

Form No. J(2)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

Present:
The Hon'ble Justice Jay Sengupta

C.R.R. 1609 of 2022

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

For the Petitioner : Mr. Sudip Ghosh Chowdhury

For the State : Mr. Madhusudan Sur, Ld. APP
: Mr. Manoranjan Mahata

Heard on: 17.05.2022

Judgment on : 17.05.2022

The Court:

This is an application challenging a proceeding being NGR (E)/148/2022 under Section 110 of the Code presently pending before the learned Special Executive Magistrate, Chandannagar Division, Chandannagar Police Commissionerate.

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner is an accused in several cases including ones under the N.D.P.S. Act and under Section 302 of the Indian Penal Code. He is in custody since 2017. There is no allegation whatsoever that he is operating any criminal activity from inside custody. In spite of this, in 2022 the present proceeding was instituted under Section 110 of the Code of Criminal Procedure. The petitioner is facing trial in some of the cases and in a few of the cases under the N.D.P.S Act, he is still in custody and he was produced from the Correctional Home therein for that purpose. By an order dated 16.02.2022, the learned Executive Magistrate directed the petitioner to submit show-cause as to why he shall not be bound down for good behaviour bond under Section 110 of the Code and should furnish an amount of Rs. 1,00,000/- each with two reputed Gazetted Officers as sureties for his good behaviour for such period, not exceeding three years. The petitioner is an ordinary man. It is not possible to have a Gazetted Officer to stand as a surety for him. It is also difficult for him to find out Gazetted Officer of repute because that is a subjective description. In the interest of justice, the condition as given in the order dated 16.02.2022 may be modified. A show-cause has already been filed and accepted by the learned Executive Magistrate.

Learned counsel appearing on behalf of the State submits as follows. The petitioner is an accused in several cases, some under the

N.D.P.S Act and some under the Indian Penal Code. He is a habitual offender. He needs to be bound down to certain stringent conditions. As such, the learned Executive Magistrate was not in error in requiring two Gazetted Officers to stand a surety from him.

I have heard the submissions of the learned counsels appearing on behalf of the petitioner and the State and have perused the revision petition.

It is a settled law that such onerous condition cannot be put either in an order granting bail or in a proceeding requiring execution of bond for good behaviour that cannot be fulfilled by the person on whom such direction is passed. On this, reliance placed on Dipu Singh vs. State of West Bengal, 2020 SCC Online Cal 932.

More than that the condition imposed by the learned Executive Magistrate is suffers from lack of clarity. It is not clear what is the meaning by using the term “reputed Gazetted Officer”, as if some Gazetted Officers may not be much repute.

Therefore, the onerous condition imposed by the learned Executive Magistrate cannot be sustained.

In view of the above, the order dated 16.02.2022 is modified to the following extent. The petitioner shall appear before the learned Executive Magistrate on a subsequent date to be fixed by the learned Magistrate, which will be within a month from the date of communication of this order, and submit show-cause as to why he

shall not be bound down with good behaviour bond under Section 110 of the Code for an amount of Rs. 1,00,000/- each with two local sureties for his good behaviour for such period, not exceeding three years, as the learned Magistrate would think fit.

However, if the petitioner is in custody in connection with any other case, he shall only be notionally released in respect of the instant proceeding, but shall not be physically released and shall be referred to the authorities in respect of the said case.

With these observations, the revisional application is disposed of.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta,J.)