
(2018) 04 CAL CK 0124
In the Calcutta High Court
Case No : C.R.R 665 of 2018

Totan Biswas

APPELLANT

Vs

State Of West Bengal

RESPONDENT

Date of Decision : 25-04-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 102, 110, 121

Citation : (2018) 04 CAL CK 0124

Hon'ble Judges : SHIVAKANT PRASAD, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

In compliance of the Court's order dated 18.4.2018 the I.O, Mr. Animesh Hazari, S.I of Police, Chinsurah PS, of the concerned case being

NGR(E) Case No. 10/18 dated 17.01.18 has submitted a report regarding present status in connection with cases pending against Toton Biswas (in

jail). This case was registered before the Court of the learned Special Executive Magistrate, Chandannagar Division, Chandannagar Police

Commissionerate with the brief facts that the person noted in Col No. 3 is a habitual offender and has immense capability of commission of crime as

well as extortion and criminal conspiracy.

He has got no ostensible series of sustenance. He along with his associates accumulated a large amount of money by rowdism, extortion as well as

committing hired murder. Because of his dareness and rowdism, none dared to speak against him. He is very much desperate and dangerous in

nature. To curb down the notorious activities of the person and to restore peace, harmony and tranquillity in the locality judicial binding of the person is

urgently required. The person was previously involved in C/W (1) Chinsurah P.S Case no. 96/13 Dt14.04.13 U/S 302/34 IPC,9(B)(II) I.E Act (2)

Chinsurah PS Case No-367/13 Dt-20.11.13 U/S-326/307/302/34 IPC (3) Chinsurah PS Case No-270/14 Dt.-23.06.14 U/S-302/34 IPC & 25/27 Arms

Act (4) Chinsurah PS Case No- 58/15 Dt-07.02.15 U/S489B/489C IPC (5)Chinsurah PS Case No- 139/15 Dt-22.03.15 U/S-302/34 IPC & 25/27

Arms Act (6) Bhadreswar PS Case No.

162/15 Dt-01.6.15 U/S-302/34/120B IPC and (7) Gurap P.S Case No. 120/16 Dt. 13/09/16 U/S-20 (b)(II)(c) of NDPS Act, 1985. His presence in the

society at large will be highly affected and a prayer was made that the accused Toton Biswas be bound down under Section 102 Cr.PC with view to

furnish a bond on keeping good behaviour. A show cause was ordered by the Magistrate and the petitioner, accused Toton Biswas, was produced

from Alipur Correctional Home on the strength of the said report and he was taken to custody and remanded to jail custody till 15.2.2018 by rejecting

his bail application vide order dated 31.01.2018.

The Superintendent, Alipur Correctional Home, was to produce the accused on the next date and the advocate for the accused had appeared along

with two gazetted officers as surety for execution of the bond. It was directed that the present petitioner should furnish two sureties of gazetted

officer with Rs.20,000/- each. It reveals from the order dated 07.3.2018 that Ashutosh Biswas and Sudhangsu Kumar Biswas both stood sureties of

Rs. 20,000/- each and the bail bond was placed on record and date was fixed on 14.3.2018 as per Section 121 Cr.PC.

It further reveals that by order dated 14.3.2018 the documents produced by the sureties were sent to the issuing authority for verification and report by

21.03.18. Mr. Animesh Hazari, S.I of Police, Chinsurah PS, has submitted report on this day by giving present status in respect of eight cases, which

were made reference in this report on the basis of which the petitioner was directed to furnish two sureties by two gazetted officers. It would appear

that in two cases the accused Toton Biswas was acquitted and in one case being Bhadreswar P.S Case No. 162/15 Dt. 01.6.15 U/s 302/34/120B IPC

he was admitted on anticipatory bail and in respect of rest of the cases he is on bail, obviously granted by the Sessions Judge. From the antecedents of

offences levelled against him, which are undoubtedly serious in nature. But this

fact cannot be lost sight of that the petitioner Toton Biswas is on bail.

So, had there been ill-behaviour or misconduct in the society this could obviously amount to breach of the bail condition which could no doubt be a

ground for cancellation of his bail and consequently taking him into custody in connection with those cases pending before the Sessions Court and the

fact could have been brought to the notice of the concerned Additional Sessions Judge, Chandannagar for cancellation of his bail. But this is not the

case in hand. It is submitted by Mr. Animesh Hazari, S.I of Police that said NGR(E) Case No. 10/18 dated 17.01.18 is pending for examination in

respect of suitability of the sureties and next date is fixed on 06.6.2018 before learned SEM, Chandannagar Division, Chandannagar Police

Commissionerate.

It appears that keeping this accused behind the bar by taking aid of the provision of law under Section 110 Cr.PC in the given case would not be

justified. It is pertinent to note that the petitioner was granted bail in as many as five cases and in two cases he has been acquitted of the charges by

the Sessions Court as would reflect from the report of S.I Hazari. Habit is a tendency or capacity resulting from frequent repetition of the same or

similar acts. It indicates depravity of or criminality in character, evidenced by frequent commission of offences. Habit can be proved by an aggregate

of acts, previous convictions but not by one instance or one conviction. Proof as habitual offender can be available and construed after the petitioner is

found guilty of the charge levelled against him. Mere institution of cases and pendency of them would not attract S. 110 of the Code of Criminal

Procedure.

In the context above, there is no justification in the conduct of the concerned Magistrate who has been fixing the date after date for verification of the

bonds furnished by two gazetted officers. The aforesaid two persons who submitted the bonds on behalf of Toton Biswas would have been verified in

one go by perusal of the Gazette Notification as to whether their position is notified as gazetted officer by the Government of West Bengal and if it is

found that they are not gazetted officer, the bond could have been rejected. But keeping the entire things pending for a considerable period of time

only to put the petitioner behind the bar is no justification inasmuch as this petitioner has been admitted on bail in so many cases by the Sessions Court

and continuance of the said proceeding in the given case, in my opinion, would be abuse of the process of law because, the Ld. Magistrate ought to

have enquired into the matter before ordering for furnishing surety for good behaviour. I find that proceeding is not bona fide.

Therefore, upon hearing Mrs. Mousumi Paul Biswas, for the petitioner in person, who happens to be the wife of the petitioner in jail and on

considering the report submitted by Mr. Animesh Hazari, S.I of Police, Chinsurah PS, who is present in Court and upon hearing him, CRR 665 of 2018

be allowed by quashing the proceeding pending before the SEM, Chandannagar Division.

I quash the proceeding aforesaid. Consequently, he be made free because he has already been enlarged on bail granted by the Sessions Court in

various cases as mentioned above and the local police will only watch his behaviour and his movement. I.O concerned will see to it that his attendance

is made on the date of trial before the Sessions Court in the said case. The report submitted by S.I Animesh Hazari be kept on record. Thus, the

revisional application being CRR 665 of 2018 is disposed of. Urgent photostat certified copy of this order, if applied for, be given to the parties upon

compliance of all necessary formalities.