

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

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRR 3465 of 2019

Rajesh Prasad Tanti

-vs.-

The State of West Bengal

With

CRR 133 of 2020

Ranjit Saroj

-vs.-

The State of West Bengal

With

CRR 278 of 2020

Sukdeb Halder @ Kana Sukdeb

-vs.-

The State of West Bengal

With

CRR 3221 of 2019

Kamal Dev @ Kamal Kumar Dev

-vs.-

The State of West Bengal

Ms. Kakali Dutta

...for the petitioner in CRR 3465 of 2019

Mr. Ansuman Bera

... for the petitioner in CRR 278 of 2020

Mr. S.G. Mukherji, Learned PP,
Mr. Arijit Ganguly

...for the State in CRR 2465 of 2019, CRR 133 of 2020
& CRR 278 of 2020

Mr. Swapan Banerjee
Mr. Suman De

...for the State in CRR 3221 of 2019

Mr. Sandiptan Ganguly,
Mr. Ayan Bhattacharya

...Amicus Curiae

Judgment on : 01.08.2022

Tirthankar Ghosh, J:-

The present set of revisional applications relate to the provisions of Chapter VIII of the Code of Criminal Procedure which incorporates Section 106 to Section 124 of the Code of Criminal Procedure. The said Chapter is captioned under the heading “Security For Keeping The Peace And For Good Behaviour”.

The common feature in all these cases are that the petitioners before this Court were accused of offences and were in custody when the police authorities prayed before the learned Executive Magistrate for invoking the provisions of Section 110 of the Code of Criminal Procedure for the purposes of furnishing bond with sureties and the learned Executive Magistrate accordingly passed

orders which would be elaborately dealt with in the subsequent paragraphs in respect of each of the revisional applications. The factual background leading to the revisional applications are set out for deciding the issues.

CRR 3465 of 2019

In this revisional application one Avijit Biswas, Sub-inspector of Airport Police Station lodged GDE No.768/18 dated 15.11.18 wherein a permission was sought for launching prosecution under Section 110 of Cr.P.C. against the petitioner Rajesh Prasad Tanti as he was already an accused in connection with Airport PS case no. 162/18 dated 30.07.2018 and also in connection with New Town PS case no. 352/2018 dated 17.08.2018 under Section 395/412 of the Indian Penal Code. It has been alleged that the petitioner is a notorious habitual criminal of his locality as well as rowdy. He is ill reputed in his area and has no fixed means of subsistence and earns his livelihood by committing crime against property like theft, burglary etc. and deals in stolen properties. According to the Officer he is dangerous and desperate in nature and local people do not dare to open their mouth against him. Under such circumstances a request was advanced to the Deputy Commissioner of Police, Airport Division, Bidhannagar Police Commissionerate who launched prosecution under Section 110 of Cr.P.C. against the petitioner for maintaining his good behaviour for preventing him from committing consecutive offences.

The said report dated 17.11.18 was on the foundation of a General Diary Entry no.768/18 dated 15.11.18 which was presented before the learned

Special Executive Magistrate, Bidhannagar Commissionerate , Bidhannagar on 17.11.18 and the learned Executive Magistrate by its order dated 17.11.18 registered the same as NGR no. 614/18 and passed the following order:

“I hereby order U/s 111 cr.p.c. why he should not be asked to execute a good behaviour bond u/s 116(3) cr.p.c. for maintaining peace in the locality for a period of three years and he is also direct to appear this court on the next date of hearing.

I.C Airport PS is directed to serve copy of this order upon the Suptd. D.D.C.C. Home, Dist-north 24 p.g.s. and the accd person. As the said accd. is in jail custody at D.D.C.C. Home, 24pgs. (n) and also the accd. person is involved in Airport PS CASE NO-162/18 dt. 30.07.2017 U/S- 399 & 402 IPC.

Issue Production Warrant against the accused Rajesh Pradhan Tanti. of D.D.C.C. Home, 24 pgs(n) is directed to produce the accused on 20.11.2018.”

The records of the case thereafter reflect that the petitioner being accused was detained in Dum Dum Correctional Home and was produced on 20.11.18, 03.12.18, 17.12.18, 31.12.18, 14.01.19, 28.01.19, 11.02.19, 25.02.19, 11.03.19, 25.03.19, 05.04.19, 17.04.19, 29.04.19, 13.05.19, 24.05.19, 14.06.19, 28.06.19 and 12.07.19. On 19.07.19 learned advocate appeared and submitted a reply to the show cause notice which the learned Executive Magistrate observed to be not satisfactory and as such he directed to furnish bond for releasing him by way of sureties being two government employees. On 27.07.19 the Executive Magistrate refused to modify such condition relating to sureties being Government Employees and rejected the

prayer for modification and the same was followed on 06.08.19, 20.08.19, 03.09.19, 17.09.19 and 01.10.19. Thus, what is seen is this that the petitioner was first produced on 20th November, 2018 and continued to be in custody in connection with this case till 01.10.19.

CRR 133 of 2020

In this case i.e. NGR(s) case no. 582 of 2018 was registered before the learned Special Executive Magistrate, Serampore, Hooghly, on the basis of a report submitted by Sub-inspector of Police attached to Serampore Police Station, CPC, Hooghly.

The allegation against the present petitioner is that he is veteran criminal of Serampore area and generally commits crime in the jurisdiction of Serampore Police Station and its adjacent areas. It is stated that he was arrested in connection with twelve cases, which included offences relating to murder, dacoity, fake currency and NDPS Act.

Records reflect that on 17.07.18 it was prayed that having regard to his dangerous nature and involvement in breach of peace in the area, a proceeding under Section 110 of the Code of Criminal Procedure may be initiated against him with a view to execute a good behaviour bond. Accordingly, such report was furnished before the learned Executive Magistrate on 17.07.18, the learned Executive Magistrate directed in the first order for his production and to file show cause as to why he should not be directed to execute good behaviour

bond amounting Rs.50,000/- each, which would be furnished by two Gazetted Officer as sureties for a period of three years.

Records reflected that in connection with the said case the petitioner was produced on 11.09.18 and the learned Executive Magistrate after observing the same directed him to be produced by the Jail Authorities on 04.12.18. On 04.12.18 the petitioner was not produced before the learned Executive Magistrate and the next date was fixed on 05.03.19 and on 05.03.19 the petitioner was also not produced before the learned Executive Magistrate, the next date was fixed on 19.03.19. The petitioner was not produced on 16.04.19, 30.04.19, 14.05.19, 18.06.19 and subsequently produced on 19.07.19 when he also filed show cause which was kept with the record. On 06.09.19 the Enquiry Officer was not present as such his reply was not considered and next date was fixed on 16.11.19. On 29.11.19 the petitioner was produced, there was no progress and on 13.12.19, the learned Court refused the prayer for release of present petitioner for non-fulfilment of the condition imposed. On 03.01.20 the learned Executive Magistrate reiterated that as the condition of the good behaviour bond being 50,000/- with two Gazetted Officers as sureties for a period of three years has not been furnished before the Court, there is no scope for releasing the petitioner.

CRR 278 of 2020

The present revisional application relates to NGR case 450/15 which was initiated on the basis of Serampore Police Station GDE no.1577 dated 30.04.18

and GDE No. 1584 dated 30.04.18. Prayer under Section 110 of the Code of Criminal Procedure was advanced before the learned Executive Magistrate, Serampore, Hooghly wherein it was contended that the petitioner happened to be habitual offender/accused of committing repeated offences, who is dangerous and desperate in nature and he being in the society without security is hazardous to the community. A list of 30 cases were appended to show the previous bad character of the petitioner. Learned Executive Magistrate by its order dated 08.05.18 directed to produce the petitioner from jail custody fixing 17.07.18 and the next date and to submit show cause as to why he shall not execute a good behaviour bond amounting to Rs.2,00,000/- with two Group 'A' Gazetted sureties for a period of three years.

The petitioner was produced on 17.07.18. On the prayer of the petitioner, time was allowed to file show cause and the next date was fixed on 11.09.18. Record reflect that by an order dated 05.03.19 there is an observation that already six months have expired however, the learned Magistrate considering the duration of the proceedings modified the order and directed the petitioner to execute good behaviour bond Rs.50,000/- and one registered surety for three years, fixing next date on 19.03.19. The said order was thereafter challenged before the learned Sessions Court and the learned Sessions Court allowed the revisional application and directed as follows:

“that the order passed by Ld. Special Executive Magistrate, Serampore dated 26.11.2019 which has been reaffirmed by order dated 31.12.2019 in NGR(S) No.450 of 2018 is accordingly modified.

Revisionist is directed to furnish bond by depositing Rs.25,000/- in the local Treasury and to enclose the receipt with the bond to be furnished to the satisfaction of Ld. Special Executive Magistrate, Serampore.”

CRR 3221 of 2019

This revisional application was preferred against NGR(S) no.390/18 wherein a prayer was advanced pursuant to Rishra PS GDE No. 1044 dated 30.01.2018 under Section 110 of the Code of Criminal Procedure. It was alleged that the petitioner is involved in thirteen cases and a list to that effect was appended.

The learned Executive Magistrate on consideration of the prayer so advanced directed the petitioner to be produced from custody on 17.04.18 and issued a show cause as to why he should not execute a good behaviour bond amounting to Rs.1,00,000/- with two Group ‘A’ Gazetted sureties for a period of three years.

Records reflect that the petitioner appeared on 24.04.18 and 12.06.18 wherein directions were passed for further appearance from the Correctional Home. A prayer was advanced on 27.11.18 for modification of condition of bond, accordingly, the learned Executive Magistrate directed that the class and nature of the sureties are modified to the extent that the Group ‘A’ Gazetted

Officer as sureties are converted to Gazetted sureties. A revisional application was preferred against the order dated 27.11.18 and the same was converted into good behaviour bond of two local sureties of Rs.1,00,000/- each who are residing within the territorial jurisdiction of Rishra Police Station.

On 25.06.19 a report was called for by the Executive Magistrate regarding local sureties. This continued from 18.06.19 till 20.08.19 wherein the Special Executive Magistrate, Serampore directed the Officer-in-charge, Rishra to continue enquiry regarding the following issues:

“(1) Whether the local surety residing within the territorial jurisdiction of Rishra P.S. for a period of three or not years by any of supporting residential proof documents.

(2) Whether the local surety is it financial capable of Rs.01(one) lakh? If so, his financial ability and solvency of the person should be assessed through supporting Financial document.”

The common features relating to all the four revisional applications are:

1. All the accused/petitioners are history sheeters and were produced from custody as the prayers were under Section 110 of the Code of Criminal Procedure and were advanced during the detention of the petitioners. In all these cases the petitioners were more than six months in custody and in some cases for more than one and half years the proceedings continued.
2. In all these cases the direction of the learned Executive Magistrate was for furnishing bond through either Group ‘A’ Gazetted Officer

sureties or Gazetted sureties or Government Employees – whether the same was at all required or is available. If a condition is impossible to be executed whether the same can be considered to be adhering to the provision of law.

Section 110 of the Code of Criminal Procedure which deals with “*Security for good behaviour from habitual offenders*” and the Sub Sections which are relevant for the purposes of this case are quoted below:

“When [an Executive Magistrate] receives information that there is within his local jurisdiction a person who –

- (a)*
- (b)*
- (c)*
- (d)*
- (e) Habitually commits, or attempts to commit, or abets the commission of offences, involving a breach of the peace, or*
- (f)*
- (g) Is so desperate and dangerous as to render his being at large without security hazardous to the community,*

Such Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit.”

Section 111 of the Code of Criminal Procedure dealing with “*Order to be made*” reads as follows:

“When a Magistrate acting under Section 107, Section 108, Section 109 or Section 110, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.”

Section 113 of the Code of Criminal Procedure deals with *“Summons or warrant in case of person not so present.”* The batch of revisional applications which are dealt with presently, all the petitioners were in custody and as such production warrant was issued by the learned Executive Magistrate for their appearance, thus, the other provisions of this Section are not required to be considered. However, Section 114 of the Code of Criminal Procedure deals with *“Copy of order to accompany summons or warrant”* as the same is not reflected in the order and only the production warrant were issued by the learned Magistrate, it is very difficult to assess whether the contents of the warrant included the show cause and its terms or the copy of the order was enclosed.

Section 116 of the Code of Criminal Procedure which deals with *“Inquiry as to truth of information”*, insists for conducting enquiry, in none of the cases any attempts were there for commencing enquiry by the Learned Executive Magistrates and the petitioners were detained in custody for a period longer than that prescribed under the statute.

Relevant parts of Section 116 of the Code of Criminal Procedure is set out as follows:

“(1) When an order under Section 111 has been read or explained under Section 112 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant, issued under Section 113, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

(2) Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trial and recording evidence in summons cases.

.....

(6) The inquiry under this section shall be completed within a period of six months from the date of its commencement, and if such inquiry is not so completed, the proceedings under this Chapter shall, on the expiry of the said period, stand terminated unless, for special reasons to be recorded in writing, the Magistrate otherwise directs:

Provided that where any person has been kept in detention pending such inquiry, the proceeding against that person, unless terminated earlier, shall stand terminated on the expiry of a period of six months of such detention.”

In the proviso clause of Sub-section 6 of Section 116 of the Code of Criminal Procedure it has been categorically stated that when any person is detained, pending such enquiry the proceeding against that person, unless terminated earlier, shall stand terminated on the expiry of six months of such detention.

In CRR 3465 of 2019, the petitioner was produced before the Court on 31.12.18 and thereafter he was sent back on his inability to furnish the bond and the learned Executive Magistrate did not conduct any enquiry as prescribed under Section 116(1) of the Code of Criminal Procedure.

In CRR 133 of 2020 similarly the petitioner was produced from custody on 11.09.2018 and the terms of the bond which were impossible to be executed and as such could not be furnished by the petitioner, thus he was sent back to jail and was in custody till 03.01.2020.

In CRR 278 of 2020 the petitioner was directed to be produced on 17.07.2018 when he was first produced and was in custody till 07.01.2020 as he could not furnish the bonds which were as usual impossible to be executed.

In CRR 3221 of 2020, in this case although the petitioner was more than six months in custody the learned Court surprisingly after expiry of six months directed extension of the period and the reasons so assigned was the previous conduct of the petitioner.

Therefore Sub-section 6 of Section 116 of the Code of Criminal Procedure was incorporated in case of proceedings which could not be completed but where the opposite parties were at liberty and the same principles (i.e. not in custody or detained) do not apply in case of persons who were detained in custody and the learned Magistrate ignoring the proviso clause particularly the phrase 'terminated' used therein erroneously extended the period for furnishing bond and continued within the proceeding.

The learned Advocates representing the petitioners in each of the revisional applications stressed on the issue of the bond which were imposed. However, this Court took the assistance of Mr. Saswata Gopal Mukherji, learned Public Prosecutor and also appointed Mr. Sandipan Ganguly, learned Senior Advocate and Mr. Ayan Bhattacharya, learned Advocate as Amicus Curiae for presenting the procedure as well as for assessing powers of the Executive Magistrate under Chapter VIII of the Code of Criminal Procedure. All the three Learned Advocates not only rendered their utmost assistance to this Court but also submitted written notes of arguments in support of their contentions. Reliance was placed on Paresh Chandra Hati & Anr. –Vs. – Ahitosh Panda & Anr., 1978 Cri LJ 1171; Dhirendra Nath Chakraborty –Vs. – Smt. Sarama Debi & Ors., 1983 Cri. LJ 44; Bhairab Paul –Vs. – Gora Chand Kundu & Ors. 1985 (11) CHN 82; Ananda Prasad Ghosh & Anr. –Vs. – Om Prakash Agarwal, 1993 C Cr LR (Cal) 402; Radhe Shyam Pandey –Vs. – State & Ors., 2008 Cri LJ 890. Attention of this Court was also drawn to several judgments of the Hon’ble Supreme Court for the purpose of interpreting the intricacies attached to the term enquiry, its commencement and termination.

It would be pertinent to state that in all these revisional applications the show cause order contained directions for furnishing bond which were not only excessive but also of such character of sureties who would never agree to vouch on behalf of all the petitioners. This is partially against the spirit of Section 117(b) of the Code of Criminal Procedure which states that “*the amount*

of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive.”

It is reiterated that the provisions of Section 110 of the Code of Criminal Procedure in these four cases were used recklessly and there were no efforts on the part of the learned Executive Magistrate or the applicants to start the process of inquiry under Section 116 of Cr.P.C. and from the inception there was thrust upon the petitioners to execute the bonds which were fixed by the learned Executive Magistrate. No efforts were made so that on the first day when the petitioner was produced from jail custody a lawyer would be representing them and no efforts were also there to provide them with lawyers from the District Legal Services Authority. No law was adhered to while passing the orders and no uniform procedure was also followed for fixing the next dates as such the petitioners after one appearance were directed to be produced either after one month or more than two months thereafter. The detention was never taken care of by the Executive Magistrate and the limited period during which the enquiry was supposed to be completed was completely ignored. The approach and attitude of the applicants being police authorities and the learned Executive Magistrates adjudicating the same reflects that there was only concern for detaining the petitioners and nothing else.

In view of the aforesaid the order passed by the learned Executive Magistrates call for interference by this Court and as such the same are quashed.

The learned Executive Magistrate henceforth will adhere to the following guidelines in case such persons who are in custody are directed to be produced before the learned Executive Magistrate while exercising their jurisdiction under Section 111 of the Code of Criminal Procedure:

- (a) The production warrant should accompany a copy of the order passed by the learned Executive Magistrate.
- (b) The bond which is expressed in the show cause notice should not be excessive or impossible to be executed and must be in the nature of a bond granted by a Court allowing prayer for bail in cases under Section 302 of the Indian Penal Code by the Sessions Judge of the concerned district.
- (c) On the first day of production if the accused or the petitioner is unrepresented he must be provided with an option of legal representation from the District Legal Aid Services Authority.
- (d) If the accused or the petitioner is unable to understand the meaning of the terms “show cause’ then the Court would explain the allegations against him and as provided in Section 251 of the Code of Criminal Procedure read out such allegation and ask him whether he pleads guilty or not (in view of the fact that Sub-section 2 of Section 116 of Cr.P.C. refers to summons cases).
- (e) The Magistrate would within a month of such production make efforts for commencement of recording of evidence of the witnesses intended to be produced by the applicants or the prosecution.

- (f) If under Section 116(3) of Cr.P.C. the accused or the persons are unable to furnish the bond then in that case they would be deemed to be in custody from the date of their first production before the learned Executive Magistrate and if their enquiry as referred to in Sub-Section 6 of Section 116 of Cr.P.C. are not concluded within a period of six months the Court would close the proceedings and release the accused or the persons against whom proceedings were initiated.
- (g) Under no circumstances a detained person would be asked to face an enquiry extending beyond the period of six months by assigning any special reasons.

With the aforesaid observations CRR 3465 of 2019, CRR 133 of 2020, CRR 278 of 2020 and CRR 3221 of 2019 are allowed.

Pending Applications, if any, are consequently disposed of.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

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

(Tirthankar Ghosh, J.)