IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

C.R.M (SB) 237 of 2022

Goutam Kundu
Vs.
Enforcement Directorate

For the Petitioner: Mr. Sabyasachi Banerjee, Adv.,
Ms. Minal Palana, Adv.

For the E.D: Ms. Debjani Ray, Adv.

Heard on: 13 December, 2022.
Judgment on: 16 January, 2023.

BIBEK CHAUDHURI, J. : –

1. This is an application under Section 436A read with Section 439 of the Code of Criminal Procedure filed by accused Goutam Kundu who is implicated in ML Case No.2 of 2018 under various penal provisions of Prevention of Money Laundering Act (PMLA) arising out of ECIR No.KLZO/08/2015 dated 21st May, 2015. It is pertinent to record at the outset that the petitioner had preferred an application before the learned Judge, Special CBI Court No.1, Bichar Bhawan, Calcutta praying for his release on bail under Section 436A of the Code of Criminal Procedure on the ground that he has been in custody for more than three years and seven months and thereby has undergone detention for a period extending up to one-half of the maximum period of imprisonment

specified for the offence under Section 4 of the PMLA. However, the learned Judge rejected the said prayer vide order dated 19th May, 2022.

2. It is submitted on behalf of the petitioner that the IGP, CID West Bengal vide letter dated 30th September, 2014 had forwarded two FIRs on the basis of which Durgapur P.S Case No.779 of 2013 dated 4th October, 2013 under Sections 420/406/506/34 of the IPC against the Chairman Rose Valley Real Estate and Construction Limited and others and Tarakeswar P.S Case No.53 of 2014 dated 12th March, 2014 under Sections 420/468/471/120B of the IPC against one Ravi Shankar Roy and others, associated with a company in the name and style of M/s Rose Valley Chain Marketing System Limited. Subsequently, two more FIRs in connection with Baguiati P.S Case No.623/2014 dated 21st October, 2014 and 626/2014 dated 22nd October, 2014 both under Sections 420/406 of the IPC against Rose Valley Group of Industries, Baguiati Branch were also collected from the police. All the above mentioned cases revealed that Rose Valley Group of Companies illegally and fraudulently collected money from general public with the intention to cheat them by making false promise of high returns on their investment and had not made repayment of the maturity of deposits. Since the offence under Section 120B and 406 of the IPC are within the purview of the Scheduled Offence, the Enforcement Directorate initiated ECIR No.KLZO/08/2015 dated 21st May, 2015 against Rose Valley Group of Companies and others including the present petitioner. Subsequently, on completion of inquiry the Enforcement Directorate had filed the above

mentioned complaint under Section 45 of the PMLA before the learned Special Judge (CBI) Court No.1, Bichar Bhawan, Calcutta against the petitioner and others for an offence under Section 3 of the PMLA, punishable under Section 4 of the PMLA. The said complaint was registered as ML Case No.2 of 2018.

3. It is alleged in the complaint that five companies of Rose Valley Group, namely, Rose Valley Real Estates and Constructions Ltd, Rose Valley Hotels and Entertainment Ltd, Rose Valley Industries Ltd, Real Estates and Land Bank Limited and Rose Valley Realcon Limited had collected funds to the tune of Rs.17,520 crores approximately from common people mostly in the State of Orissa, Assam, Tripura and West Bengal under false promises of exorbitant high rate of interest on the deposits. It is also alleged that money was collected by the agents appointed by Rose Valley from the investors and the said money was sent to the Rose Valley Group of Companies in contravention of guidelines laid down by the Reserve Bank of India or SEBI. It is also alleged in the complaint that Rose Valley Group of Companies had made repayment to the investors to the tune of Rs.10,854 crores including interests of Rs.2,430 crores and principal amount of Rs.9096 crores still remain unpaid and outstanding on the account of Rose Valley Group of Companies. The said amount constitute the proceeds of crime. After filing of the complaint, the petitioner had been arraigned as an accused along with other accused persons in connection with ML Case No.2 of 2018. The petitioner was produced before the learned trial judge on 10th August,

2018. It is further submitted by the petitioner that subsequently with the permission of the trial court the Enforcement Directorate submitted supplementary complaint under Section 44/45 of the PMLA in connection with the instant case on 28th December, 2018 against the petitioner and others. The learned Judge had taken cognizance of the offence on the basis of the said complaint vide order dated 28th December, 2018. It is stated by the petitioner that he had been arrested on 25th March, 2015 in connection with ML Case No.1 of 2015 and had been remanded to the custody of Enforcement Directorate till 31st March, 2015. Thereafter, he was remanded to judicial custody, since then he is in judicial custody without any break. The petitioner was shown arrested in ML Case No.2 of 2018 on 10th August, 2018 and since then he has been languishing in custody for a continues period of more than four years, while maximum period of sentence for the offence under Section 4 of the PMLA is seven years. It is also submitted on behalf of the petitioner that vide order dated 6th April, 2022 the learned trial judge allowed petitioner's application under Section 436A of the Code of Criminal Procedure and released him on bail in connection with ML Case No.3 of 2015. Under such circumstances, it is submitted on behalf of the petitioner that he is entitled to statutory bail under the provision of Section 436A of the Code of Criminal Procedure.

4. The Enforcement Directorate has filed a written report through its learned Advocate in compliance of the order passed by a Coordinate Bench on 29th September, 2022. Briefly stated, the opposite party has

delineated in its report that the petitioner is the chairman of the Rose Valley Group. During the investigation of the instant case, it is established that five companies of Rose Valley Group had collected unauthorized deposits to the tune of Rs.17520 crores (approximately) from common people under false promise of their high return against such investments. At the time of institution of the instant complaint it was found that the petitioner and his associates did not refund an amount exceeding Rs.6666 crores which constitute the proceeds of crime. Till date the Enforcement Directorate could identify proceeds of crime to the tune of Rs.1105.21 crores. Though, complaint being ML No.2 of 2018 was filed in the trial court against the petitioner and others, enforcement directorate is still inquiring the matter to trace out further proceeds of crime. It is alleged on behalf of the opposite party that before filing of the instant application the petitioner filed several applications praying for bail and his applications were rejected. Therefore, the instant petition is liable to be rejected for non-closure of true, complete and correct facts. It is further submitted on behalf of the opposite party that this Court previously granted interim bail to the accused on humanitarian ground during the period between 9th August, 2021 and 15th August, 2021 in ML No.3/2015. During the said period he tried to influence the witnesses and the officials of Rose Valley Group of Companies and claimed monetary benefits from them and asked them to give electronic devices like mobile phones, laptop etc which he instructed to procure out of the companies funds which represent the proceeds of crime. He also demanded monetary benefit from Rose Valley Group for fighting his personal cases and directed the officials of Rose Valley to leave the properties at his disposal and at the disposal of his family members. While on interim bail during the period between 30th September, 2021 and 6th October, 2021, the petitioner and his mother made desperate attempt to remove the officials of M/s Chocolate Hotels Pvt. Ltd, a subsidiary company of Rose Valley Group managing hotel business. He also tried to change the manager of the committee which was set up by the Asset Disposal Committee constituted by this court under the chairmanship of Hon'ble Justice (retired) D.K.Seth. He was also guilty for using mobile phones from the correctional home to the officials of M/s Chocolate Pvt. Ltd, his relatives to instruct them to divert the funds and infrastructure of the company for the personal use of him and his family members. It is further contended by the Enforcement Directorate that the assets involved in ML Case No.3 of 2015 and ML Case No.2/2018 are the same and identical. It is further stated that the petitioner previously on 19th May, 2022 filed an application under Section 436A of the Code of Criminal Procedure before the trial court. From the order of the trial court it is absolutely clear that the petitioner by one pretext or the other delayed the trial of the case. It is also submitted on behalf of the Enforcement Directorate that if he is released on bail he may terrorize and instill fear in the mind of the investors/complainant either himself or through his agents. The paragraph 7.6 of the said report contains a detailed chart showing how the petitioner delayed trial of ML Case No.2 of 2018.

5. Mr. Sabysachi Banerjee, learned Advocate for the petitioner at the outset submits that the opposite party refers to the various steps allegedly taken by the petitioner in ML Case No.3 of 2015. The said case has no connection with the present ML Case No.2 of 2018. Referring to the decision of **Satender Kumar Antil vs. Central Bureau of Investigation & Anr.** reported in **2022 SCC OnLine SC 825**, it is stated by Mr. Banerjee that Section 436A has been inserted in the Code of Criminal Procedure with a laudable object behind it, particularly from the point of view of granting bail. This provision draws the maximum period for which an undertrial prisoner can be detained. This period has to be reckoned with the custody of the accused during the investigation, inquiry and trial. When a person has undergone detention for a period extending to one-half of the maximum period of imprisonment specified for that offense, he shall be released by the court on his personal bond with or without sureties. The word 'shall' clearly denotes the mandatory compliance of this provision. It is observed by the Hon'ble Supreme Court in paragraph 64 of the **Satender Kumar Antil** (supra):-

> "We do feel that there is not even a need for a bail application in a case of this nature particularly when the reasons for delay are not attributable against the accused. We are also conscious of the fact that while taking a decision the public prosecutor is to be heard, and the court, if it is of the view that there is a need for continued detention longer than one-half

of the said period, has to do so. However, such an exercise of power is expected to be undertaken sparingly being an exception to the general rule. Once again, we have to reiterate that 'bail is the rule and jail is an exception' coupled with the principle governing the presumption of innocence. We have no doubt in our mind that this provision is a substantive one, facilitating liberty, being the core intendment of Article 21. The only caveat as furnished under the Explanation being the delay in the proceeding caused on account of the accused to be excluded. This court in Bhim Singh v. Union of India, (2015) 13 SCC 605, while dealing with the aforesaid provision, has directed that:

> "5. Having given our thoughtful consideration to the legislative policy engrafted in Section 436-A and large number of undertrial prisoners housed in the prisons, we are of the considered view that some order deserves to be passed by us so that the undertrial prisoners do not continue to be detained in prison beyond the maximum period provided under Section 436-A.
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> 6. We, accordingly, direct that jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge shall hold one sitting in a week in each jail/prison for two months commencing from 1-10-2014 for the purposes of effective implementation of Section 436-A of the Code of Criminal Procedure. In its sittings in jail, the above judicial officers shall identify the undertrial prisoners who have completed half period of the maximum period or maximum period of imprisonment provided for the said offence under the law and after complying with the procedure prescribed under Section 436-A pass an appropriate order in jail itself for release of such undertrial prisoners who fulfil the requirement of Section 436-A for their release immediately. Such jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge shall submit the report of each of such sittings to the Registrar General of the High Court and at the end of two months, the Registrar General of each High Court shall submit the report to the Secretary General of this Court without any delay. To facilitate compliance with the above order, we direct the Jail Superintendent of each jail/prison to provide all necessary facilities for holding the court sitting by the above judicial officers. A copy of this order shall be sent to the Registrar General of each High Court, who in turn will communicate the copy of

> the order to all Sessions Judges within his State for necessary compliance."

6. It is submitted by Mr. Banerjee that Section 436A is in the nature of statutory bail. If the accused is in incarceration for half of the period of the maximum period of punishment for which he has been entitled to be released on bail. The order of bail under Section 436A is automatic subject to the provision that an accused will not be entitled to such benefit if trial of the case is delayed due to his contribution. In the instant case the petitioner cannot be said to be responsible for delay in commencement of trial of ML Case No.2 of 2018.

7. Mr. Banerjee next refers to another unreported decision of the Hon'ble Supreme Court in the case of **Indrani Pratim Mukerjea vs. Central Bureau of Investigation & Anr.** {Special Leave to Appeal (Crl.) No.1627/2022) decided on 18th May, 2022} and submits that while deciding an application under Section 436A of the Code, the court should not comment on the merits of the case which might be determined to the interest of other prosecution or the defence. The court will consider the period of the accused in custody and grant him bail.

8. On the same issue Mr. Banerjee refers to the following decisions of the Hon'ble Supreme Court:-

i) **Jahir Hak vs. State of Rajasthan : 2022 SCC OnLine SC 441.**

ii) **Ramchand Karunakaran vs. Directorate of Enforcement & Anr : Criminal Appeal No.1650 of 2022 decided on 23rd September, 2022.**

9. Ms. Debjani Ray, learned Advocate for the Enforcement Directorate on the other hand submits that the decision of the Hon'ble Supreme Court in **Satender Kumar Antil** (supra) as laid down the propositions of law in respect of an application under Section 436A of the Cr.P.C. other decisions referred to by Mr. Banerjee are solemn orders of the Hon'ble Supreme Court in the cases involving offences under the IPC. Those, cases did not have any precedents in respect of the offence under the PMLA. Mrs. Roy refers to an order passed by a Coordinate Bench in CRM No.8345 of 2019 between the same parties on 28th February, 2020 wherein this Court unequivocally observed:-

> "The learned Special Judge (PMLA) Court fixed the matter for consideration of charge on several occasions however the same could not be proceeded due to dilatory tactics adopted by the different accused persons in the case. At this ground the Coordinate Bench refused to extend the benefit of Section 436A of the Cr.P.C to the petitioner.
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> Section 436A runs thus:-
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> **"436 A. Maximum period for which an undertrial prisoner can be detained:-**
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> Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law)

> undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties;
>
> Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties;
>
> Provided further that no such person shall in any case be detained during the period of investigation inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law."

10. Plain reading of the above provision suggests that the said Section speaks about maximum period for which an undertrial prisoner can be detained. First proviso to Section 436A states that the court may, after hearing the public prosecutor and for reasons to be recorded by it in writing, order continued detention of such person for a period longer than one-half of the said period.

11. Thus, Section 436A makes it obligatory for the court to release an undertrial on bail who has undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for the offence, subject to the proviso that the court may after giving opportunity of hearing to both the parties pass an order of continued detention on certain circumstances, viz if delay in trial is caused by the accused himself.

12. In its report submitted on behalf of the Enforcement Directorate reasons for delay was clearly delineated. The progress of ML Case No.2 of

2018 is reproduced below as per chart mentioned in paragraph 7.6 of the report.

> 7.6. That it is pertinent to bring before your lordship the non-cooperating attitude of the petitioner in the Ld. Special Court under PMLA which is causing detail in trial.

Date of hearing	Detail of proceedings
10.08.2018	Sh. Gautam Kundu was sent to Judicial Custody.
17.08.2018	Service Report for accused 1 & 2 remain returned unserved. The copy of Prosecution Complaint was supplied to accused persons. Prosecution was directed to take fresh steps for accused no.1 & 2
31.08.2018	The prosecution filed application mentioning the Sh. Gautam Kundu is the Chairman of Rose Valley Group of companies including Rose Valley Real Estate Construction Ltd. and Rose Valley Hotels and Entertainment Ltd. and that the summons should be served through Gautam Kundu, the chairman of the companies and further that when the said Gautam Kundu is produced before this Court he should receive the summons issued in the name of Rose Valley Real Estate Construction Ltd. and Rose Valley Hotels & Entertainment Ltd. The Ld. Special Court observed that upon going through the application and pursuing the complaint it appears that Rose Valley Real Estate Construction Ltd. and Rose Valley Hotels Entertainment Ltd. are properly represented by its Chairman Goutam Kundu, who is regularly produced before this Court in respect of the present case as well as in respect of other cases pending against him. When Mr. Kundu knows everything about the complaint lodged against him personally as well as his company which were run under his Chairmanship, then there will be no impediment or there may not any bar if summons be received by Gautam Kundu on behalf or Rose Valley Real Estate Construction Ltd. and Rose Valley Hotels & Entertainment Ltd. Accordingly the prosecution was directed to serve the summons including the complaint and other documents to Gautam kundu when he will be

	produced before the Spl. Court and Mr. Kundu was directed accordingly to receive the summons in respect of both Rose Valley Real Estate Construction Ltd. and Rose Valley Hotels & Entertainment Ltd.
05.09.2018	The Court received unserved copy of summons in respect of two companies namely Rose Valley Real Estate Construction Ltd. and Rose Valley Hotels & Entertainment Ltd.
13.09.2018	Sh. Gautam Kundu filed the bail application. However, it was submitted by his advocate that he is not intending to argue the bail application that day and he pressed the matter on the next day when the Ld. Court fixed the date for production of the accused.
28.09.2018	Ld. Advocate for accused Gautam Kundu and co accused Shibmoy Dutta stated that he is not in a position to argue the bail application today since he received a copy of written objection in the later stage and he is not ready to go through the said objection.
11.10.2018	Ld. Advocate for the accused stated that he will not argue the bail application filed on behalf of the accused Gautam Kundu and Shibmoy Dutta today as he is not ready to argue the said matter and he accordingly pray for time.
12.11.2018	The prosecution sought custody of another accused person. No steps taken by Gautam Kundu for his bail. Matter was fixed for 27.11.2018 for production of Gautam Kundu.
27.11.2018	Since the Regular Presiding Officer was on leave. Matter was adjourned for 10.12.2018 for production of accused persons in custody.
10.12.2018	Gautam Kundu was produced. Another accused person filed petition for confirmation of his interim bail.
20.12.2018	Gautam Kundu was produced. Another person filed petition for confirmation of his interim bail.
03.01.2019	Gautam Kundu was produced. Objection is filed in respect of application for confirmation of interim bail in respect of another accused person.
17.01.2019	Gautam Kundu was produced. Hearing took place on application for confirmation on interim bail in respect of another person.
30.01.2019	Gautam Kundu was produced. Another accused person filed petition for relaxation of bail

	conditions.
12.02.2019	Gautam Kundu was produced. Written objection filed in respect of petition for relaxation of bail conditions of another accused person.
26.02.2019	Gautam Kundu was produced. Another accused person filed petition for relaxation of bail conditions.
12.03.2019	Gautam Kundu was produced. Hearing took place on petition of relaxation of bail conditions of another accused person.
25.03.2019	Gautam Kundu was produced. Misc application filed on behalf of another accused person.
05.04.2019	Gautam Kundu was produced. Hearing took place on Misc application filed on behalf of another accused person. Gautam kundu filed petition for interim bail. Hearing was fixed for 06.04.2019.
06.04.2019	Interim Bail to Gautam Kundu was granted by the Ld. Special Court.
18.04.2019	Gautam Kundu was produced. Misc application filed on behalf of another accused person.
24.04.2019	Gautam Kundu was produced. Hearing took place on prayer of another accused person.
10.05.2019	Gautam Kundu was produced. Misc application filed on behalf of another accused person.
30.05.2019	Gautam Kundu was not produced since he was reported to be admitted to hospital of correctional home.
13.06.2019	Gautam Kundu was produced. The Ld. Court called investigation Report.
27.06.2019	Hearing adjourned for 10.07.2019.
10.07.2019	Gautam Kundu was produced. Misc application filed by another person. Matter fixed for 11.07.2019 for hearing on petition. The date 25.07.2019 fixed for production.
25.07.2019	Gautam Kundu was produced. Misc application filed by another accused.
08.08.2019	Gautam Kundu was. The Ld. Court was apprised about the progress of investigation and the Court called a report.
28.08.2019	Gautam Kundu was produced. Upon perusing the report, the court noted its satisfaction with investigation.
11.09.2019	Gautam Kundu was produced. Matter was adjourned for 07.11.2019 for production of accused person.
07.11.2019	Gautam Kundu was produced. Misc application

	filed by another accused person.
27.11.2019	Gautam Kundu was produced. Upon perusing the case records the Ld. Court noted their satisfaction with investigation. Matter was adjourned for 16.01.2020 for production of accused person.
16.01.2020	Gautam Kundu was produced. Misc application filed by another accused person.
08.06.2020	Gautam Kundu was not produced.
18.06.2020	Gautam Kundu was not produced.
14.07.2020	Gautam Kundu was not produced.
05.09.2020	Gautam Kundu was not produced.
21.11.2020	Gautam Kundu was not produced.
12.01.2021	Gautam Kundu filed application for interim bail which was rejected.
22.01.2021	Gautam Kundu was produced. Since regular Presiding Officer is on leave, matter was adjourned for 05.02.2021
05.02.2021	Gautam Kundu was produced. It was fixed for hearing of petition dated 21.10.2020 filed by ED for disposal of vehicles. However, on behalf of accused Gautam Kundu an application was filed for adjournment on the ground that he will not be available today due to illness of his mother. Since the said accused has opposed the application for disposal of properties, without hearing the accused the matter relating to the application for disposal of properties should not be taken up for hearing that day. The matter was adjourned for 09.03.2021
09.03.2021	Gautam Kundu was produced. It was submitted on behalf of Gautam Kundu that they did not receive the application and accordingly it is not possible to hear the application for disposal of properties and prayed for time, which was allowed.
05.04.2021	Gautam Kundu was produced. Time was prayed on behalf of accused person to file written objection against petition for disposal properties.
26.04.2021	Gautam Kundu was not produced. It was prayed by accused person Gautam Kundu that their counsel could not appear due to his personal reasons and prayed for time which was allowed.
02.07.2021	Gautam Kundu was not produced. Another accused person filed petition for confirmation of interim bail. An application was filed by Prosecution that Gautam Kundu should be

	directed to represent the companies Rose Valley Real Estate Construction Ltd. and Rose Valley Hotels Estate & Entertainment Ltd. The matter was adjourned for 06.08.2021 for hearing dated 02.07.2021 and dated 21.10.2020 for disposal of properties.
06.08.2021	Gautam Kundu was not produced. Misc application filed by another accused person. Matter was adjourned.
26.08.2021	Gautam Kundu was not produced. Advocate of another accused sought adjournment which was allowed.
10.01.2022	Gautam Kundu was not produced. Matter was adjourned.
16.02.2022	Gautam Kundu was produced. Hearing on another accused took place. The Ld. Court observed that it appears from the case records till now the copies are not supplied/accepted by Gautam Kundu. The matter was adjourned for 22.03.2022 for verification of documents and supplies of copies to Gautam Kundu, if he declined to accept the copies u/s 207 of the Crpc, necessary order shall be passed.
22.03.2022	Gautam Kundu was not produced. Gautam Kundu received copies u/s 207 of CrPC. Misc application filed by another accused person.
22.04.2022	Gautam Kundu was produced. Application u/s 436A of CrPC filed by Gautam Kundu
28.04.2022	Haring on application u/s 436A of CrPC filed by Gautam Kundu took place.
19.05.2022	Bail application of Gautam Kundu was rejected.
17.06.2022	Gautam Kundu was produced. Matter was adjourned since the regular Presiding Officer retired.

13. On careful perusal of the above chart it is ascertained that primarily delay in trial is attributable to the accused. Though the complaint was filed in the year 2018. The trial court could deliver the copies under Section 207 of the Cr.P.C only on 22nd March, 2022 to the accused. Prosecution cannot be blamed for causing delay in conducting ML Case No.2 of 2018.

14. It is also not out of place to mention that the petitioner is involved in money laundering of huge sum of money amounting to Rs.1750 crores (approximately). He has already siphoned out a sum of Rs.6666 crores which are proceeds of crime. The Enforcement Directorate has also produced reports and documents as to how the petitioner tried to coerce the present director of M/s Chocolate Group of Hotels for extortion of money and wrongful gain. Repayment process by the High Court constituted Asset Disposal Committee has been going on.

15. Therefore, at this stage, I am not inclined to grant benefit of Section 436A of the Code of Criminal Procedure. Prayer for bail of the accused Goutam Kundu is, thus, considered and rejected.

16. The instant motion is, thus, disposed of on contest.

(Bibek Chaudhuri, J.)