IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 4389 of 2025

Piyush Sharma
Vs.
The State of West Bengal & Anr.

For the petitioners	:	Mr. Sabyasachi Banerjee, Sr. Adv Mr. Soumya Nag Mr. Abhinav Rakshit Ms. Atrayee Chatterjee
For the O.P. No.2.	:	Mr. Ayan Bhattacharjee, Sr. Adv Mr. Sagnik Mukherjee
For the State	:	Mr. Debasish Roy, Ld. P.P. Mr. Rudra Dipta Nandy, Ld. APP Mr. Bikram Mitra
Heard on	:	23.04.2026
Judgment on	:	23.06.2026

Dr. Ajoy Kumar Mukherjee, J.

1. The petitioner as a representative of Sastha Sunder Health Buddy Ltd. lodged a complaint alleging misappropriation of cash amount of over 15 Crores and Medicines worth 93 lakhs by private opposite parties herein (in

short OP), who diverted such funds and acquired assets from the proceeds of crime, being Baruipur P.S. case no. 369 of 2025 under section 318(4)/316(5)/314/338/61/49 Bharatiya Nyaya Sanhita (in short BNS). One application was filed by the investigating officer before learned Additional Chief Judicial Magistrate, Baruipur for attachment of such property under section 107 of the Bharatiya Nyaya Surkhsha Sanhita (in short BNSS) and for passing necessary order upon the Branch Manager of Canara Bank, Bally branch thereby directing not to allow encashment of term deposit without obtaining specific orders from the learned Magistrate. On 21.04.2025, notice was served to OP no.2. Thereafter on 19.05.2025, the investing agency filed a second application under section 107 of the BNSS for attachment of properties of OP no.3 Satarupa Sarkar, who received notice on 22.05.2025. Charge sheet was also filed against the accused persons on 29.05.2025. Thereafter learned Magistrate, Baruipur, by an order dated 09.06.2025, directed attachment of such properties under section 107 of BNSS.

2. The relevant portion of the order passed by learned magistrate is reproduced below:-

> *"This court apprehending that the articles seized and the properties identified in the petition of investigating officer might be proceeds of crim, issued notice upon both the accused persons directing them to show cause within 14days of the received of the notice as to why the seized articles shall not be attached. The notice to Taraknath Bhattacharjee was issued by this court on 19.04.2025 and that of Satarupa Sarkar was issued on 19.05.2025. Accused Taraknath Bhattacharjee received the same at Baruipur Central Correctional Home on 22.05.2025. It further transpires that 14 days has already passed since the receipt of the show cause notices by both the accused persons but neither they are represented before this Court through any Advocate nor they have personally filed any show cause to that effect. Further it is also a fact that the charge-sheet has already been submitted in this case vide No. 829 of 2025 dated 29.05.2025 under section 318 (4)/316 (5) 314/338/61/49 of BNS and cognizance has been taken on 30.05.2025. if further time is allowed to the accused persons for showing cause to the notices, there is every chance that the purpose of notices will get frustrated. I am not inclined to allow further time*

to the accused. Moreso because they are getting themselves represented before Ld. ADJ, Baruipur from which it transpires that they are quite vigilant about this case and are purposefully avoiding showing cause of the notices issued by this court.
Consequently, I am inclined to pass attachment order in this case and verbal prayers of the accused persons for further time stands rejected.
Hence, it is
Ordered
That the prayer of the investigating officer of this case under section 107 of BNSS is hereby allowed on contest.
IO is directed to attach articles and properties mentioned under the headings' seized articles' and identified properties' in the petitions u/s 107 of BNSS respectively. The IO shall hold the same under attachment until further orders of this court.

3. Thereafter, the said order was put under challenge before the Revisional Court. It was urged before the Revisional Court that none of the functionaries proceeded as per law, while the order of attachment was passed and thereby the order affected the right to property of the revisionist, which is constitutionally guaranteed legal right. It was further urged that Investigating officer (in short IO) in this case proceeded merely on the basis of assumption, which was mechanically approved by his official superior and ultimately ratified by the Trial Court without properly assessing the legal requirements. It was further urged that in the ordering portion learned magistrate directed the IO to attach the properties seized and identified as figured out in the petition while the power of attachment lies only with the magistrate. It was also urged that admittedly revisionist did not file reply to show cause notice but non furnishing of reply to show cause notice does not empower learned trial court to have the sufficient '*reason to believe'* that the properties in question were obtained through the proceeds of crime.

4. Learned Revisional Court, while setting aside the order of trial Court noted that the prayer made by the IO to the learned ACJM for attachment clearly reveals that he *'assumed'* that the properties listed by him were

obtained as proceeds of crime. The relevant portion of that order may be quoted below:-

> *"The prayer made by the IO to the Ld. ACJM, baruipur for attachment clearly reveals that he 'assumed' that the properties listed by him were obtained as proceeds of crime. The notice to the revisionist, as was issued by the Ld. ACJM, Baruipur, manifests that it was issued as the I.O. 'apprehended' the seized articles and properties were derived or obtained directly or indirectly because of commission of the offence alleged in the case. Assumption and apprehension are obviously not same or even proximate to something which the Court has 'reason to believe'. Assumption means accepting something as true without proof. While apprehension means suspicion or fear. Naturally, they are far in meaning from the purport of 'reasons to believe'. Interestingly, in the whole episode, the term 'reason to believe' or even a similar expression was neither used by the I.O. nor by Ld. ACJM, Baruipur."*

5. In the concluding paragraph of the Order, the court below held that leasehold property unlike a freehold one, continues to be owned by the lessor. In the instant case while passing the order of attachment, learned ACJM Baruipur, did not consider it proper to issue notice to the lessor of the leasehold properties mentioned in the petition filed by the IO, though sub section (2) and sub section (3) of section 107 BNSS uses respectively the term *'such person'* and *'any other person'* and as such it is clear that legislature consciously did not use the expression *'accused persons'*. Therefore, the Court below observed that the notice should have been served on the persons claiming right over the property, sought to be attached but in the instant case, as no attempt was made to inform the lessor of the properties listed in serial no. 4 and 5, the order impugned is not sustainable and therefore liable to be set.

6. Being aggrieved by the said order passed by the Court below, Mr. Banerjee learned counsel appearing on behalf of the petitioners argued that non usage of the expression *'reason to believe'* in so many words in order dated 29.08.2005 would not vitiate the entire proceeding, when in fact the

material on record clearly discloses sufficient grounds and cogent reasons for the learned magistrate to believe that the property in question represented are from the proceeds of crime. He further argued that learned Court below failed to appreciate that the OP no.2 and 3 herein had been duly served with the notices under section 107 of BNSS on 21.04.2025 and 22.04.2025 respectively, calling upon them to show cause within 14 days as to why the seized and identified properties should not be attached, but despite expiry of the said period no reply to show cause or representation was filed before learned Magistrate, nor any plausible explanation was given for their deliberate non participation in the proceeding. In fact, it was not considered that if the order dated 29.08.2025 is allowed to stand, it would result in grave prejudice to the petitioner and would frustrate the ongoing criminal proceeding since the properties representing the proceeds of crime which were lawfully attached by the learned magistrate would now be free to be dissipated or alienated by the accused persons. Learned Court below ought not to have set aside the attachment order dated 09.06.2025 on hyper technical grounds, because omission of the expression *'reason to believe'* is curable in nature and cannot justify vacating an attachment order, which was otherwise supported by overwhelming evidence and is also necessary to safeguard public interest. Infact, learned court below did not consider that no prejudice whatsoever was caused to the opposite party no. 2 and 3 by the attachment order dated 09.06.2025, which only preserved the status quo of the properties, prima facie represented to be from proceeds of crime and it serves larger public interest by preventing further concealment, alienation or dissipation of the said properties pending trial. In short, the order impugned

dated 29.08.2025 has frustrated the statutory scheme for seizure and preservation of proceeds of crime and unless it is set aside it would result in irreparable injury to the petitioner and would cause grave miscarriage of justice.

7. Therefore, the issue before this court is whether Court below was justified in setting aside the order of trial Court passed in connection with the attachment order in the light of modern expositions of the expression *'reasons to believe'* in the context of section 107 of the BNSS.

8. The introduction of the BNSS after repealing Criminal Procedure Code is a legislative attempt to modernise India's criminal justice system. In the process of modernisation, section 107 has been newly incorporated as a mechanism, whereby property can be attached, liquidated and distributed even before the investigation and/or criminal trial concludes.

9. The modern understanding of attachment and forfeiture originates from Criminal Law Amendment Ordinance 1945, which was designed to prevent dissipation of assets derived from specific offences. *In* ***State of West Bengal Vs. SK Ghosh,*** reported in **AIR 1936 SC 255,** Hon'ble the Supreme Court clarified that attachment under the Ordinance was essentially a civil recovery mechanism and not a punishment. The court emphasises that the objective was to preserve property for eventual confiscation upon conviction and not to impose pre-trial penalties. This distinction was reaffirmed in ***Biswanath Bhattacharya Vs. Union of India*** reported in **(2014) 4 SCC 392,** where the Apex Court upheld forfeiture under Smugglers and Foreign Exchange Manipulators (forfeiture of property) Act (in short SAFEMA), while

reiterating that such measures must be accompanied by procedural safeguard and must not operate arbitrarily.

10. Therefore, historically attachment in India under criminal law was a procedural tool and not a punitive one. Under section 83 of the Cr.P.C., Attachment was primarily used to compel appearance or facilitate cross border co-operation. However section 107 changes that and now it converts attachment into a substantive instrument of economic deprivation/asset deprivation. Previously attachment was restricted to scheduled offences in the statutes such as Prevention of Money Laundering Act (in short PMLA) or SAFEMA. But Section 107 extends the scope to *'any offence'* under BNS. Therefore with the introduction of section 107, the law of attachment is now applicable to serious economic crimes as also minor offences.

11. Here lies the importance of using terminology *'reasons to believe'.* Legislature very wisely and consciously used the term *'reasons to believe'* twice in sub section (1) and sub section (2) of section 107. This has been done so that the provision may not fundamentally alter the architecture of the criminal law by collapsing the distinction between 'suspicion' and 'guilt'. The legislature while framing the law of attachment were conscious that unless a barrier is put, it may create a regime where attachment may be invoked, though situation does not warrant such drastic intervention, in the absence of any classification based on gravity or nature of offence. However unlike the PMLA, section 107 does not provide detailed mechanism for protecting *bonafide* third party interest.

12. The Supreme Court in ***Attorney General for India Vs. AmratLal Prajibhandas,*** reported in **(1994) 5 SCC 54** *and* ***Fatima Md. Amin Vs.***

Union of India, reported in **(2003) 7 SCC 436** emphasises that forfeiture laws must not penalise innocent parties. The definition of proceeds of crime under chapter VIII includes not only the property itself but also its equivalent value thereby allowing attachment of untainted property, which infact creates a defacto reverse burden scenario where individual will have to establish the legitimacy of their property to avoid attachment. Not only that section 107 (5) gives the power to pass exparte interim attachment orders and such order is to be passed where notice would defeat the purpose of attachment. The judiciary as Guardian must see that the cumulative effects of this feature do not render section 107 vulnerable under multiple constitutional provisions like deprivation of property in violation of article 300A and/or lead to violation of Article 14 of the Constitution of India.

13. Therefore, the words *'reasons to believe'* used in section 107 is to be interpreted in its true perspective so that the provision does not reflect a structural imbalance between state power and individual rights. The term 'reason to believe' has not been defined in BNSS. However, section 2 (29) of BNS defines 'reason to believe' as follows:-

> *"2(24)reason to believe". A person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing but not otherwise;*

14. Similarly proceeds of crime has not been defined in chapter VII. However, for the purpose of chapter VIII, it has been defined in section 111 (C) as:-

> *"proceeds of crime" means any property derived or obtained directly or indirectly, by any person as a result of criminal activity (including crime involving currency transfers) or the value of any such property;"*

15. While the statutory language appears straightforward , the judicial interpretation has progressively shaped the definition *'reasons to believe'* into a naunced doctrinal tool that mediates between mere suspicion and actual knowledge. The judgment in ***Arbind Kejriwal Vs. ED,*** reported in **(2024) 9 SCC 577** constitutes one of the most detailed modern exposition of the expression 'reason to believe' in the context of arrest under section 19 of the PMLA. In the judgment a sharp distinction has been drawn between 'reason to believe' and 'suspicion'. The court reiterates that suspicion represents a lower grade of satisfaction and cannot justify arrest. 'Reason to believe' on the other hand holds a higher threshold conveying a conviction founded on an evidence regarding the existence of a fact. The court reinforces that the believe must be evidence-based and not speculative and must be grounded in material, that has a rational connection with the conclusion reached. It explicitly states that the reasons must not be extraneous or irrelevant and must bear a nexus to the formation of believe. The belief must emerge from a chain of probable reasoning based on circumstances, even if those circumstances do not establish guilt with certainty. The court also underscores that 'reason to believe' cannot be formed selectively or arbitrarily. The authority cannot pick and choose only incriminating materials while ignoring exculpatory evidence. The exercise of power cannot be based on whims and fancies and subjectively is not a license to disregard relevant material. This introduces an important requirement of fair evaluation of the entire material, not merely a prosecution oriented selection. Para 61 of this judgment runs as follows:-

> ***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.*

16. In court on its own motion Vs. State (NCT Delhi and Ors.) criminal Appeal no. 2161-2162 of 2024 (decided on 23rd September, 2024), the Court held that the expression operates at a stage anterior to knowledge and is not confined to established or completed facts. It may arise where circumstances create a credible apprehension of the likelihood of an offence. This decisions reaffirmed that 'reason to believe' is not merely retrospective but may expect of prospective or anticipatory situation provided the belief is grounded on objective material that would persue a reasonable person.

17. The doctrinal roots of the expression 'reason to believe' can be traced to several authoritative decisions that continue to govern the field. In

Calcutta Discount Company Limited Vs. Income Tax Officer reported in **AIR 1961 SC 372,** it was first articulated that the existence of 'reason to believe' is justiciable issue. The court held that the expression "has reason to believe" in section 34(1) (a) of the Income Tax Act does not mean a purely subjective satisfaction of the income Tax officer but predicates the existence of reasons on which such belief has to be founded. That belief therefore, cannot be founded on mere suspicion and must be based on evidence and any question as to the adequacy of such evidence is wholly immaterial at that stage.

18. Thereafter in **SheoNath Singh Vs. Appellate Assistant Commissioner of Income Tax,** reported in **(1972) 3 SCC 234,** the court emphasises that belief must be held in good faith and cannot be a mere pretence. It must be based on reasonable grounds and not on vague indefinite or irrelevant material. The court cautioned that the expression does not permit arbitrary action under the guise of subjective satisfaction. Para 10 of the judgment runs as follows:-

> ***10.*** *In our judgment, the law laid down by this Court in the above case is fully applicable to the facts of the present case. There can be no manner of doubt that the words "reason to believe" suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the Income Tax Officer may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. The Income Tax Officer would be acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the section. The Court can always examine this aspect though the declaration or sufficiency of the reasons for the belief cannot be investigated by the Court.*

19. In **Income Tax Officer Vs. Laxmani Mewal Das**, **(1976) 3 SCC 757,** the Supreme Court introduced the well established requirement of a 'live link' or rational nexus between the material available and the belief formed.

The court held that the connection between the information and the belief must not be remote. Para 11 and 12 of this judgment runs as follows:-

> ***11.*** *As stated earlier, the reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income Tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is no doubt true that the court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income Tax Officer on the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and farfetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment. The fact that the words "definite information" which were there in Section 34 of the Act of 1922 at one time before its amendment in 1948 are not there in Section 147 of the Act of 1961 would not lead to the conclusion that action can now be taken for reopening assessment even if the information is wholly vague, indefinite, farfetched and remote. The reason for the formation of the belief must be held in good faith and should not be a mere pretence.*
>
> ***12.*** *The powers of the Income Tax Officer to reopen assessment though wide are not plenary. The words of the statute are "reason to believe" and not "reason to suspect" The reopening of the assessment after the lapse of many years is a serious matter. The Act, no doubt, contemplates the reopening of the assessment if grounds exist for believing that income of the assessee has escaped assessment. The underlying reason for that is that instances of concealed income or other income escaping assessment in a large number of cases come to the notice of the Income Tax Authorities after the assessment has been completed. The provisions of the Act in this respect depart from the normal rule that there should be, subject to right of appeal and revision, finality about orders made in judicial and quasi-judicial proceedings. It is, therefore, essential that before such action is taken the requirements of the law should be satisfied. The live link or close nexus which should be there between the material before the Income Tax Officer in the present case and the belief which he was to form regarding the escapement of the income of the assessee from assessment because of the latter's failure or omission to disclose fully and truly all material facts was missing in the case. In any event, the link was too tenuous to provide a legally sound basis for reopening the assessment. The majority of the learned Judges in the High Court, in our opinion, were not in error in holding that the said material could not have led to the formation of the belief that the income of the assessee respondent had escaped assessment because of his failure or omission to disclose fully and truly all material facts. We would, therefore, uphold the view of the majority and dismiss the appeal with costs.*

20. The doctrine was further consolidated in ***Phool Chand Bajranglal Vs. Income Tax Officer,*** reported in **(1993) 4 SCC 77** where the court clarified that although the court's sufficiency cannot be questioned but courts are entitled to examine whether there exists a rational connection between the material and the belief. The court reaffirmed that the belief

must be *bonafide* and based on relevant considerations and thereby reinforced the requirement of a 'live link'. Para 25 may be quoted below:-

> ***25.*** *From a combined review of the judgments of this Court, it follows that an Income Tax Officer acquires jurisdiction to reopen assessment under Section 147(a) read with Section 148 of the Income Tax Act, 1961 only if on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reasons which he must record, to believe that by reason of omission or failure on the part of the assessee to make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his income, profit or gains chargeable to income tax has escaped assessment. He may start reassessment proceedings either because some fresh facts come to light which were not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts. In such situations, it is not a case of mere change of opinion or the drawing of a different inference from the same facts as were earlier available but acting on fresh information. Since, the belief is that of the Income Tax Officer, the sufficiency of reasons for forming the belief, is not for the Court to judge but it is open to an assessee to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and non-specific information. To that limited extent, the Court may look into the conclusion arrived at by the Income Tax Officer and examine whether there was any material available on the record from which the requisite belief could be formed by the Income Tax Officer and further whether that material had any rational connection or a live link for the formation of the requisite belief. It would be immaterial whether the Income Tax Officer at the time of making the original assessment could or, could not have found by further enquiry or investigation, whether the transaction was genuine or not, if on the basis of subsequent information, the Income Tax Officer arrives at a conclusion, after satisfying the twin conditions prescribed in Section 147(a) of the Act, that the assessee had not made a full and true disclosure of the material facts at the time of original assessment and therefore income chargeable to tax had escaped assessment. The High Courts which have interpreted Burlop Dealer case [(1971) 1 SCC 462 : (1971) 79 ITR 609] as laying down law to the contrary fell in error and did not appreciate the import of that judgment correctly.*

21. In ***Jyoti Prasad Vs. State of Haryana*****,** reported in **1993 SCC (Cri) 691** the court distinguished between knowledge, belief and suspicion, placing 'reason to believe' in an intermediate position. Paragraph 5 of the judgment runs as follows:-

> ***5.*** *Under the Indian penal law, guilt in respect of almost all the offences is fastened either on the ground of "intention" or "knowledge" or "reason to believe". We are now concerned with the expressions "knowledge" and "reason to believe". "Knowledge" is an awareness on the part of the person concerned indicating his state of mind. "Reason to believe" is another facet of the state of mind. "Reason to believe" is not the same thing as "suspicion" or "doubt" and mere seeing also cannot be equated to believing. "Reason to believe" is a higher level of state of mind. Likewise "knowledge" will be slightly on a higher plane than "reason to believe". A person can be supposed to know where there is a*

direct appeal to his senses and a person is presumed to have a reason to believe if he has sufficient cause to believe the same. Section 26 IPC explains the meaning of the words "reason to believe" thus:

"26. 'Reason to believe'.— A person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing but not otherwise."

In substance what it means is that a person must have reason to believe if the circumstances are such that a reasonable man would, by probable reasoning, conclude or infer regarding the nature of the thing concerned. Such circumstances need not necessarily be capable of absolute conviction or inference; but it is sufficient if the circumstances are such creating a cause to believe by chain of probable reasoning leading to the conclusion or inference about the nature of the thing. These two requirements i.e. "knowledge" and "reason to believe" have to be deduced from various circumstances in the case.

22. Similarly, in ***State of Maharashtra Vs. Som Nath Thapa,*** reported in **1996 (4) SCC 659,** the court held that 'reason to believe' requires a strong, reasonable probability but not certainty. The belief must arise from credible material that would induce such conclusion in the mind of a prudent person. The standard is lower than proof beyond reasonable doubt but higher than mere suspicion.

23. In ***AS Krishnan Vs. state of Kerala***, reported in **(2004) 11 SCC 576** the court reiterated that 'reason to believe' must be founded on reasonable ground and cannot be equated with suspicion or conjecture. Para 9 of the judgment runs as follows:-

9. *Under IPC, guilt in respect of almost all the offences is fastened either on the ground of "intention" or "knowledge" or "reason to believe". We are now concerned with the expressions "knowledge" and "reason to believe". "Knowledge" is an awareness on the part of the person concerned indicating his state of mind. "Reason to believe" is another facet of the state of mind. "Reason to believe" is not the same thing as "suspicion" or "doubt" and mere seeing also cannot be equated to believing. "Reason to believe" is a higher level of state of mind. Likewise "knowledge" will be slightly on a higher plane than "reason to believe". A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a reason to believe if he has sufficient cause to believe the same. Section 26 IPC explains the meaning of the words "reason to believe" thus:*

"26. 'Reason to believe'.—A person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing but not otherwise."

24. The procedural dimension of the doctrine was emphasised in ***Aslam Md. Merchant Vs. Competent Authority,*** reported in **(2008) 14 SCC 186** where the supreme Court held that the formation of 'reason to believe' must, in appropriate statutory context, be accompanied by the recording of reasons. This requirement ensures transparency, accountability and facilitates judicial review, thereby preventing arbitrary exercise of power. The relevant paragraphs are paragraphs 32 and 34, which run as follows:-

> ***32.*** *Before, however, an order of forfeiture can be passed, the competent authority must not only comply with the principles of natural justice, he is also required to apply his mind on the materials brought before him. It is also necessary that a finding that all or any of the properties in question were illegally acquired properties is recorded.*
> ***...*** .....
>
> ***34.*** *Analysis of the aforementioned provisions clearly establish that a link must be found between the property sought to be forfeited and the income or assets or properties which were illegally acquired by the person concerned.*

25. In ***Ravinder Kumar Vs. State of Haryana*** reported in **2024 SCC Online SC 2495,** the court while analysing the meaning of the phrase 'reason to believe' under section 26 of IPC held in para 12 as follows:-

> ***"12.*** *The question is what meaning can be assigned to the expression "has reason to believe". Section 26 of the Penal Code, 1860 defines the expression "reason to believe", which reads thus:*
>
> ***"26. "Reason to believe".—*** *A person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing but not otherwise."*
>
> *In the case of Aslam Mohammad Merchant v. Competent Authority[1], this Court had an occasion to interpret the same expression. In paragraph 41, this Court held thus:*
>
> ***"41.*** *It is now a trite law that whenever a statute provides for "reason to believe", either the reasons should appear on the face of the notice or they must be available on the materials which had been placed before him."*
>
> *However, interpretation of the expression will depend on the context in which it is used in a particular legislation. In some statutes like the present one, there is a power to initiate action under the statute if the authority has reason to believe that certain facts exist. The test is whether a reasonable man, under the circumstances placed before him, would be propelled to take action under the statute. Considering the object of the 1994 Act, the expression "reason to believe" cannot be construed in a manner which would create a procedural roadblock. The reason is that once there is any material placed before the Appropriate Authority based on which action of search is required to be undertaken, if the action is delayed, the very object of passing orders of search would be frustrated. Therefore, what is needed is that the complaint or other*

material received by the appropriate authority or its members should be immediately made available to all its members. After examining the same, the Appropriate authority must expeditiously decide whether there is a reason to believe that an offence under the 1994 Act has been or is being committed. The Appropriate Authority is not required to record reasons for concluding that it has reason to believe that an offence under the 1994 Act has been or is being committed. But, there has to be a rational basis to form that belief. However, the decision to take action under sub-section (1) of Section 30 must be of the Appropriate Authority and not of its individual members.

26. I must say that the objective of targeting proceeds of crime is unquestionably legitimate. However, the means adopted under section 107 may sometimes appear fragile and may also appear doctrinally inconsistent with established principles of criminal jurisprudence in the absence of procedural discipline. Therefore, some potential safeguards need to be imposed to prevent arbitrary use of section 107 and to avoid flooded prayer for quashing weak and unsupported attachment orders, so that such orders must be passed on material evidence and proper application of mind.

27. Therefore, while the courts dealing with issues relating to sub section (1) to sub-section(8) of section 107, they must keep in mind following things as decided in several authorities:-

(i) Under section 2(24) of BNSS a person has 'reason to believe' only with sufficient cause and the words "not otherwise" excludes lower thresholds like suspicion. The phrase 'not otherwise' imposes a stringent condition particularly in penal contexts, excluding contrary evidence or irrelevant factors.

(ii) 'Reason to believe' is another facet of the state of mind and a higher level than suspicion or doubt. Mere seeing cannot be equated to believing. Likewise 'knowledge' will be slightly on a higher plane than 'reason to believe'. A person must have reason to believe, if the circumstances are such that a

reasonable man would by probable reasoning conclude or infer regarding the nature of the thing concerned.

(iii) The test is objective not mere subjective satisfaction. Such circumstances need not necessarily be capable of absolute conviction or inference, but it is sufficient if the circumstances are such creating a cause to believe by chain of probable reasoning leading to the conclusion or inference about the nature of the thing.

(iv) The reasons for the formation of the belief must have a rational connection with or an element bearing on the formation of belief. The reason should not be extraneous or irrelevant. In each case recording reasons in writing with rational material basis deuced from circumstances forming probable chain, is highly desirable.

(v) Reasons need not appear on notice face but must be available on materials, rational basis suffices without procedural roadblock. Prosecution should record reasons in writing with rational, material basis, deduced from circumstances forming probable chain.

(vi) Investigating agency and Court should apply objective "reasonable man" tests and to balance stringent compliance with non absolute conviction, and must furnish reasons to accused unless court approved redaction.

(vii) The belief must be held in good faith. It cannot be a pretence and it is open to the court to examine the question whether the

reasons for the belief have a rational connection or a relevant bearing to the formation of the belief.

(viii) When invoking "reasons to believe", both are to ensure documented tangible materials like witness statements, recoveries etc. with rational nexus, which the courts will scrutinize for good faith and to confirm question of fact.

28. Now in the context of aforesaid judicial interpretation of the term *'reason to believe'* , I must say that the court below has committed no mistake in setting aside the order which is based on mere suspicion and/or on the basis of assumption that since petitioner accused has not given reply to notice to show cause, so he has 'reason to believe' that the properties are proceeds of crime. Not only that while the trial court passed the order he directed investigating officer to attach and to keep the properties under attachment going against the mandate of statute envisaged under section 107 (2) and most importantly without giving notice to lesser in terms of section 107 (2) of BNSS who claims right over the property. However, I find while setting aside the order, the court below ought to have remanded the matter to initiate fresh procedure for attachment strictly in compliance with section 107 of BNSS.

29. Therefore **CRR 4389 of 2025** stands dismissed.

30. However this dismissal order will not preclude the investigating authority to make fresh prayer strictly in compliance with sub section (1) of section 107 of BNSS within a period of 30 days and in the event of making such prayer the court below will deal with such prayer in accordance with law as discussed above.

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.)