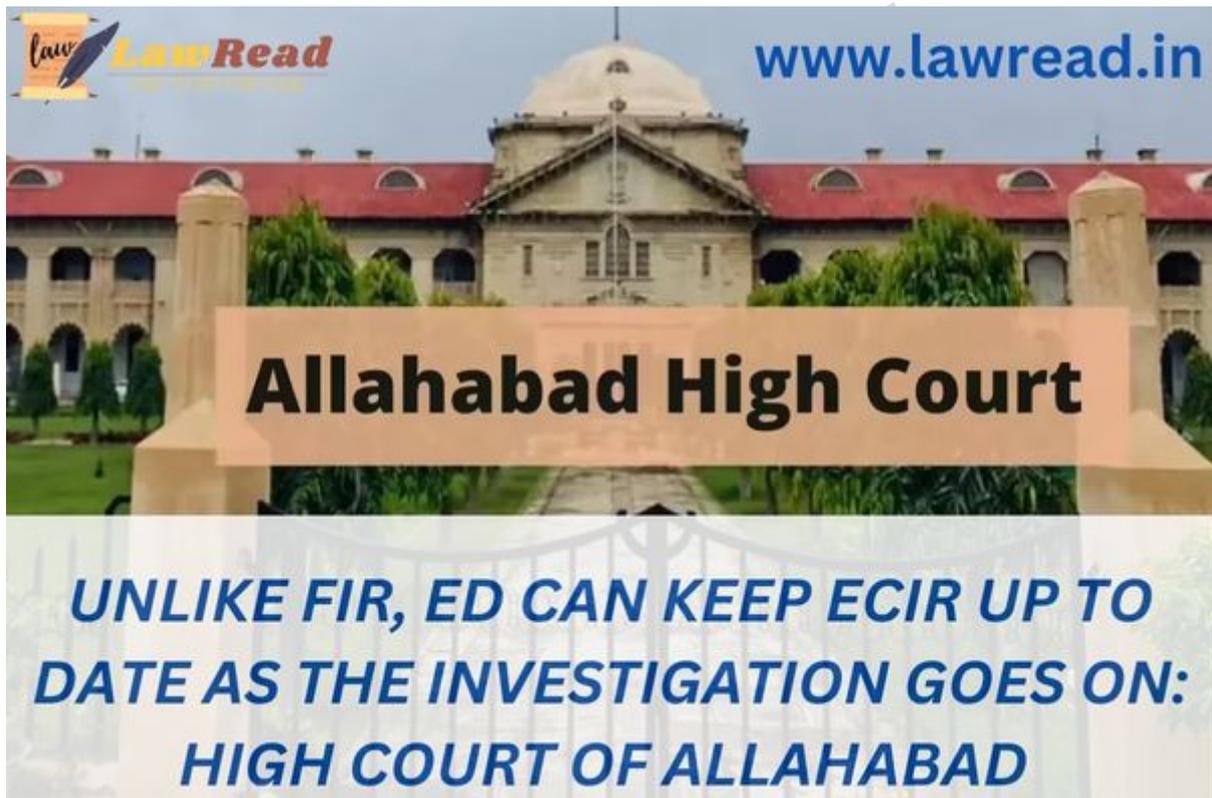


News

Unlike FIR, ED can keep ECIR up to date as the investigation goes on: High Court of Allahabad



However, the Court did not agree with ED's point of view that PMLA investigations should continue even though processes for the primary offense had been halted.

In the case of *Satinder Singh Bhasin v. State of UP and another*, the Allahabad High Court ruled on Thursday that the Enforcement Directorate (ED) can add to an Enforcement Case Information Report (ECIR).

A group of judges led by Justice Chandra Dhari Singh and Justice Lakshmi Kant Shukla said

that the ECIR can be updated with new information through addendums as the investigation goes on because special-statute investigations are always changing and not limited to the first information.

ECIR is not a legal document; it is a private document for running the business. The PMLA doesn't say anything about how it should look. The Court said that unlike a FIR under Section 154 CrPC, which can only be changed or added to by following certain steps, an ECIR is not limited by strict processes.

The Court said these things in its decision on a petition that businessman Satinder Singh Bhasin brought to question the ECIR that was made against him in connection with the FIRs about "The Grand Venice Mall" in Greater Noida. He also fought the April 11 warrants for his arrest that did not allow him to get bail.

The ECIR was based on a total of 49 FIRs, out of which 44 FIRs arose out of Grand Venice project and the remaining five linked to Mist Avenue project.

Pertinently, the Supreme Court had ordered clubbing of 46 FIRs. As per the ED, two FIRs out of the 46 clubbed FIRs were not part of the ECIR.

In the current plea, one of the main arguments before the Court was that since the trial of the predicate offence was stayed by a single-judge in April 2023, the ED lacks any jurisdiction to continue its proceedings under the Prevention of Money Laundering Act (PMLA).

It was alleged that the ED had improperly added FIRs relating to unrelated projects like 'Mist Avenue' to the ECIR.

However, the Court ruled that if complainants in multiple FIRs claim cheating, forgery, falsification of documents and criminal conspiracy in different real estate projects by the same party, they remain distinct scheduled offences for the purposes of PMLA.

Clubbing of FIR happens for administrative consolidation of trial and does not erase the scheduled offences for purposes of Section 3 of PMLA, the Court ruled.

It rejected the petitioner's argument that once the Supreme Court consolidated all 46 Grand Venice FIRs into a single FIR, the ED could not have relied upon any other FIRs or increased

the scope of the ECIR by way of addendums.

“Where ED receives material relating to new scheduled offences, or further transactions involving the same accused or entities controlled by them, it is entitled to incorporate that information into its investigative record through addendums. The petitioner has shown no legal bar on the ED releasing addendums. Nor has any judicial statement to that effect held that addendums to an ECIR are impermissible,” the Court said.

The ED’s argument that PMLA investigations must continue despite the stay of predicate proceedings amounts, in essence, to circumventing the judicial order of stay, a course impermissible under the principle of subordination to superior court orders and the doctrine of judicial discipline.

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However, the Court also said that the stay order on the trial of the predicate offence - the Grand Venice FIR - means that the ED cannot continue with its inquiry into the proceeds of crime.

The bench explained that under the PMLA, the offence of money laundering under Section 3 is naturally dependent upon the presence of a scheduled offence – a predicate offence. The predicate scheduled offence must continue to exist and stay operative, it added. Thus, it opined that the ED cannot continue with its investigation in the ECIR.

“In the context of the PMLA, a legislation expressly designed to address proceeds derived from the commission of criminal offences, the investigative authority cannot be permitted to unilaterally proceed with inquiry into proceeds of crime while the very question of whether a predicate offence was committed remains suspended in judicial abeyance,” the Court said.

To permit the ECIR to breathe freely while the predicate remains in judicial suspension would amount to circumventing the stay order, a proposition antithetical to the rule of law and the principle of judicial discipline, it added.

The Court rejected the ED’s claim that PMLA investigations must continue despite the stay of predicate proceedings.

The Court said that the same would amount to circumventing the judicial order of stay,

a course impermissible under the principle of subordination to higher court orders and the doctrine of judicial discipline.

Thus, it restrained the ED from investigating proceeds of crime linked to the FIRs which form part of the consolidated Grand Venice Project, till the pendency of the case before the single-judge or framing of charges.

However, since the validity of FIRs is pending before a single-judge, the Court refused to quash the ECIR.

Fleeing from a search operation is a separate issue from evasion of summons or process. Fleeing from a search does not necessarily indicate prior intent to evade investigation, it may indicate a response to an unexpected and unannounced incursion at the residence.

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Meanwhile, the Court also set aside the non-bailable warrant issued against the suspects. ED had taken the move alleging that he repeatedly evaded personal appearance before the agency.

However, the Court found that the accused constantly engaged with the agency during the four years of investigation, appearing in person on initial occasions and subsequently through authorised representatives.

On ED's claim that the accused had fled from his premises in a clear and deliberate attempt to avoid any cooperation with the investigation during the search operations, the Court said,

“Fleeing from a search operation is a distinct issue from evasion of summons or process. Fleeing from a search does not necessarily indicate prior intent to evade investigation, it may indicate a response to an unexpected and unannounced incursion at the residence. Moreover, the petitioner’s legal position has been that the search itself was conducted without authority and in the absence of proper statutory satisfaction under Section 17 PMLA”.

The Court added that ED failed to discharge its burden of showing actual evasion by the accused.

“The chronology of summons and responses shows regular engagement on behalf of the petitioner. Most critically, the temporal aspect, nearly four years of investigation

without completion and no prosecution complaint having been filed yet, suggests that NBWs are not being issued in the early stages of a nascent investigation where an accused is evading process but rather in a prolonged investigation where no clear investigative purpose is being served by further coercive measures,” the Court further said.

Advocates Aditya Yadav, Malay Prasad, Saloni Mathur, Shivam Yadav and Tanya Makker defended the petitioner.

Government Advocate Pankaj Kumar Shukla and advocates Manoj Kumar Singh and Sushant appeared for the defendants.