IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 4810 of 2025
IA No. CRAN 1 of 2026

Puja Hari
Vs.
The State of West Bengal & Anr.

For the petitioners	:	Mr. Ayan Bhattacharya, Sr. Adv. Mr. Soumyajit Das Mahapatra Mr. Soumya Basu Roy Chowdhuri Ms. Upasana Banerjee Mr. Abir Dalui
For the opposite party No.2	:	Mr. Sandipan Gangully, Sr. Adv. Mr. Sabyasachi Banerjee, Sr. Adv. Mr. Anirban Dutta Mr. Dwip Raj Basu
For the State	:	Mr. Debasish Roy, Ld. PP Mr. Rudradipta Nandy, Ld. APP Mr. Suman De Mr. Sachit Talukdar
Heard on	:	28.04.2026
Judgment on	:	23.06.2026

Dr. Ajoy Kumar Mukherjee, J.

1. The petitioner herein, Puja Hari wife of accused Bikash Hari has challenged the order passed by the learned Chief Judicial Magistrate,

Howrah, dated 24th September, 2025. By the impugned order, the court below attached total three properties owned jointly by the accused Bikash Hari and Puja Hari and also two properties belonging exclusively to Puja Hari invoking jurisdiction under section 107 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (in short BNSS) and directed investigating officer of the case to take necessary further step towards attachment of the property in question with an intimation to superintendent of police and collector of the concerned district, where the properties situate.

2. The inception of the dispute is when one written complaint was lodged at Sakrail P.S. on 20.05.2025 by one Manoj Agarwal, representative of Utkarsh India Limited alleging *interalia* that the company was approached by one Shyam Kumar Gupta, representative of Shree Shyam Road Safety and also its sole proprietor, Lalita Devi in the year 2020 and they thereby started a business relationship. It is alleged that thereafter discrepancies were discovered in the ledger of Shree Shyam Road Safety during the period form 16.04.2022 to 22.02.2024.

3. Upon receipt of such complaint, Sakrail P.S. Case no. 433/2025 dated 20.05.2025 under section 420/426/120B/34 of the IPC was started against aforesaid Bikash Hari and other employees of the company. During pendency of the investigation on 10.07.2025, the investigating officer made a prayer for order of forfeiture of the properties under section 107 of the BNSS 2023. On that date, the court below declined to pass any order as the accused persons were not within the clutch of investigating agency till that date. Thereafter on 24.09.2025, when the accused persons were arrested, the court below was pleased to allow the attachment of properties including

the properties of the petitioner herein, who is not an accused. The petitioner herein had taken various grounds to challenge said order dated 24.09.2025 and amongst the grounds which were argued are:-

(a) Though the petitioner Puja Hari has not been arraigned as accused person but still she became the victim of the instant impugned order. The impugned order came to the notice of the present petitioner only on 11.10.2025, when she found that a notice has been pasted upon her properties directing her to vacate.

(b) The petitioner is the owner of the properties but no notice was served upon her as mandated under section 107(2) & (3) of the BNSS and everything has been done behind her back, affecting her rights and interests.

(c) Learned magistrate without any reason has held that the right of audience of the present petitioner Puja Hari is not available as she is absconding. Such observation is a flawed observation because she was neither named as an accused in the FIR nor she has been inducted in the present case as an accused and as such, the question of abscondence by the petitioner does not arise. Moreover, even if she would have been an absconding accused, law does not prevent serving of notice of hearing by pasting it over the house of the petitioner.

4. Admittedly the petitioner has not been arraigned as an accused person in the instant case. Out of the attached properties, three are being jointly held by the petitioner and accused Bikash Hari who is her husband and two are exclusively owned by the petitioner. Though the petitioner is

owner of all those properties under attachment, there is nothing to show that before passing the impugned order of attachment, any notice was served upon her under the mandatory provision laid down in section 107(2) & (3) of BNSS and obviously she did not get any chance to place her case before the court.

5. Section 107 of BNSS specifically prescribe the procedure of attachment. Before proceeding further, let me reproduce the said provision.

> ***107. Attachment, forfeiture or restoration of property.***-- *(1) Where a police officer making an investigation has reason to believe that any property is derived or obtained, directly or indirectly, as a result of a criminal activity or from the commission of any offence, he may, with the approval of the Superintendent of Police or Commissioner of Police, make an application to the Court or the Magistrate exercising jurisdiction to take cognizance of the offence or commit for trial or try the case, for the attachment of such property.*
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> *(2) If the Court or the Magistrate has reasons to believe, whether before or after taking evidence, that all or any of such properties are proceeds of crime, the Court or the Magistrate may issue a notice upon such person calling upon him to show cause within a period of fourteen days as to why an order of attachment shall not be made.*
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> *(3) Where the notice issued to any person under sub-section (2) specifies any property as being held by any other person on behalf of such person, a copy of the notice shall also be served upon such other person.*
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> *(4) The Court or the Magistrate may, after considering the explanation, if any, to the show-cause notice issued under sub-section (2) and the material fact available before such Court or Magistrate and after giving a reasonable opportunity of being heard to such person or persons, may pass an order of attachment, in respect of those properties which are found to be the proceeds of crime:Provided that if such person does not appear before the Court or the Magistrate or represent his case before the Court or Magistrate within a period of fourteen days specified in the show-cause notice, the Court or the Magistrate may proceed to pass the ex parte order.*
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> *(5) Notwithstanding anything contained in sub-section (2), if the Court or the Magistrate is of the opinion that issuance of notice under the said sub-section would defeat the object of attachment or seizure, the Court or Magistrate may by an interim order passed ex parte direct attachment or seizure of such property, and such order shall remain in force till an order under sub-section (6) is passed.*
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> *(6) If the Court or the Magistrate finds the attached or seized properties to be the proceeds of crime, the Court or the Magistrate shall by order direct the District Magistrate to rateably distribute such proceeds of crime to the persons who are affected by such crime:*
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> *(7) On receipt of an order passed under sub-section (6), the District Magistrate shall, within a period of sixty days distribute the proceeds of crime either by himself or authorise any officer subordinate to him to effect such distribution.*

(8) If there are no claimants to receive such proceeds or no claimant is ascertainable or there is any surplus after satisfying the claimants, such proceeds of crime shall stand forfeited to the Government.

6. Therefore, section 107(2) of BNSS provides for four steps and/or pre-requisites to be followed before passing any order of attachment which has to be adhered to i.e.

(a) notice to the person of whom the property in question belongs to

(b) a time period of 14 days

(c) reasonable opportunity of being heard and

(d) to come to a logical conclusion that the property in question is actually proceeds of crime.

7. The statute also provides exceptions (a) if such person does not represent his case before the court within a period of 14 days and (b) if the court is of the opinion that issuance of notice under the said sub section would defeat the object of attachment or seizure. Therefore, the legislature in its wisdom made a specific provision for attachment mandating service of notice upon the person whose property would be attached and as such it made the room for the opportunity of being heard.

8. However, in the present case in hand as stated above the petitioner who is the owner of the concerned properties in question was not intimated through any notice and as such she failed to participate in the proceeding and lost the opportunity to be heard. Not only that, in support of his order for attachment of petitioner's property, learned Magistrate erroneously held that the petitioner is absconding and therefore, right of audience does not arise in her case and furthermore even after passing attachment order,

surprisingly he again directed the investigating officer to make the attachment by taking physical possession of the said properties.

9. Since the trial Court while passing the impugned order has clearly flouted the mandate of section 107 of BNSS, the matter could have ended here by remanding the case before trial Court for initiating the process of attachment, if any, afresh in accordance with law but the way the trial court brushed off all the warnings laid down in sub section (1) (2) & (3) of section 107 by observing that approval of the Commissioner of Police, Howrah is a technical issue and that service of notice upon Bikash Hari is sufficient compliance of section 107(2),/107(3), since property under attachment was purchased in the *benam* of present petitioner, being unjustly taking her as "absconding accused", it tempted me to remind the court below the necessity of following the newly incorporated provisions in the BNSS, in its true letter and spirit.

10. Needless to say section 107 BNSS has introduced a mechanism whereby property can be attached, liquidated and distributed even before the investigation or trial concludes. The understanding of attachment and forfeiture originates from the Criminal Law Ordinance which was designed to prevent dissipation of assets derived from specified offence and attachment. Under the said ordinance, attachment was essentially a civil recovery mechanism and not a punishment.

11. The procedure for attachment at the threshold of investigation has been incorporated mainly to serve dual purposes. Firstly to ensure participation of the accused in the legal process and secondly to deprive offenders of illegal gains. However, since newly incorporated law involves

valuable property rights of public or private, it demands procedural fairness within a framework. This is also because earlier law treated attachment as ancillary to adjudication. But presumably keeping the earlier similar provisions in mind, legislature has framed section 107(1) to 107(8) as a standalone mechanism for attachment. The other important aspect is that while the provisions for attachment have been framed, legislature did not make any distinction between serious economic crimes and minor offences as said section is applicable to *'any offence'* .

12. Therefore, both the investigating agency and the Courts must be vigilant while exercising such jurisdiction as indiscriminate use of such power without application of mind, may cause serious disaster to the constitutional right of 'right to property'.

13. An investigating officer can seek approval of his superior under section 107 (1) of BNSS only when there is a '*reason to believe*' that the property is derived or obtained as a result of any offence. '*Reason to believe*' of the investigating officer must be recorded in the application which will be forwarded to his superior as envisaged under section 107 (1) of the BNSS. The said application must demonstrate the close connection with the criminal activity or an offence which is under investigation. Furthermore, the report should additionally demonstrate as far as practicable the necessity of such attachment mainly from the point of view of concealment or transfer etc. The approval of higher official as envisaged under section 107 (1) of BNSS must reflect the due application of mind on the basis of cogent materials which will be part of investigation. Mere endorsement by the higher official should not be treated as an approval. The approval must

satisfy the requirement of attachment as envisaged under section 107 (1) of the BNSS.

14. The aforesaid provision can only be invoked by the investigating agency where there is reason to believe. The term 'reason to believe' must get strict interpretation. For commencement of investigation, the threshold limit is 'reason to suspect' vide section 176 of BNSS. Therefore, the provisions under section 107 of BNSS should not be invoked by an investigating officer without proper investigation as the threshold for 'reason to believe' is much higher than the 'reason to suspect'. In a recent judgment Supreme Court held that reason to believe' must have strict interpretation in ***Arvind Kejriwal Vs. ED*** reported in **(2025) 2 SCC 248** which may be reproduced below:-

> ***"61.*** *The legality of the "reasons to believe" has to be examined based on what is mentioned and recorded therein and the material on record. However, the officer acting under Section 19(1) of the PML Act cannot ignore or not consider the material which exonerates the arrestee. Any such non-consideration would lead to difficult and unacceptable results. First, it would negate the legislative intent which imposes stringent conditions. As a general rule of interpretation, penal provisions must be interpreted strictly. [See Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1 at para 106 : (2023) 21 ITR-OL 1 (SC) : (SCC pp. 164-65)"106. The "proceeds of crime" being the core of the ingredients constituting the offence of money laundering, that expression needs to be construed strictly. In that, all properties recovered or attached by the investigating agency in connection with the criminal activity relating to a scheduled offence under the general law cannot be regarded as proceeds of crime. There may be cases where the property involved in the commission of scheduled offence attached by the investigating agency dealing with that offence, cannot be wholly or partly regarded as proceeds of crime within themeaning of Section 2(1)(u) of the 2002 Act—so long as the whole or some portion of the property has been derived or obtained by any person "as a result of" criminal activity relating to the stated scheduled offence."Also see M. Ravindran v. Directorate of Revenue Intelligence, (2021) 2 SCC 485 : (2021) 1 SCC (Cri) 876 at para 17.9 : (SCC p. 505)"17. … 17.9. Additionally, it is well settled that in case of any ambiguity in the construction of a penal statute, the courts must favour the interpretation which leans towards protecting the rights of the accused, given the ubiquitous power disparity between the individual accused and the State machinery. This is applicable not only in the case of substantive penal statutes but also in the case of procedures providing for the curtailment of the liberty of the accused."] Secondly, any undue indulgence and latitude to DoE will be deleterious to the constitutional values of rule of law and life and liberty of persons. An officer cannot be allowed to selectively pick and choose material implicating the person to be arrested. They have to equally apply their mind to other material which absolves and exculpates the arrestee. The power to arrest*

under Section 19(1) of the PML Act cannot be exercised as per the whims and fancies of the officer."

15. Naturally the words "*approval of superintendent of police"* must not be taken as a mere formality but would mean and pre suppose a detailed representation to superior officer by the investigating officer with cogent material and case docket indicating his reason to believe why such property which is attempted to be attached, has link with the proceeds of crime. Parallelly the approval so granted by the superior officer would also indicate his satisfaction regarding the necessity for such attachment and also a prima facie finding regarding the link between the proceeds of crime and the property attempted to be attached.

16. Similarly, when the Court while examining such application along with the approval must examine and assess, though to a limited extent, the same on every aspect, For example if there is an involvement of public property and/or government property that must be appropriately scrutinized by the Court and to that effect appropriate findings must be recorded in the order.

17. In a case of exparte order under section 107(5) of the BNSS, the court should be more careful and should be invoked in rare cases which must demonstrate the reasons for such haste in the application as well as in the approval. Since the process of attachment has a deleterious effect on the right of a citizen, therefore, the same must be interpreted rigorously. It is settled law that attachment must receive strict interpretation as held in ***N. Padmamma and Ors. Vs. S. Ramkrishan Reddy and Ors***. reported in **(2008) 15 SCC 517** :-

> ***"21.*** *If a right of property is a human right as also a constitutional right, the same cannot be taken away except in accordance with law. Article 300-A of the Constitution protects such right. The provisions of the Act seeking to divest such right, keeping in view of the provisions of Article 300-A of the Constitution of India, must be strictly construed. (See Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai [(2005) 7 SCC 627] .) The principle laid down in the said decision, having regard to the concept of Article 300-A of the Constitution of India may be held to have some application in a case of this nature."*

18. On a bare perusal of section 107 itself, it is clear that before passing an order of attachment by the court, the legislature through sub-section (1) to (4) of section 107 of the BNSS has provided for multiple layers of scrutiny. At the first stage the scrutiny was conducted on the Executive side first by the investigating officer and secondly by the superintendent of police or the Commissioner of the police, i.e. highest superior officer of the investigating officer. When such application is made by the investigating officer before the Court, there are again two lawyers of judicial scrutiny conducted on the facts provided to such court or magistrate by the investigating officer. One prior to issuance of the show cause notice to the person whose property is proposed to be attached under section 107 of BNSS and the second stage of judicial consideration takes place after such persons appear in terms of show cause notice and provide their explanation. Therefore, it is apparent that the legislature in its wisdom had provided multiple layers of checks and balances both at the executive and judicial level in order to ensure that the process under section 107 of the BNSS leading to attachment of property cannot be done at the whims and fancies of the investigating officer.

19. Therefore after considering the materials placed before him, if he considers the requirement to pass such order, he must also record his

satisfaction that unless such order is passed, the victim of the crime shall be seriously prejudiced.

20. Keeping it in mind that forfeiture of property is not a punishment under section 4(d) of BNS, recording of 'reason to believe'; has to be made by the investigating agency and mandatorily by the court along with satisfaction if required, regarding the likelihood and/or transfer, in the line of section 5 of The Prevention of Money Laundering Act (in short PMLA Act). In this context, I feel it necessary to quote the observation made in the judgment (though in connection with attachment and confiscation in PMLA case), in ***Vijay Madan Lal Chowdhury Vs. Union Of India*** reported in **(2023) 12 SCC 1** which runs as follows:-

> ***"179.*** *The other grievance of the petitioners is in reference to the stipulation in sub-section (4) of Section 8 providing for taking possession of the property. This provision ought to be invoked only in exceptional situation keeping in mind the peculiar facts of the case. In that, merely because the provisional attachment order passed under Section 5(1) is confirmed, it does not follow that the property stands confiscated; and until an order of confiscation is formally passed, there is no reason to hasten the process of taking possession of such property. The principle set out in Section 5(4) of the 2002 Act needs to be extended even after confirmation of provisional attachment order until a formal confiscation order is passed.*
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> ***180.*** *Section 5(4) clearly states that nothing in Section 5 including the order of provisional attachment shall prevent the person interested in the enjoyment of immovable property attached under sub-section (1) from such enjoyment. The need to take possession of the attached property would arise only for giving effect to the order of confiscation. This is also because sub-section (6) of Section 8 postulates that where on conclusion of a trial under the 2002 Act which is obviously in respect of offence of money laundering, the Special Court finds that the offence of money laundering has not taken place or the property is not involved in money laundering, it shall order release of such property to the person entitled to receive it. Once the possession of the property is taken in terms of sub-section (4) and the finding in favour of the person is rendered by the Special Court thereafter and during the interregnum if the property changes hands and title vest in some third party, it would result in civil consequences even to third party. That is certainly avoidable unless it is absolutely necessary in the peculiar facts of a particular case so as to invoke the option available under sub-section (4) of Section 8.*
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> ***181.*** *Indisputably, statutory rules have been framed by the Central Government in exercise of powers under Section 73 of the 2002 Act regarding the manner of taking possession of attached or frozen properties confirmed by the adjudicating authority in 2013, and also regarding restoration of confiscated property in 2019. Suffice it to observe that direction under Section 8(4) for taking possession of the property in question before a formal order of confiscation is passed merely on the basis of confirmation of provisional*

attachment order, should be an exception and not a rule. That issue will have to be considered on case-to-case basis. Upon such harmonious construction of the relevant provisions, it is not possible to countenance challenge to the validity of sub-section (4) of Section 8 of the 2002 Act.

182. *The learned counsel appearing for the Union of India, had invited our attention to the recommendations made by FATF in 2003 and 2012 to justify the provision under consideration. The fact that non-conviction based confiscation model is permissible, it does not warrant an extreme and drastic action of physical dispossession of the person from the property in every case — which can be industrial/commercial/business and also residential property, until a formal order of confiscation is passed under Section 8(5) or 8(7) of the 2002 Act. As demonstrated earlier, it is possible that the Special Court in the trial concerning money laundering offence may eventually decide the issue in favour of the person in possession of the property as not being proceeds of crime or for any other valid ground. Before such order is passed by the Special Court, it would be a case of serious miscarriage of justice, if not abuse of process to take physical possession of the property held by such person. Further, it would serve no purpose by hastening the process of taking possession of the property and then returning the same back to the same person at a later date pursuant to the order passed by the court of competent jurisdiction. Moreover, for the view taken by us while interpretating Section 3 of the 2002 Act regarding the offence of money laundering, it can proceed only if it is established that the person has directly or indirectly derived or obtained proceeds of crime as a result of criminal activity relating to or relatable to a scheduled offence or was involved in any process or activity connected with proceeds of crime.*

183. *It is unfathomable as to how the action of confiscation can be resorted to in respect of property in the event of his acquittal or discharge in connection with the scheduled offence. Resultantly, we would sum up by observing that the provision in the form of Section 8(4) can be resorted to only by way of an exception and not as a rule. The analogy drawn by the Union of India on the basis of decisions of this Court in Divl. Forest Officer v. G.V. Sudhakar Rao [Divl. Forest Officer v. G.V. Sudhakar Rao, (1985) 4 SCC 573 : 1986 SCC (Cri) 34] , Biswanath Bhattacharya [Biswanath Bhattacharya v. Union of India, (2014) 4 SCC 392 : (2014) 2 SCC (Cri) 342] , Yogendra Kumar Jaiswal v. State of Bihar [Yogendra Kumar Jaiswal v. State of Bihar, (2016) 3 SCC 183 : (2016) 2 SCC (Cri) 1] , will be of no avail in the context of the scheme of attachment, confiscation and vesting of proceeds of crime in the Central Government provided for in the 2002 Act.*

21. It may very well come to one's mind as to how the spirit of ***Vijay Madan Lal*** (supra) judgment becomes relevant for the present context as it was passed in connection with special statutes namely PMLA. In my opinion, it becomes relevant as the statute itself has created an anomalous situation with the nucleus in the provision under section 107 of the BNSS in connection with the term "*criminal activity*" and/or "*proceeds of crime*". Both these terminologies are not defined in the relevant chapter. The definition of "proceeds of crime" as found under section 111(c) of the BNSS may not be

of much assistance, because such definition has been restricted only for chapter VIII of BNSS. It is trite law that in such case the court will adopt the general definition, as a sequel there will be a room for uncertainty. The net will remain wide enough thereby rendering the provisions susceptible to misuse. It is true that possibility of misuse of a provision is not a ground for declaration of the same as ultra vires but can be taken as a ground for taking additional safeguards by the Executive and the Judiciary while invoking their respective jurisdictions. In the absence of application of mind and/or taking requisite safeguards, there is every likelihood that the criminal prosecution would be used in some cases as a tool of recovery mechanism, which is not permissible under the law.

22. It further needs to be mentioned about another particular feature of section 107 which deals with exparte interim attachment order. As stated above, the provisions allow such orders to be issued where notice would defeat the purpose of attachment though it does not provide any guidance on the circumstances justifying such action. Once such interim order is passed there is likelihood that it may continue indefinitely, because the statute does not prescribe any time limit for final adjudication and it may create a situation where individual may be deprived of his property for prolonged period without effective remedy. Furthermore, though bare reading of heading under section 107 speaks about restoration of property but said section is silent about the mode or manner as to how such attached property can be restored, if situation demands. Moreover, in the statute like PMLA, such provisional attachment limits for a period of 180 days, though section 107 imposes no such constraints. Therefore exparte

order under section 107 (5) of the BNSS can only be passed in rare cases which must demonstrate the reason for such haste in the application as well as in the approval. Since, such ex parte order of attachment may cause a deleterious effect on the right of a citizen therefore the same must be interpreted rigorously.

23. Needless to say that the term *'proceeds of crime'* if taken as '*any property derived or obtained directly or indirectly as a result of criminal activity or from the commission of any offence',* this layer of judicial supervision can be triggered prior to even issuance of any show cause notice to the affected person. Therefore, while the court is going to exercise such power on the basis of ex parte hearing, the court should record material evidence to that effect. 'Reason to believe' of the investigating officer in all such cases must be in writing and could be placed before superior police officer or before the court or magistrate.

24. In short, I may conclude that non application of judicial mind or to take casual approach while dealing with prayer for attachment under section 107, (as has happened in the instant case) may render section 107 vulnerable under multiple constitutional provisions. If the investigating authorities and the Court do not keep in mind what has been reiterated in **Arvind Kejriwal** Case (supra) that the words *'but not otherwise'* gives a stringent condition that before invoking jurisdiction under the said provision concerned authority must have sufficient cause to believe, otherwise absolute discretion would lead to tyranny. The investigating officer must base their belief on hard admissible material in their actual possession and

that material must clearly indicate guilt. Mere non co-operation with question or a general "reason to suspect" does not meet the "sufficient cause.....but not otherwise" threshold required to deprive an individual of their liberty. Needless to say that the deprivation of property if not made on sound judicial discretion may violate Article 300A also as recognized in ***K.T. plantation Pvt. Ltd. Vs. State of Karnataka*** **(2011) 9 SCC 1** and may also lead to violation of article 14 in the light of ***EP Royappa Vs. State of Tamilnadu*** reported in **(1974) 4 SCC 3** and ***Maneka Gandhi Vs. Union of India***, reported in **(1978) 1 SCC 248**.

25. Coming back to the instant case, as I have already stated above that since no notice was served upon the petitioner in violation of section 107 (2) & (3) of the BNSS the instant application being CRR 4810 of 2025 is allowed. The impugned order dated 24.09.2025 passed by the learned CJM Howrah, in GR no. 2801 of 2025 is hereby set aside. However, this order will not prevent the concerned investigating authority to initiate process afresh strictly in compliance with section 107 of BNSS, within a period of four weeks from the date of this order and in the event of initiation of such process afresh and also in the event of making any prayer under section 107 (2) or (3) of BNSS afresh, the court below will dispose of such prayer, if any, strictly in accordance with law as discussed above.

26. Connected Application also stand disposed of accordingly.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)