24.03.2025, 25.03.2025, 26.03.2025 and 16.04.2025. The complete material is with the investigating agency, and after collecting the said evidence, the complaint has been filed. Thus, there is no risk of the applicant tampering with any evidence.

18. The applicant has not intentionally concealed or detained any money which may be termed as proceeds of crime. As such, he cannot be prosecuted under the PMLA.

19. The contemporaneous financial records unequivocally demonstrate that the amounts alleged to have been diverted by the applicant were, in fact, promoter contribution, inter-corporate loans, institutional borrowings or security deposits.

20. The company of the applicant received approximately Rs.500/- crore from home buyers and incurred an expenditure of about Rs.670/- crore. Thus, the company was in severe financial crisis, which indicates the absence of any story of money laundering or wrongful gain.

21. The prosecution complaint is vague and diversion has not been mentioned with particular details.

22. The National Green Tribunal, New Delhi, stayed all construction projects in the area. After the insolvency, all powers were vested in the IRP. The order to proceed with construction was passed again on 21.11.2024, and immediately about one month, thereafter, the instant ECIR was filed.

23. After the allotment, the company faced significant hindrance in securing possession of the allotted land owing to disputes with local farmers, which led to litigation before the civil courts.

24. The applicant is suffering from a severe pancreatic ailment and had to undergo regular treatment. As such, the applicant could not appear before the EOW on certain dates due to appointments with doctors.

25. The applicant has satisfied the well-established parameters for grant of bail in PMLA cases, as he is not a flight risk and is not likely to tamper with evidence or influence witnesses and has thoroughly cooperated with the investigation.

26. The applicant has a fixed place of residence, has no previous criminal antecedents apart from the aforesaid FIRs, and is not likely to abscond or evade the judicial process. Thus, the rigours of Section 45 of the PMLA stand satisfied, as no proceeds of crime have been identified to be in the possession, control or ownership of the applicant.

27. The Supreme Court in the case of ***Sushil Sethi and Another v. State of Arunachal Praesh and Others, (2020) 3 SCC 240*** holds a follows:

> *"8.1. As observed hereinabove, the charge-sheet has been filed against the appellants for the offences under Section 420 read with Section 120-B IPC. However, it is required to be noted that there are no specific allegations and averments in the FIR and/or even in the charge-sheet that fraudulent and dishonest intention of the accused was from the very beginning of the transaction. It is also required to be noted that contract between M/s SPML Infra Limited and the Government was for supply and commissioning of the Nurang Hydel Power Project including three power generating units. The appellants purchased the turbines for the project from another manufacturer. The company used the said turbines in the power project. The contract was in the year 1993. Thereafter in the year 1996 the project was commissioned. In the year 1997, the Department of Power issued a certificate certifying satisfaction over the execution of the project. Even the defect liability period ended/expired in January 1998. In the year 2000, there was some defect found with respect to three turbines. Immediately, the turbines were replaced. The power project started functioning right from the very beginning—1996 onwards. If the intention of the company/appellants was to cheat the Government of Arunachal Pradesh, they would not have replaced the turbines which were found to be defective. In any case, there are no specific allegations and averments in the complaint that the accused had fraudulent or dishonest intention at the time of entering into the contract. Therefore, applying the law laid down by this Court in the aforesaid decisions, it cannot be said that even a prima facie case for the offence under Section 420 IPC has been made out.*

28. The Supreme Court in the case of ***Prof. R.K. Vijayasarathi and Another v. Sudha Seeharama and Another, (2019) 16 SCC 739*** holds a follows:

> *"19. The ingredients to constitute an offence under Section 420 are as follows:*
>
> *19.1. A person must commit the offence of cheating under Section 415; and*
>
> *19.2. The person cheated must be dishonestly induced to*
>
> *(a) deliver property to any person; or*
>
> *(b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.*
>
> *20. Cheating is an essential ingredient for an act to constitute an offence under Section 420."*

29. The Supreme Court in the case of ***Vijay Madan Lal Choudhary & Others vs. Union of India and Others, 2022 SCC OnLine SC 929***, holds a follows:

> *"288. The successive decisions of this Court dealing with analogous provision have stated that the court at the stage of considering the application for grant of bail, is expected to consider the question from the angle as to whether the accused was possessed of the requisite mens rea. The court is not required to record a positive finding that the accused had not committed an offence under the Act. The court ought to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. Further, the court is required to record a finding as to the possibility of the accused committing a crime which is an offence under the Act after grant of bail."*

30. The principle that *"bail is a rule and jail is an exception"* has been established in the land mark judgment of the Supreme Court passed in ***Manish Sisodia v. Directorate of Enforcement, 2024 INSC 595, Shri Gurbaksh Singh Sibbia and Others v. State and Punjab (1980) 2 SCC 565*** *and* ***Sanjay Chandra v. Central Bureau of Investigation (2012) 1 SCC 40***.

31. The Supreme Court in ***V. Senthil Balaji v. Deputy Director, Directorate of Enforcement (SC), 2024 SCC OnLine SC 2626*** has granted bail to the accused on the basis of his period of incarceration of 15 months.

32. The applicant is in jail since 16.4.2025, as such, the period of incarceration is about 16 months, as such, is entitled to bail. He is ready to cooperate with trial. In case, the applicant is released on bail, he will not misuse the liberty of bail.

<u>ARGUMENTS ON BEHALF OF DEPARTMENT:</u>

33. It has been argued that the details of the proceed of crime are very much available, as the applicant had diverted an amount of Rs.126.30 crores from the home buyers/investors through various instruments, namely, equity investment, debentures, bonds, preference shares, loans

and advances to associate companies. Accordingly, his immovable properties were attached, if released is likely to commit more offences.

34. The applicant is a flight risk and has a criminal history of six cases.

35. Reliance has been placed upon the judgment of the Supreme Court in ***Directorate of Enforcement v. Aditya Tripathi, 2023 SCC OnLine SC 619***, wherein the bail granted to the accused was quashed on the ground that he was a flight risk and had a criminal history of nine cases.

36. Reliance has also been placed upon the judgment of the Delhi High Court in ***Aditya Krishna v. Directorate of Enforcement, 2025:DHC:462***, whereby it has been submitted that the predicate offences and the offence under the PMLA are separate offences. Therefore, grant of bail in the predicate offence does not necessarily mean that bail under the PMLA must also be granted. It has also been held in the said judgment that the individual role of an accused should not be evaluated in isolation, but the entire criminal enterprise must be viewed.

37. There were five predicate/scheduled offences registered against the applicant in the ECIR. The principal predicate offence is Case Crime No. 30 of 2022, which was registered by the UP SIT against the applicant after the Special Secretary (Administration) conducted a preliminary inquiry on the complaint alleging that the applicant had cheated home buyers after collecting hundreds of crores of rupees and not providing flats to them.

38. The audit report conducted by Currie and Brown India Pvt. Ltd., a private firm, found a diversion of Rs.107 crore by the applicant and his company. In FIR No.285 of 2019, the applicant sold the same flat to multiple persons. The transfer of funds was made from the account in which money had been received from the home buyers.

39. The investigation identified Rs.126.30 crores as proceeds of crime, which were diverted into the company controlled by the applicant. An amount of Rs.88 crores was given as advance, which was shown as irrecoverable in the account books.

40. Reliance has been placed upon the judgment of the Supreme Court in ***Gautam Kundu v. Directorate of Enforcement (Prevention of Money-Laundering Act), Government of India, (2015) 6 SCC 1***, wherein it has been held that the offence of money laundering is an independent offence from the predicate offence and that the High Court must strictly apply the rigours of Section 45 of the PMLA while considering a bail application.

41. The applicant has also a history of absconding, wherein proceedings U/s 82 Cr.P.C. were initiated against him in FIR No.63 of 2017 instituted by E.O.W., Delhi.

42. The applicant has a criminal history of nine cases mostly involving charges relating to fraud, breach of trust and forgery.

43. The rigours of Section 45 PMLA apply to the instant case and the applicant failed to satisfy the twin conditions mentioned therein.

44. The financial trail established by the independent audit, establishes a diversion of Rs.126.30 crores by the applicant himself. The financial offences constitute a class apart and must be viewed seriously while considering a bail application as held by the Supreme Court in ***Y.S. Jagan Mohan Reddy vs. Central Bureau of Investigation, (2013) 7 SCC 439*** **.**

CONCLUSION:

45. This Court had called for the status of trial from the concerned trial court. As per the said status report dated 14.8.2026, the applicant was present on several dates before the court, but his counsels were absent on various occasions.

46. The said report also reveals that the arguments on behalf of the applicant were concluded on 30.7.2026 for framing of charge and the case was fixed for cognizance order on 24.8.2026.

47. White-collar crime has grown too pervasive and too costly to be met with anything less than firm, uncompromising enforcement. Corporate fraud, embezzlement, insider trading, and large-scale financial deception

routinely destroy pensions, savings, and livelihoods on a scale that dwarfs the damage caused by many street crimes, yet offenders have often faced comparatively lenient sentences, fines their companies can absorb as a cost of doing business, or plea deals that avoid real accountability. Treating these offenses with an iron hand — mandatory custodial sentences, personal liability for executives regardless of corporate shielding, asset forfeiture, and aggressive prosecution — would close the perception that wealth and status buy a softer form of justice. A firm stance sends an unambiguous signal that economic crimes, precisely because they are often invisible and diffuse in their harm, deserve no less severity than crimes committed with a weapon.

48. After hearing learned counsel for the parties and taking into consideration the fact that applicant is charged with the offence of diverting an amount of Rs.126.30 crores of various allottees, which stands established by the independent audit report, coupled with the fact that counsel for applicant has been dillydallying with the trial, I do not find it a fit case for grant of bail to the applicant.

49. The bail application is found devoid of merits and is, accordingly, ***rejected***.

50. However, it is directed that the aforesaid case pending before the trial court be decided expeditiously, in accordance with law, without granting unnecessary adjournment to either party, if there is no legal impediment.

51. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

**(Krishan Pahal,J.)**

**September 16, 2026**
Vikas Verma