

**IN THE COURT OF THE DISTRICT JUDGE, NADIA  
AT KRISHNAGAR**

**Present: Shri Subhankar Sen**  
District Judge, Nadia at Krishnagar.  
(JO Code: WB00657)

**Criminal Revision No.07 of 2026**

CIS Reg No.07 of 2026

CNR : WBND01 000826 2026

**Later:**  
**12.02.2026**  
at 3:00PM

Learned Advocate for the petitioner wants to move an application for stay upon the impugned order dated 28.01.2026 passed by the Learned Executive Magistrate, Krishnagar, Nadia, in connection with SDEM Case No.116(EM) of 2026 under Section 163 of the BNSS (Ajarul Islam + one vs. Koriful Mallick + three), on the grounds stated therein.

But the fact remains that the instant criminal revisional application has only been filed this day wherein the date is prefixed on 18.04.2026 for admission hearing. Thus, unless the instant revisional application is admitted, the Court cannot hear and dispose of the said application for stay.

Therefore, having heard the Learned Advocate for petitioner/revisionist and perusing the impugned order, challenged in this revisional application, passed on 28.01.2026, it appears that the instant criminal motion has been filed by him on 12.02.2026. Therefore, it can safely be said that it has been filed well within the prescribed statutory period of limitation and as such, there is no impediment in admitting the same.

Hence, the instant criminal revisional application is **admitted**.

Now, having heard the Learned Advocate for the petitioner/revisionist in the perspective of the application for stay of the impugned order, it appears that according to him, the impugned order has given a direction upon the petitioner/revisionist to maintain peace and initiation of proceedings under section 163 of the BNSS and there was also a direction upon the police to ensure a peace in the locality. But the local police, specifically ASI Manik Kumar Das of Kaliganj PS is very eager to stop the construction of *kachha* kitchen and *kachha challa* over the suit property directing the petitioner/revisionist to remove the and/or stop the construction of the said *kachha* kitchen and *kachha challa*, which is

absolutely necessary for their livelihood. The Learned Executive Magistrate, in utter disregard of the fact that arising out of the selfsame suit property, a partition suit has been pending in the Court of Learned Civil Judge (Senior Division), 2<sup>nd</sup> Court, Krishnagar, Nadia, being Title Suit No.264 of 2025, has basically overlapped the jurisdiction of the Civil Court. Therefore, the said impugned order is highly illegal and in no way binding upon the petitioner/revisionist. Therefore, it has been prayed that the said impugned order should be stayed, as the dispute between the parties is purely civil in nature.

Having perused the impugned order and the documents annexed with the petition, it appears that the petitioner of said SDEM case NO.116(EM) of 2026 under Section 163 of the BNSS, has filed the said title suit No.264 of 2025 against the selfsame opposite parties/defendants. From the said petition filed by the petitioner no.1 Ajarul Islam under Section 163 of the BNSS, it appears that the pendency of the said title suit no.264 of 2025 in the Court of Learned Civil Judge (Senior Division), 2<sup>nd</sup> Court, Krishnagar, Nadia, has cunningly been suppressed by him in the four corners of his pleadings.

Secondly, the said impugned order is nothing but in the form of prescribed printed proforma, which is not even duly filled in. In other words, it can safely be said that the said impugned order has been passed by the Learned Executive Magistrate, Krishnagar, Nadia on 28.01.2026, in a purely mechanical and stereotype manner leaving the relevant entries blank.

In this regard, Learned Advocate for the petitioner/revisionist has referred to a decision of the Hon'ble Supreme Court **reported in 1971 AIR 2486 : AIR 1971 SCR (2) 711: AIR 1971 Supreme Court 2486 (Madhu Limaye vs. Sub-Divisional Magistrate, Monghyr & Ors.)** and the decision of the Hon'ble Calcutta High Court, **reported in 1951 AIR CAL 207 : 1950 SCC ONLINE CAL 80 : 1950 CRI LJ 1975 ( Kalipada Das v. The State).**

On perusal of the aforesaid two judgements, respectively passed by the Hon'ble Supreme Court and the Hon'ble Calcutta High Court as well, it appears that the same has been laid down in respect of the provision of Section 144 of the Code of Criminal Procedure which is reproduced as Section 163 of the Bharatiya Nagorik Suraksha Sanhita (BNSS). A plain reading of the provisions of Section 163 of BNSS goes to refer that it is nothing but the reproduction of the proceedings of Section 144 of the erstwhile Code of Criminal Procedure and therefore, principally the decision rendered by the Hon'ble Apex Court and the Hon'ble High Court

equally bear much substance on the point in issue. Therefore, it is required to be considered as to what has been laid down by the Hon'ble Apex Court and the Hon'ble Parent High Court on the same.

On perusal of the ratio laid down by the Hon'ble Apex Court, it appears, *inter alia*, that *"The gist of action under Section 144 is the urgency of the situation and its efficacy in the likelihood of being able to prevent some harmful consequences. It is not an ordinary power, flowing from administration but a power used in a judicial manner and which can stand "further judicial scrutiny". As it is possible to act under the section absolutely and even ex-parte the emergency must be sudden, and the consequences sufficiently grave."*

On the other hand, the Hon'ble Calcutta High Court in the subsequent judgement, as mentioned aforesaid, has been pleased to lay down, *inter alia*, that *"An order Section 144 of the Cr.P.C., may be made where it is necessary to prevent a breach of the peace or something of that kind. Sub-Section (2) of Section 144 of the Cr.P.C. however provides that only in case of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed an order can be made ex parte. As the narration of the facts has shown this dispute had been dragging on for months and months and there was no desperate urgency in the matter at all. There was no suggestion that heads were likely to be broken."*

Now, while applying the aforesaid observations and/or views of the Hon'ble Apex Court and the Hon'ble Calcutta High Court, on the scope of an application under Section 144(2) of the Cr.P.C., in view of the aforesaid two referred judgements, it appears that the Learned Executive Magistrate ought to have borne in mind before going to pass an order under Section 144(2) of the Cr.P.C. corresponding to Section 163(2) of the BNSS, as to what kind of urgency or grave situation appeared on the suit locale, which otherwise than by way of passing an order under Section 163(2) of the BNSS, could not be avoided.

Secondly, there was utter suppression of the material facts by the petitioner before him that arising out of the dispute between the parties over the suit property, there has been a civil suit filed by the petitioner before him being title suit No.264 of 2025 and the Leaned Civil Judge (Senior Division), 2<sup>nd</sup> Court, Krishnagar, Nadia has already been in *sesin* of the said dispute.

Thirdly, by virtue of the said order dated 28.01.2026 passed by the Learned Executive Magistrate, Krishnagar under Section 163(2) of the

BNSS, the law enforcing agency, by extracting or interpreting the essence of the order, impugned, in his own way, directed something else, which was not intended by the Learned Court of Executive Magistrate and thereby, made a mess of everything, which ultimately compelled the present petitioner/revisionist to take the recourse to the proceedings under Sections 397/399/400/401 of the Cr.PC. corresponding to Sections 438/440/441/442 of the BNSS,

Fourthly, Section 144 of the Cr.P.C. corresponding to Section 163 of the BNSS also provides that *"The thing which is prohibited must be clearly clearly stated. It is not proper to leave in doubt as to where the persons are prohibited from doing a thing or not. The order must state which are prohibited and what are they prohibited from doing or requiring to do. Except where the order is addressed to the public generally under Sub-Section (3), the persons against whom the order is directed must be specified. An order addressed to 'you and other persons who are or may be concerned in the project' is too vague, because it is impossible to say who are the persons who are or may be concerned in the project."*

In the instant case, the impugned order is not explicit or self-determining as to upon whom, such order was passed or meant to be or what is the nature of things, which are required to be abstained from doing so.

Consequently, in the light of the aforesaid discussions, it can safely be said that it is a fit case where the impugned order is required to be stayed for the ends of justice.

Hence, **Ordered:** The impugned order dated 28.01.2026 passed by the Leaned Executive Magistrate, Krishnagar, Nadia, in SDEM Case No.116/EM of 2026, is hereby stayed till the disposal of the instant criminal revisional application.

Let a copy of this Order be forthwith sent to the Learned Executive Magistrate, Krishnagar, Nadia, for information and necessary action.

Requisites in both ways already put in, be issued after verification.

To **18.04.2026** for SR/AD of notice, appearance and further order.

Dictated & Corrected by me

**Sd/-**  
(Subhankar Sen)  
**Sessions Judge, Nadia**  
12.02.2026

**Sd/-**  
(Subhankar Sen)  
**Sessions Judge, Nadia**  
12.02.2026