

Criminal Motion No. 7 of 2026

IN THE COURT OF THE SESSIONS JUDGE, NADIA

Present: Shri Sujay Sengupta (WB00650),
District Judge, Nadia

Criminal Motion No. 7 of 2026

Anarul Mallick	-: Vs: -	1. Ajarul Islam 2. Manjaharul Islam 3. State of West Bengal
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Order No. 04 dated 11-08-2026:

Both sides file hazira.

Ld. Advocate representing the petitioner is present.

Heard Ld. Advocate.

Earlier this Court at the time of hearing of stay application passed the following order dated 12-02-2026 which is as follows :

"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 the selfsame suit property, a partition suit has been pending in the Court of Learned Civil Judge (Senior Division), 2nd 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), 2nd 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, is 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

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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), 2nd Court, Krishnagar, Nadia has already been in sesin of the said dispute.

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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.P.C. 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 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."

Upon perusal of the impugned order, it appears that the Ld. Magistrate proceeded to grant interim order under Section 144 of Cr.P.C. without recording his satisfaction which appears to be the essence of order under Section 144(2) Cr.P.C. More so, proceeded to consider title or right without recording his satisfaction in a cryptic manner and without affordinbg any opportunity of being heard to the other side. More over, determination of title is purely the business of Civil Court which the parties are at liberty to take recourse of adhering to the provisions of law.

Since, there is palpably illegality in the impugned order, same is not sustainable for the reasons shown herein above.

The impugned order is thus, required to be interfered with.

Hence, it is,

ORDERED

that the instant Criminal Revision no. 7 of 2026 be and the same is allowed on contest.

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, is hereby set aside.

Parties to bear their respective costs.

Let a copy of this order along with LCR be sent down to the concerned Court for information and necessary action.

Parties are directed to appear before the Ld. Court below on 09-09-2026.

Dictated and corrected by me
Sd/- S. Sengupta
Sessions Judge, Nadia.
11-08-2026

Sd/- S. Sengupta
Sessions Judge, Nadia.
11-08-2026