

Form No. J(2)

***IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION***

Present:

The Hon'ble Justice Jay Sengupta

C.R.R. 1554 of 2021

Dipak Mondal

-vs-

The State of West Bengal

For the Petitioner : Mr. Rajdeep Mazumder
Mr. Pritam Roy,
Ms. Arushi Rathore.

For the State : Mr. Arijit Ganguly,
Mr. Sandip Chakraborty

Heard on : 06.08.2021

Judgment on : 06.08.2021

Jay Sengupta, J.:

This is an application praying for quashing of the proceeding in NGR Case No. 571 of 2021 under Section 110 of the Code of Criminal Procedure pending before the learned Special Executive Magistrate, Bidhannagar Police Commissionerate including the order dated 24.05.2021 passed by the learned Executive Magistrate.

Learned counsel appearing on behalf of the petitioner submits as follow. Even before an enquiry could be held, the petitioner was taken into custody in respect of a proceeding under Section 110 of the Code. The petitioner is a daily wage earner and is on bail in connection with all the cases that had been mentioned in the proceeding. The order dated 24.05.2021 is absolutely bad in law because, among other things, the order did not specify the nature, character and class of sureties to be furnished and amount of bond that was to be executed. These kinds of orders are being passed regularly with utter disregard to the provisions of law and poor people from vulnerable sections are picked up and slapped with charges at the whims of the establishment.

Learned counsel appearing on behalf of the State submits as follows. The petitioner is a habitual offender having serious allegations levelled against him in several other cases, including charges of grievous hurt, attempt to murder, molestation, kidnapping and provisions of the Explosive Substances Act. It is true that there may be some technical errors in the order passed by the learned Executive Magistrate directing the petitioner to execute good behavior bond. Keeping this matter pending will only enable the petitioner to commit more mischief. Therefore,

the application may be disposed of by setting aside the impugned order, but granting liberty to the authorities to proceed from the same stage in accordance with law.

Several infractions of law can be noted in the impugned order.

First, there is no mention of the nature, character and class of sureties to be furnished, if any or the amount of bond that is to be executed.

Besides, the learned Executive Magistrate has to strictly comply with the provisions of 116 if an individual is to be taken into custody after the commencement of inquiry, but before its completion. It can be done only if the learned Executive Magistrate is of the opinion that such immediate measures are necessary for the prevention of breach of peace or disturbance of the public tranquility or the commission of any offence or for the public safety. In fact, adequate reasons have to be recorded in writing in this regard. Such reasons may not be the same as are sufficient to merely proceed under Section 110 of the Code.

However, keeping this matter pending would not serve any purpose and it would be in the interest of justice that the impugned order is set aside and the matter is remanded back for proceeding from that stage afresh in accordance with law.

In view of the above, I set aside the order dated 24.05.2021 passed by the learned Special Executive Magistrate, Bidhannagar Police Commissionerate and direct that the petitioner shall be forthwith released from custody on his personal bond to the satisfaction of the said learned Executive Magistrate. However, the matter is remanded back to the learned Special Executive Magistrate for proceeding from that stage afresh in accordance with law.

The revisional application is, accordingly, disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Jay Sengupta, J.)