

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

PRESENT:

THE HON'BLE DR. JUSTICE AJAY KUMAR MUKHERJEE

CRR 5090 of 2025

**Rakesh Kumar Singh
Vs.
The State of West Bengal & Anr.**

For the Petitioners	:	Mr. Rajdeep Majumder, Sr. Adv., Mr. Mouyukh Mukherjee Ms. Sagnika Banerjee
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For the State	:	Mr. Debasish Roy, Ld. APP Mr. Rudradipta Nandy, APP Mr. Aniket Mitra
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Heard On	:	18.02.2026
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Judgment on	:	11.03.2026
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Dr. Ajay Kumar Mukherjee, J.

1. Petitioners herein have challenged the continuance of the proceeding and also prays for setting aside of the order dated 20th November, 2025 passed by the learned Special Executive Magistrate, South Division Kolkata, in connection with M/SEM Case no. 737 of 2025 under section 129 Bharatiya Nagarik Surakhsha Sanhita , 2023 (in short BNSS).

2. Brief background of the case is that Watgonj Police Station submitted a report before the aforesaid Executive Magistrate against the petitioner alleging that the petitioner is a habitual offender involved in various offences, including kidnapping and extortion and police therefore have prayed for initiation of proceeding under section 129 of BNSS, contending that such preventive action is necessary in order to maintain public peace and tranquillity. On the basis of such prayer, Magistrate issued a production warrant on 11.09.2025 under section 132 of BNSS, for securing the appearance of the petitioner on 22.09.2025 and for enabling him to furnish his reply to the show cause notice, issued in the said preventive proceeding, since the petitioner was in custody at the relevant point of time in connection with another case. On being produced the petitioner prayed for supply of the case details and all relevant documents pertaining to the present proceeding.

3. It is alleged that learned Magistrate without conducting any enquiry to verify and to ascertain the truth of the information so received, against the petitioner directed the petitioner to furnish bond of Rs. 5,000/- each along with four sureties. The petitioner executed the required bond with sureties.

4. Thereafter on 31.10.2025, the police officer filed a petition before the said Executive Magistrate, Port Division, Kolkata reporting that the petitioner has been arrested again in connection with Kasba P.S. Case no. 499 of 2025 dated 27.10.2025. After getting such intimation, the learned Court below upon the prayer of the Investigating Officer issued show cause notice to the petitioner, as to why the bond executed by him shall not be cancelled. The petitioner gave reply to the show cause notice and also

expressed his desire about contesting the allegation of violation of bond conditions

5. However, learned Court below taking note of the fact that the petitioner had already been implicated in Kosba P.S. case no. 499 of 2025 dated 27.10.2025 and he has been remanded in judicial custody, in connection with the said case, proceeded to cancel the interim bond earlier furnished by the petitioner in terms of order dated 20.11.2025 and had taken him in custody in connection with the instant case by the aforesaid impugned order.

6. Being aggrieved by the impugned proceeding, Mr. Majumder learned counsel appearing on behalf of the petitioner submits that section 135 (3) of the BNSS permits the court for asking of an interim good behaviour bond only after the commencement and before the completion of an enquiry, which is clear and unambiguous from the language of the section and it does not confer unfettered discretion upon the Executive Magistrate to mechanically direct execution of a bond at the very threshold. However in the present case vide order dated 25.09.2025, the court below directed the execution of an interim good behaviour bond, without commencing any enquiry and therefore the condition precedent for invoking section 135 is completely absent and he also referred that the guideline to be followed in this context has been laid down by this High Court in the case of **Rajesh Pratap Tanti and others Vs. State of West Bengal and Ors., (CRR 3465 of 2019)**.

7. He further argued that section 135(2) of BNSS mandates that the enquiry under this provision shall be conducted in the manner prescribed

for the trial of summons cases. However, it is evident from the record that the interim bond was directed to be executed just two days prior to the commencement of the puja vacation and such timing, coupled with the absence of any emergent circumstance, reflects undue haste and non-application of mind. In fact the petitioner was not in custody in any other case at that relevant point of time nor was there any material to suggest imminent danger, thereby rulling out any extra ordinary urgency. He further submits that Preventive jurisdiction cannot be exercised as a matter of convenience or administrative expediency, particularly when it results deprivation of one's personal liberty. Section 135(3) of BNSS clearly mandates that an interim bond may be directed, only if immediate measures are necessary. The absence of such recorded satisfaction renders the order arbitrary and ultra vires as preventive jurisdiction cannot be exercised on vague apprehension or speculative assumption.

8. He argued since in the instant case no enquiry has been conducted and therefore no final order under section 136 has been passed and the bond executed by the petitioner was not a final bond under section 136 of the BNSS but it's a bond filed under section 129, therefore, the impugned detention order dated 20.11.2025 passed by the court below is wholly without authority of law as it suffers from patent illegality, procedural impropriety and non-application of mind.

9. It is further argued on behalf of the petitioner that the sequence of events leading to the illegal detention of the petitioner is also apparent from the fact that immediately upon reopening the court after puja vacation, the petitioner was once again taken into custody on 27.10.2025 and on

03.11.2025 he was directed to file reply to the show cause notice, in response of which petitioner duly appeared and also filed a maintainability petition challenging the entire proceeding and also the legality of the proposed cancellation of the interim bond but despite such objections being raised at the earliest available opportunity, the court below failed to address the same in accordance with law.

10. He further argued that going against the statutory procedure, the court below only after taking the petitioner into custody proceeded to direct summoning of witness under section 135 (3) BNSS. Such a course of action is wholly impermissible in law as the power to summon witnesses and conduct enquiry under section 135, can be exercised only during the pendency of the enquiry and not at the stage when the petitioner has already been detained. The statute does not contemplate detention first and enquiry thereafter. Therefore, the magistrate has acted in patent violation of the mandate of section 135 BNSS and the principles of natural justice.

11. He further submits that the petitioner is affiliated with a political party and for which he has been deliberately singled out and has been falsely implicated in successive criminal proceedings and as such the order dated 20th November, 2025 passed by the learned Magistrate is liable to be quashed.

12. Mr. Debasish Roy learned counsel appearing on behalf of the State argued that the instant proceeding arises out of a preventive action lawfully initiated under section 129 of the BNSS against the present petitioner who is a habitual offender with long standing criminal antecedent and conviction involving serious and repeated offences. On 28.08.2025 the concerned

Executive Magistrate upon perusal of the petition was pleased to allow the prayer of the Sub-Inspector of Police attached to Watgunj PS to conduct an inquiry against the present petitioner for drawing up a proceeding under section 129 of the BNSS and on 11.09.2025, the Executive Magistrate, Port Division, upon perusal of the petition and report received from enquiry officer, deemed it fit and proper to ask the petitioner to file a show cause as mandated under section 129 and 130 of the BNSS and therefore at this stage learned Magistrate had already started enquiry and for which he asked the petitioner to file show cause. The order to file show cause as to why he should not be ordered to execute a bond is interlocutory in nature and subsequent orders were passed during or after conclusion of an enquiry, taking into account the facts and circumstances of the case. Therefore, the order of show cause was passed during the conclusion of enquiry taking into account the facts and circumstances of the case. On 25.09.2025 necessary copies of the material documents were supplied to the petitioner through his Learned Advocate and the substance of the information was read over and explained to the petitioner and he was again asked to comply with the order dated 18.09.2025 regarding the order of show cause notice under section 130 of the BNSS, as to why he should not be asked to execute a bond of good behaviour under chapter IX of the BNSS.

13. On verbal representation and on request of the learned advocate for the petitioner the amount of bond of sureties was fixed at Rs. 5,000/- each. The petitioner filed the said bond and the petitioner was released by the court upon furnishing the bond and enquiry under section 135 of the BNSS commenced at once. On 31.10.2025, the enquiry officer informed the Court

below that the petitioner has been arrested in connection with Kasba P.S. Case and therefore the enquiry officer prayed for issuing production warrant and the Executive Magistrate directed the enquiry officer to submit a detailed report fixing 06.11.2025 as next date. On 04.11.2025, due to change of jurisdiction the matter was transferred to the Special Executive Magistrate, South Divisions where the Special Executive Magistrate independently applied his mind and continued with the proceedings. On 10.11.2025 learned Advocate for the petitioner prayed for obtaining copies of the relevant documents related with the proceedings by filing a petition. Considering the report and the documents which discloses that the petitioner has violated the conditions of bond for good behaviour furnished by him on 25.09.2025 a further show cause notice under section 139 of the BNSS was served upon the petitioner as to why

- (i)** Interim bond executed by him should not be cancelled
- (ii)** Action under section 141 of the BNSS should not be taken against him for breach of bond and will not be taken into custody until completion of enquiry.

14. On the basis of the prayer made by petitioner's counsel the next date was fixed on 17.11.2025 for submission of the show cause notice, when the petitioner was prayed for time and as such 24.11.2025 was fixed for submissions of the show cause notice. In reply to the said show cause notice, he stated that his lawyer has submitted before the court to contest the matter but the court pressurized and misguided them by asking for furnishing bond first and then the court will conduct hearing. Mr, Roy in this context submits that by the order dated 25.09.2025, the petitioner was

asked to comply with the order dated 18.09.2025 and on the representation and request, learned advocate for the petitioner, the amount of bond and sureties have been fixed at Rs. 5,000/- each and therefore the question of submission of forceful bond does not arise. Moreover the order about furnishing bond was never challenged before any court. It is at latter stage when he violated the condition of bond and was subsequently arrested in different case, he has come out with the contention that the bond was bad and forceful bond.

15. Mr. Roy further argued that the ratio laid down in the judgment, of ***Madhu Lamaye & Anr. Vs. Ved Murti & Ors.***, reported in **(1970) 3 SCC 739** as relied by the petitioner is factually distinguishable with the instant proceeding in view of the fact that from the order dated 11.09.2025 and the subsequent orders dated 18.09.2025 and 25.09.2025 , it clearly reveals that the Magistrate has already commenced inquiry and on repeated occasion, Learned Magistrate directed the petitioner to show cause as to why he should not be ordered to execute a bond and it is only on the basis of the petition and submissions made by the lawyer, the bond amount was fixed and the bond was taken by the Magistrate. It is the petitioner and learned advocate who voluntarily submitted and executed the bond and now after violation of the bond, which he executed himself, he has taken a different plea that the bond was forcefully taken.

16. He further argued that standard form of trials are not mandated in preventive proceedings, when the object is preventive rather than punishment. In the present case the proceeding was lawfully initiated under section 129 of the BNSS, interim measures was imposed under section 135

(1) and subsequent action was also taken strictly within the statutory limits. The petitioner was subjected to a preventive mechanism end to averting breach of peace, not arbitrary detention or punitive incarceration. The restraint imposed is proportionate, targeted and justified by the petitioner's conduct, reflecting a continuing threat to public order. The challenge based on Article 21 of the Constitution of India is therefore wholly misconceived. The preventive measures met the test of legality, fairness and reasonableness and disclosed no constitutional infirmity warranting interference. The record reflects that the petitioner all along duly represented through his advocate on the relevant dates and was afforded regular liberty of hearing and at no stage, did he raise any contemporaneous objection regarding lack of notice or denial of liberty. He was clearly informed on repeated occasion that continuation of such liberty was contingent upon compliance. Therefore cancellation of interim bond and taking preventive measure were neither mechanical nor predetermined. They were necessitated by the petitioner's subsequent conduct, revealing continuing involvement during subsistence of the bond.

17. Mr. Roy further contended that petitioner's contention that the proceeding has been vitiated because the Executive Magistrate also held a police function is legally untenable. Preventive jurisdiction is not invalidated due to prior or parallel designation, so long as the authority acts within the statutory limits and in a quasi judicial capacity. The record clearly demonstrate due application of mind, grant of hearing, and reasoned response. The petitioner has failed to demonstrate any prejudice arising from the alleged dual role. The challenge is not founded on denial of liberty

or procedural illegality, but on satisfaction within the lawful consequence and his own subsequent conduct. Therefore, the plea lacks merit and warrants no interference and therefore he prayed for dismissal of the instant application.

Decision

18. First let me quote the relevant portion of the impugned order which runs as follows:-

“Hence order

(i) The Interim Bond, dated 25.09.2025 executed by the OP member Rakesh Kumar Singh U/S 135 (3) BNSS, hereby stand cancelled.

(ii) The OP member has been taken into custody in this case and to be sent him to the correctional Home in C/W this case until completion of the inquiry u/s 129BNSS.

(iii) The Superintendent of Presidency Correctional Home, Alipore is directed to detain the OP member Rakesh Kumar Sing(54 yrs), S/o-Shyamjit Sing of 12A, Orphanguange Road, P.S. Alipore, Kolkata-700023, under this order at Presidency Correctional Home, Alipore and produce him before this court time to time as and when asked for.

In this context, the court intends to conclude the inquiry as initiated against him u/s 130 BNSS and orders to summon witnesses number 1 & 2 on the next date, i.e., on 24.11.2025.

To 24.11.2025 for production of OP member from the Presidency Correctional Home, Alipore by way of issuing production warrant and examination of witnesses.”

19. From the aforesaid order it is clear that the bond which was executed by the petitioner on 25.09.2025 was under section 135(3) of the BNSS and not under section 136. However the court below has taken him into custody cancelling said bond invoking jurisdiction under section 141 (1) (b) & (c) and the court thereafter issued summon to witness no. 1 & 2 for examination.

20. Before going to further details let me reproduce section 129, 130, 135 (3) and 141 (1) (a) (b).

“Section 129.

Security for good behaviour from habitual offenders.

When an Executive Magistrate receives information that there is within his local jurisdiction a person who-

(a) is by habit a robber, house-breaker, thief, or forger; or
 (b) is by habit a receiver of stolen property knowing the same to have been stolen; or
 (c) habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property; or
 (d) habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter X of the Bharatiya Nyaya Sanhita, 2023, or under section 178, section 179, section 180 or section 181 of that Sanhita; or
 (e) habitually commits, or attempts to commit, or abets the commission of, offences, involving a breach of the peace; or
 (f) habitually commits, or attempts to commit, or abets the commission of-(i) any offence under one or more of the following Acts, namely:-(a) the Drugs and Cosmetics Act, 1940 (23 of 1940);
 (b) the Foreigners Act, 1946 (31 of 1946);
 (c) the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952);
 (d) the Essential Commodities Act, 1955 (10 of 1955);
 (e) the Protection of Civil Rights Act, 1955 (22 of 1955);
 (f) the Customs Act, 1962 (52 of 1962);
 (g) the Food Safety and Standards Act, 2006 (34 of 2006); or
 (ii) any offence punishable under any other law providing for the prevention of hoarding or profiteering or of adulteration of food or drugs or of corruption;
 or
 (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 bail bond, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit.

130. Order to be made.

When a Magistrate acting under section 126, section 127, section 128 or section 129, 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 of sureties, after considering the sufficiency and fitness of sureties.

135. Inquiry as to truth of information.

After the commencement, and before the completion, of the inquiry under sub-section (1), the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under section 130 has been made to execute a bond or bail bond, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond or bail bond is executed or, in default of execution, until the inquiry is concluded:

141. Imprisonment in default of security.

(a) If any person ordered to give security under section 125 or section 136 does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case next hereinafter mentioned, be committed to prison, or, if he is already in

prison, be detained in prison until such period expires or until within such period he gives the security to the Court or Magistrate who made the order requiring it;

(b) if any person after having executed a bond or bail bond for keeping the peace in pursuance of an order of a Magistrate under section 136, is proved, to the satisfaction of such Magistrate or his successor-in-office, to have committed breach of the bond or bail bond, such Magistrate or successor-in-office may, after recording the grounds of such proof, order that the person be arrested and detained in prison until the expiry of the period of the bond or bail bond and such order shall be without prejudice to any other punishment or forfeiture to which the said person may be liable in accordance with law.

21. Now after going through the bond executed by the petitioner it appears that it was executed in Form no. 14 which is a bond for good behaviour interms of section 129 and the period is '*until the completion of the enquiry in the matter*' and therefore it is undoubtedly an interim bond and it was furnished by the petitioner within the time, by which he was asked to execute. It further appears from the order dated 10th November, 2025 that the petitioner was directed to file show cause;

- (i) Why the interim bond executed by him should not be cancelled and
- (ii) Action under section 141 BNSS should not be taken against him for breach of bond and be taken into custody and send to correctional home in connection with the case, until the completion of enquiry.

22. Therefore, the question that needs to be adjudicated herein is whether learned Magistrate was justified in taking the petitioner in custody after cancelling interim bond for good behaviour, invoking his jurisdiction under section 141 of BNSS. On perusal of section 141(b), it is clear that if any person after having executed a bond for keeping the peace in pursuance of an order of Magistrate under section 136 '*is proved*' to the satisfaction of such magistrate to have committed breach of the bond, then the Magistrate after recording the grounds of proof, order that the person be detained in

prison until the expiry of the bond. In the instant case Court below has clearly observed in the impugned order dated 20.11.2025 that the petitioner had executed interim bond under section 135 (3) BNSS, pending inquiry under section 129. However, in one part of the same impugned order, court held that the petitioner herein has committed breach of interim bond as per section 139 of BNSS, which apparently shows that court below has confused the purport of bond under section 135(3) and bond under section 139 of BNSS.

23. It is needless to say that contents of bond under section 139 relates to order to give security under section 136 and the provision of interim bond is guided only under section 135 (3) of the BNSS. In the instant case there appears to be no allegation that petitioner has not furnished bond and therefore section 141 (1) (a) has got no application. Now in order to invoke jurisdiction under section 141 (1) (b) bond or bail bond for keeping the peace in pursuance of an order passed under section 136 which reads as follows:-

“136. Order to give security.

If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond or bail bond, the Magistrate shall make an order accordingly:

Provided that-(a) no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 130;(b) the amount of every bond or bail bond shall be fixed with due regard to the circumstances of the case and shall not be excessive;(c) when the person in respect of whom the inquiry is made is a child, the bond shall be executed only by his sureties.”

24. Therefore section 136 clearly mandates with the words *“if upon such enquiry it is proved that it is necessary for keeping the peace or maintaining good behaviour.....”* which signifies that first of all an inquiry is required to be made and secondly upon such inquiry it is proved that furnishing of

bond is necessary. However on perusal of the record, it would reflect that there was no compliance of section 136 BNSS. It is palpably clear that the order of executing interim bond as directed to the petitioner vide order dated 25.09.2025 acting under section 129 BNSS and not under section 136 BNSS, and therefore it is not understandable, how the court below had taken the petitioner in custody under section 141 of the BNSS. It is also worthy to be mentioned that the petitioner was in judicial custody in another case when production warrant was issued by learned Magistrate to produce the petitioner under section 129 BNSS. Under Chapter IX of the statute said bond was made to be executed by the petitioner when it was based on the apprehension of breach of peace by the petitioner. However in the instant case at that stage learned magistrate did not cause any enquiry after taking evidence to ascertain whether the report so submitted by the police officer is true or not.

25. Application of section 141 arises in the case, where the petitioner has violated the terms of bond under section 136 of the BNSS. On the contrary section 135 (3) BNSS permits taking of an interim good behaviour bond only after the commencement and before the completion of an enquiry, which is very much clear and unambiguous from the statutory language and it does not confer unfettered discretion upon the Executive Magistrate to mechanically direct to furnish interim bond. Section 135(2) BNSS mandates that the inquiry under this provisions shall be conducted in the manner prescribed for the trial of summons cases.

26. Admittedly in the instant case the bond for good behaviour was interim bond which is guided by section 135 (3) of the BNSS, which

circumscribes the power of learned Executive Magistrate by providing that an interim bond may be directed only if immediate measures are necessary to prevent a breach of peace or disturbance to public tranquillity. Such requirement is not an empty formality but learned magistrate must record objective satisfaction supported by cogent material, demonstrating immediate and proximate danger. In the instant case the impugned order is conspicuously silent on the nature of the alleged threat and the imminence of breach of peace or any factual foundation necessitating immediate preventive action. Learned counsel for the State submit that the order clearly demonstrates that the petitioner voluntarily executed the bond and therefore the question of stating urgency in the order does not arise, though such argument has been negated by the petitioner stating that the petitioner was compelled to execute the bond.

27. Be that as it may, it is to be mentioned herein that violation of an interim good behaviour bond cannot be related with section 141 (1) (b) or (c) which mandates that jurisdiction under that provision can be invoked where bond executed under section 136 is proved to the satisfaction of the Magistrate to have committed breach of bond and furthermore after recording grounds of such proof, detention order can be passed under the circumstances, what is expressly provided by statute.

28. In ***Gopal Acharya Vs. State of Kerala*** reported in **1980 (sup) SCC 649** it was held that preventive sections privative of freedom, it incautiously proved by indolent judicial processes, may do deeper injury. To call a man dangerous is itself dangerous, to call a man desperate is to affix a desperate adjective to stigmatise a person as hazardous to the community is itself a

judicial hazard, unless compulsive testimony carrying credence is abundantly available. The power to demand an interim bond is incidental to a pending enquiry and not a standalone power. If the enquiry does not disclose situation to take immediate measure, any order for interim bond or detention for violation of the bond is not in accordance with the statute.

29. However I am not agreeable with the submission made on behalf of the petitioner that the enquiry has not yet been started, when the petitioner was asked for production of interim bond, since it is clear from the order dated 11.09.2025 that the petitioner was directed to file show cause and thereafter when the petitioner was produced from custody on 25.09.2025, the substance of the information was read over and explained to the OP member/petitioner herein, which amounts to recording of plea in a summons procedure case as mandated under section 135 (2) of the BNSS.

30. Learned counsel appearing on behalf of the State argued that subsequent orders dated 20.11.2025 records that the petitioners detention is under section 141(3) BNSS. Needless to say that power to take steps under section 141 emanates in connection with an order passed under section 125 or 136 BNSS. Section 125 BNSS deals with an order for furnishing security upon conviction. The provision under section 141 read with section 125 BNSS applies where a person has been convicted of an offence and the court upon such conviction directs the person to execute a bond for keeping the peace or for good behaviour. Admittedly in the present case, the petitioner has not been convicted and therefore section 125 has got no application in the present case. Section 136 contemplates the passing of a final order after completion of an enquiry as to the truth of information

under section 135 BNSS. It is only when upon conclusion of such enquiry, the Magistrate records a conclusive finding that the allegations are proved and that an order directing the person to give security for good behaviour can be lawfully passed. The heading '*order to give security*' in section 136 BNSS clearly refers to a final and reasoned direction founded upon evidence adduced during the enquiry. In the present case admittedly no final order under section 136 BNSS has been passed. The bond directed to be executed by the petitioner was not a final bond under section 136 BNSS but merely a bond stated to be taken under section 129 BNSS, which is only an initiating and preventing provision and therefore there exists no valid order to give security within the meaning of section 136 of the BNSS. Since neither section 125 BNSS nor section 136 has been validly invoked against the petitioner, essential jurisdictional requirement for application of section 141 BNSS is entirely lacking.

31. Furthermore Sub-section (2) of Section 141 has reference only to the case where default is made in filing security. If the security is given, the section does not apply and no reference to the court of sessions is necessary even though the term of security exceeds one year. When reference under this section is pending in the court of the sessions judge, the petitioner can offer security to the magistrate, when they are able to procure it. Moreover when a magistrate passes an order for furnishing security for a period exceeding one year and default is made, imprisonment for default cannot be awarded by the Magistrate. All that he is empowered to do is to detain the accused, pending the order of the sessions judge under the said provision. The section gives power to the sessions judge to deal with the case on the

merits and to pass such orders as the circumstances of the case may require.

32. On the other hand section 129 of the BNSS empowers an Executive Magistrate to require a person to execute a bond for good behaviour on the basis of information laid before him. The magistrate forms an opinion that such person is a habitual offender or is otherwise likely to commit offences affecting public order or peace. Object of section 129 is not to contemplate punishment but merely enables Magistrate to initiate proceeding to prevent anticipated breach of law by calling upon the person concerned to show cause why he should not be bound to maintain good behaviour. At this stage the Magistrate only forms a prima facie satisfaction based on information received and no adjudication on guilt or habituality has been undertaken.

33. In short section 135 BNSS lays down the procedure to be followed after proceeding under section 129 BNSS are initiated. Sub-section (1) of section 135 mandates that the magistrate shall hold an enquiry into the truth of information and Sub-Section (2) provides that such enquiry shall be conducted in the manner of a trial in summons cases including recording of evidence. Sub-Section (3) permits the Magistrates during the pendency of such enquiry to direct the person to execute an interim bond subject to the conditions prescribed therein and it ensures procedural safeguards by requiring a full fledged enquiry before any final adverse order is passed. Section 136 BNSS contemplates the culmination of proceedings under section 129 and 135 BNSS, empowering the Magistrate to pass a final order, directing execution of the bond for good behaviour, if the allegations are

proved or to discharge person and to drop the proceeding, if the information is found to be unsubstantiated.

34. In order to invoke jurisdiction under section 141, the apprehension which alone justifies initiation of proceeding under section 129 BNSS is required to be established through evidence in the inquiry. Until such evidence is laid, tested and evaluated in the manner of a summons trial, the apprehension remains a mere allegation and cannot attain the status of a proven fact and inquiry under section 135 BNSS necessarily requires the Magistrate to examine whether the information laid before him is true. Mere referring to past cases or police allegations cannot amount to an inquiry which entails evaluation of evidence, examination of witness and application of judicial reasoning.

35. In ***Madhu Limaye & Anr. Vs. Ved Murti & Ors.*** reported in **(1970) 3 SCC 739** a Five Judges Bench of Apex Court observed as follows:-

“11. It will be noticed that before the Magistrate took action to call for an interim bond, he did not make any efforts to enquire into the truth of the information as is required by Section 117(3) of the Code. He only saw the police report and was satisfied from it, without even questioning the Sub-Inspector. He did question him with regard to Narender Shastri who is described in the Order as OP No. 3 but not others. It is also to be noticed that the case was fixed on the following day for statements of Madhu Limaye and Ram Adhar Giri and there is no mention that any witnesses were to be present. In fact even on the next day the Magistrate was not going to try the case but only take statements from the petitioners.....”

36. It is evident from the impugned order dated 20.11.2025 that the interim good behaviour bond of the petitioner was cancelled and the petitioner was taken into custody. At the relevant point of time no evidence have been recorded, no witness have been examined and no satisfaction had been arrived at, nor attained the status of a proven fact in accordance with law prior to curtailment of the petitioners liberty. The learned Executive

Magistrate only after taking the petitioner into custody proceeded to direct summoning of witnesses under section 135 BNSS. Such course of action is wholly impermissible in law.

37. Learned Court below while passed the order has relied upon ***Devadassan Vs. 2nd Class Executive Magistrate Ramanatha puram and Ors.***, reported in **(2022) 13 SCC 166** but the fact of the said case is distinguishable with the circumstances of the present case as said judgment was rendered in a factual context where a full-fledged enquiry was conducted, evidence was considered and upon conclusion of such an enquiry the competent magistrate had formed a conclusive opinion that the person concerned was a habitual offender likely to breach the peace. It was in such circumstances that a final bond was directed to be executed which was upheld by the Apex Court. The present case stands on a different footing in view of the fact that the record and order sheets demonstrates that the statutory inquiry contemplated under section 135 BNSS has not been concluded. Mere reference to past cases may not be sufficient for the said purpose and an enquiry under the BNSS requires the Magistrate to examine the truth of the information received by recording evidence and applying judicial mind to determine whether the apprehension alleged has been substantiated.

38. I am not agreeable with the argument advanced by learned Public Prosecutor that if the perpetrator can be taken into custody for violation of terms of final bond furnished in terms of section 136 BNS, then he can also be taken into custody for violation of interim bond furnished in terms of see 135(3). Supreme Court in ***Madhu Limaye Vs. Sub-Divisional Magistrate,***

reported in **(1970) 3 SCC 746**, while dealt with section 107 of Cr.P.C. which deals with “security for keeping the peace in other cases” has exhaustively dealt with the issue and paragraph 35 may be quoted in this context

“35. We have seen the provisions of Section 107. That section says that action is to be taken ‘in the manner hereinafter provided’ and this clearly indicates that it is not open to a Magistrate in such a case to depart from the procedure to any substantial extent. This is very salutary because the liberty of the person is involved and the law is rightly solicitous, that this liberty should only be curtailed according to its own procedure and not according to the whim of the Magistrate concerned. It behoves us, therefore, to emphasise the safeguards built into the procedure because from there will arise the consideration of the reasonableness of the restrictions in the interest of public order or in the interest of the general public.”

39. It also needs to be mentioned that the contents of the bond executed by the petitioner in terms of section 129 of BNSS are governed by the prescribed Form no.14, which has been annexed to the petition and a bare perusal of the same it appears that the consequence of violation of the interim bond is limited to the forfeiture of the bond amount stipulated therein and no penal consequence and or provisions or detention or imprisonment is envisaged under the said bond. The bond also does not contemplate either expressly or impliedly that the petitioner may be taken into custody merely on the allegation of violation of the interim bond.

40. Therefore, the impugned order which pertains to taking into custody of the petitioner is hereby set aside.

41. CRR 5090 of 2025 thus stands disposed of. However this order will not prevent the court below to ask the petitioner for submission of fresh bond during pendency of enquiry if emergent situation demands for furnishing such bond in terms of 135 (3) BNSS, and from forfeiting the amount of interim bond already furnished by the petitioner.

42. Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)