

29.05.2023

Sl. No.01.

AGM/NB

Ct.No.6.

CRR 489 of 2023

**Kashinath Dey @ Kashi
Vs.
The State of West Bengal**

Mr. Arunava Ganguly.
...for the petitioner.

Mr. Rudradipta Nandy,
Mr. Suman De.
...for the State.

An application under Section 482 of the Code of Criminal Procedure has been filed being aggrieved by the order dated 14.12.2022 passed by the learned Special Executive Magistrate at Chandannagar Division, Chandannagar, Police Commissionerate in NGR(E) No.148/2022 along with an order to quash the entire proceeding as aforesaid.

The impugned order dated 14.12.2022 passed by the learned Special Executive Magistrate, which inter alia, precisely observed that the petitioner herein committed breach of bond for good behaviour furnished by him under Section 117 of Cr.PC by committing a fresh criminal offence which indicated that the petitioner herein was a habitual offender, who was not inclined to correct his conduct refraining from committing any criminal offence and to exhibit good behaviour. It was further considered that the petitioner was desperate and dangerous in nature and did not display any respect for the law of the land.

It was further observed that the petitioner herein committed a criminal offence involving illegal firearms with one round live ammunition,

which were recovered from his possession and therefore, violated the condition of bond by committing criminal offence. Further in connection with CGR PS Case No.232 of 2022 dated 26.10.2022 under Section 25/27 of the Arms Act, a police case was initiated against him. However, due to his non-cooperation, the proceeding could not proceed. Thereafter, the petitioner herein was arrested in connection with Chandannagar PS Case No.230 of 2022 dated 20.10.2022 under Sections 399/402 of the Indian Penal Code as he was FIR named accused person. The petitioner herein has also been accused in connection with Bhadreswar PS Case No.559 of 2022 dated 17.10.2022 under Sections 399/402 IPC and 25/27 of the Arms Act and presently he is in District Correctional Home, Purulia.

It was further observed that the petitioner herein violated certain conditions namely “not to commit any further offence, if any FIR was registered, then the bond shall be cancelled and not to give shelter or facilitate with other criminal associates of the petitioner” and accordingly committed a breach of bond as per Section 122(1)(b) of the Code of Criminal Procedure. It was further observed that as per Section 446(1) of Cr.PC, it was clear that if a term of bond was violated or breach of term of a bond is committed, the same automatically stood forfeited.

Summons were issued against two local sureties and the next date was fixed on 21st December, 2022 wherein, it was stated that the petitioner herein would be given another opportunity to defend him either personally or through his advocate in consonance with the principles of natural justice.

From the materials on record, it transpired that on 21.12.2022, the local surety as directed to appear before the Court as aforesaid, by the

order dated 14.12.2022 and was found to be absent and therefore, the hearing could not be completed. The next date was fixed on 28.12.2022 for hearing on the ground of forfeiture of bond. On 28.12.2022, the sureties were absent and the case was postponed till 01.02.2023. Further dates, namely 09.01.2023 and 01.02.2023 were fixed for hearing on the ground of forfeiture of bond. However, the sureties did not appear before the Court as aforesaid.

From the report submitted by the Inspector of Police, Chandannagar PS, CPC dated 25.01.2023 filed by the learned advocate for the State reveals the next date has been fixed on 01.06.2023 for final hearing and final order sheet.

The learned advocate for the petitioner submitted that the aforesaid GR case is pending before the Executive Magistrate for over the statutory period of six months as enumerated in Section 116 Sub-Section 6 of Cr.PC and under no circumstances, the petitioner can be detained beyond the said period mandatorily provided in the Code of Criminal Procedure.

The learned advocate for the State submitted that after providing the bond for good behaviour, the petitioner has again committed several offences and has been booked accordingly. Moreover, the sureties despite repeated orders did not appear before this Court. On the enquiry from the bank manager regarding the current status of FD Account, it was found to be devoid of any fund. The petitioner had violated the conditions of the bond and committed breach therein. Considering his nature of committing multiple offences, the prayer should not be allowed.

The petitioner was released after furnishing good behaviour bond on 15.06.2022. However, he was implicated in connection with

Chandannagar PS Case No.230 of 2022 dated 20.10.2022 under Sections 399/402 of the Indian Penal Code as he was FIR named accused person. The petitioner herein has also been accused in connection with Bhadreswar PS Case No.559 of 2022 dated 17.10.2022 under Sections 399/402 IPC and 25/27 of the Arms Act and presently he is in District Correctional Home, Purulia.

Section 116 (6) of Cr.PC is as follows:

“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 same 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 view of the aforesaid provisions, the proceeding under Section 110 of the Cr. PC should have been concluded within the mandatory period of six months. The next date of hearing is fixed on 01.06.2023.

The learned Executive Magistrate is directed to conclude the hearing under any circumstances disregarding the absence of the sureties, if any, directing necessary steps to be taken against them and finally dispose of the case pending before it. Considering the fact of the lapse of a mandatory period of six months within which the enquiry should have

been concluded, the petitioner should be entitled to the relief to be freed from detention.

Accordingly, the instant CRR No.489 of 2023 is **disposed of**.

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Ananya Bandyopadhyay, J.)