

IN THE HIGH COURT AT CALCUTTA

Circuit Bench at Jalpaiguri

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 282 of 2023

Dipak Chik Baraik @ Deepak Chiak Baraik

Vs.

The State of West Bengal.

For the Petitioner

: Mr. Sanjay Mazoomdar.
Ms. Sukanya Adhikary.

For the State

: Mr. Aditi Shankar Chakraborty,
Mr. Aniruddha Biswas.

Hearing concluded on

: 11.10.2023

Judgment on

: 13.10.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against an order dated 12.09.2023 passed by the learned Additional District and Sessions Judge, 1st Court at Siliguri, in connection with Criminal Revision No. 22(08) of 2023, in connection with Pradhan Nagar GDE number 712 dated 13.08.2023, NGR number 748 (II) 2023 under Section 107 of Code of Criminal Procedure whereby the learned Additional District and Sessions Judge, 1st Court at Siliguri, rejected the application filed by the petitioner for staying operation of an order dated 25.08.2023 passed by the Ld. Special Executive Magistrate Special Police Commissionerate, Siliguri under Section 111 of Code of Criminal Procedure.
2. **Vide the said order the Special Executive Magistrate, Siliguri has directed as follows:-**

“I therefore draw a proceeding against the O.P. u/s 107 Cr.P.C. directing him to show cause as to why he should not be ordered to execute a bond of Rs. 1000/- and also to give surety by the bond with one Government Servant (State/Central Government) having Gazetted rank/post/Associate Professor of any Govt. college/Registered Medical Practitioner of any Govt. Hospital/Manager of any nationalized Bank of like amount for lumping peace/maintaining good behavior for a period of one year.

The order in made u/s 111 Cr.P.C.”

3. On revision being criminal revision no. 22(08) of 2023 vide the order dated 12.09.2023. The Additional District and Sessions Judge, 1st Court, Siliguri has been pleased to reject the prayer for stay made by the

petitioner in respect of the said order of the Special Executive Magistrate, Siliguri.

4. In **CRR 3465 of 2019, (Rajesh Prasad Tanti vs The State of West Bengal)**, dated **01.08.2022**, a Co-ordinate Bench of this Court has laid down the guidelines to be considered in proceedings of this nature. The Court held:-

“.....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 Subsection 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.....”

5. Thus, in view of the guidelines of the Co-ordinate Bench in ***Rajesh Prasad Tanti vs The State of West Bengal, (Supra)***, the order under revision being no. 22(08) of 2023 in connection with Pradhan Nagar GDE number 712 dated 13.08.2023, NGR number 748 (II) 2023 under Section 107 of Code of Criminal Procedure of learned Additional District and Sessions Judge, 1st Court, Siliguri **is clearly an abuse of the process of law/Court** and is thus set aside.
6. Accordingly, the order of the Special Executive Magistrate dated 16.08.2023 is hereby modified to the extent that the petitioner shall execute a bond of Rs. 5,000 with two registered sureties of Rs. 2500/- each, for keeping peace and maintaining good behavior for a period of one year.
7. **The revisional application CRR 282 of 2023 is thus allowed and disposed of.**

8. All connected applications, if any, stand disposed of.
9. Interim order, if any, stands vacated.
10. Copy of this judgment be sent to the Court of the learned Executive Magistrate for necessary compliance.
11. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)