

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.T. SANKARAN

&

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

MONDAY, THE 21ST DAY OF DECEMBER 2015/30TH AGRAHAYANA, 1937

WP(C).No. 31954 of 2015 (T)

PETITIONER:

JITHESH, S/O. RAJAN, AGED 24 YEARS,
MAMATH HOUSE, KIZHOOR AMSOM,
KIZHOOR DESOM, KANNUR DISTRICT.

BY ADVS. SRI. C. RAJENDRAN
SRI. K. R. RANJITH

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695 001.
2. DISTRICT MAGISTRATE, KANNUR - 670 001.
3. DISTRICT POLICE CHIEF, KANNUR DISTRICT,
KANNUR- 670 001.
4. SUB INSPECTOR OF POLICE,
IRITTY POLICE STATION,
KANNUR- 670 631.

BY DIRECTOR GENERAL OF PROSECUTION SRI. T. ASAF ALI
SR. GOVERNMENT PLEADER SMT. KOCHUMOL KODUVATH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
21.12.2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

- EXT.P1: PHOTOCOPY OF THE FIR IN CRIME NO.227/2010 OF IRITTY POLICE STATION.
- EXT.P2: PHOTOCOPY OF THE GIST OF THE CHARGE DATED 31/7/2010 IN CRIME NO.227/2010 OF IRITTY POLICE STATION.
- EXT.P3: PHOTOCOPY OF THE FIR IN CRIME NO.232/2010 OF IRITTY POLICE STATION.
- EXT.P4: PHOTOCOPY OF THE REPORT BY THE 4TH RESPONDENT SHOWING THE NAME AND ADDRESS OF ACCUSED NOS.2 TO 4 IN CRIME NO.232/2010 OF IRITTY POLICE STATION.
- EXT.P5: PHOTOCOPY OF THE GIST OF THE CHARGE IN CRIME NO.232/2010.
- EXT.P6: PHOTOCOPY OF THE FIR IN CRIME NO.719/2010 OF IRITTY POLICE STATION.
- EXT.P7: PHOTOCOPY OF THE FI STATEMENT IN CRIME NO.719/2010 OF IRITTY POLICE STATION.
- EXT.P8: PHOTO COPY OF THE GIST OF THE CHARGE IN CRIME NO.719/2010.
- EXT.P9: PHOTOCOPY OF THE FIR IN CRIME NO.226/2010 OF OF IRITTY POLICE STATION.
- EXT.P10: PHOTOCOPY OF THE FIS IN CRIME NO.226/2010 OF IRITTY POLICE STATION.
- EXT.P11: PHOTOCOPY OF THE GIST OF THE CASE SUBMITTED BY THE 4TH RESPONDENT JFMC, MATTANUR.
- EXT.P12: PHOTOCOPY OF THE FIR & FIS IN CRIME NO.1075/2013 OF IRITTY POLICE STATION.
- EXT.P13: PHOTOCOPY OF THE FIR & FIS IN CRIME NO.229/2010 OF IRITTY POLICE STATION.
- EXT.P14: PHOTOCOPY OF THE RELEVANT PORTION OF THE FINAL REPORT IN CRIME NO.229/2010 OF IRITTY POLICE STATION.
- EXT.P15: PHOTOCOPY OF THE DETENTION ORDER DATED 17/3/2014 ISSUED BY TE SECOND RESPONDENT AGAINST AJESH.

- EXT.P16: PHOTOCOPY OF GROUNDS FOR PASSING EXT.P15 DETENTION ORDER DATED 17.03.2014.
- EXT.P17: PHOTOCOPY OF THE DETENTION ORDER DATED 17/3/2014 ISSUED BY THE SECOND RESPONDENT AGAINST RIJESH.
- EXT.P18: PHOTOCOPY OF THE GROUNDS FOR DETENTION ORDER DATED 17/3/2014.
- EXT.P19: PHOTOCOPY OF THE FIR NO.173/2011 REGISTERED BY THE 4TH RESPONDENT.
- EXT.P20: PHOTOCOPY OF THE COMPLAINT FILED BY THE 4TH RESPONDENT BEFORE THE SUB DIVISIONAL MAGISTRATE, THALASSERY.
- EXT.P21: PHOTOCOPY OF THE BAIL ORDER DATED 04/5/2010 PASSED BY THIS COURT IN BAIL APPEAL NO.2612/2010.
- EXT.P22: PHOTOCOPY OF THE BAIL ORDER DATED 22/10/2013 PASSED BY THE SESSIONS COURT, THALASSERY IN CRL.M.C.NO.1360/2013.
- EXT.P23: PHOTOCOPY OF THE SHOW CAUSE NOTICE DATED 23/01/2014 ISSUED UNDER THE KAAPA BY THE KANNUR RANGE POLICE TO ONE SAJU.
- EXT.P24: PHOTOCOPY OF THE JUDGMENT IN WP(C)NO.14956/2014 DATED 12/8/2014.
- EXT.P25: PHOTOCOPY OF KERALA ANTISOCIAL ACTIVITIES (PREVENTION) ACT 2007.
- EXT.P26: PHOTOCOPY OF KERALA ANTISOCIAL ACTIVITIES (PREVENTION) AMENDMENT ACT 2014.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

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**K.T.SANKARAN &
RAJA VIJAYARAGHAVAN V., JJ.**

W.P.(C) No.31954 of 2015 (T)

Dated this the 21st day of December, 2015

JUDGMENT

K.T.Sankaran, J.

The petitioner challenges in this Writ Petition the order of detention No.SS1/2014/8111/13 dated 17.3.2014 issued by the District Magistrate, Kannur, at its pre-execution stage. Earlier, the petitioner had approached this Court for almost the same relief in W.P.(C) No.14956 of 2014, which was dismissed as per the judgment dated 12.8.2014. In the present Writ Petition, apart from the grounds taken by the petitioner in W.P.(C) No.14956 of 2014, it is also pointed out that Rijesh @ Oonda Rijesh and Ajesh, who were co-accused along with the petitioner in several cases and against whom similar detention orders dated 17.3.2014 were passed, were released on revocation of the order of detention on the basis of the opinion furnished by the Advisory Board. It is contended by the petitioner that his case also stands on the same footing as that of Rijesh @ Oonda Rijesh as well as Ajesh. The petitioner relies on the decision of the Supreme Court in **Pawan Bhartiya v. Union of India**

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and another [(2003) 11 SCC 479 = 2003 KHC 1793] wherein the Supreme Court dealt with a similar case.

2. A counter affidavit has been filed by the third respondent in which it is stated that the detention order against Ajesh was revoked by the Government on the basis of the opinion of the Advisory Board that there was no link evidence with respect to Ajesh's involvement in the case and the details regarding link evidence were not furnished to the detenu. It is also contended that in respect of the case of Rijesh, the Advisory Board gave a similar opinion as that of Ajesh's case and consequent to that opinion, the Government revoked the order of detention.

3. Referring to the counter affidavit of the first respondent, the learned Government Pleader submitted that the facts and circumstances in respect of different persons against whom different orders of detention have been passed may differ and therefore, the case of the petitioner has to be dealt with independently. It was also submitted by the learned Government Pleader that the case of the petitioner stands on a different footing and the original files would

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disclose the same. On the basis of that submission, as per the order dated 1.12.2015, we directed the Government Pleader to produce the original records with respect to Rijesh @ Oonda Rijesh and Ajesh. Those records have been produced for our perusal by the learned Government Pleader.

4. In the case of the petitioner, the detaining authority referred to five crimes against the petitioner, namely, Crime Nos.227/2010, 229/2010, 232/2010, 719/2010 and 1075/2013. On perusal of the original files with respect to Rijesh as well as Ajesh, we could find that majority of the crimes relied on in those cases are also the same crimes. In addition to the crimes referred to in Rijesh's and Ajesh's cases, Crime No.229/2010 is also referred to in the case of the petitioner.

5. In the case of Rijesh and Ajesh also, the order of detention was dated 17.3.2014. The last prejudicial activity in respect of Ajesh and Rijesh was also on 6.10.2013 as in the case of the petitioner. In the case of Rijesh, the Advisory Board opined that there was no live-link between the last prejudicial activity and the order of detention.

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The Advisory Board also found that the name of Rijesh @ Undesh did not find a place in the First Information Reports and the detaining authority did not furnish the link evidence with respect to that detenu. In the case of Ajesh also, the Advisory Board opined that the link evidence was not provided. The learned counsel for the petitioner submitted that in all the crimes in which the petitioner is stated to be involved, his name does not find a place in the first information statements. It is also submitted that the link evidence was not made available in the case of the petitioner as well.

6. In **Pawan Bhartiya v. Union of India and another [(2003) 11 SCC 479 = 2003 KHC 1793]**, detention orders were issued under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short 'COFEPOSA') against six persons. Five out of the six detention orders were revoked by the competent authority on the ground that the customs duty which was required to be paid by the detenus was paid by them before execution of the detention orders. However, in the case of the appellant therein, the detention order was not revoked even though he also paid the customs duty as demanded. In the case of Pawan Bhartiya, the

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detaining authority admitted before the Supreme Court that similar detention orders were revoked. However, it was stated that at the relevant time when the detention orders with regard to the other five persons were revoked, the perception of the Central Government was that the fact of payment of customs duty may act as a deterrent against the chance of the detenus indulging in similar prejudicial activities in future since the payment of customs duty would adversely affect their financial backbone. It was submitted before the Supreme Court that subsequently the detaining authority had changed that perception and it was contended that there was no necessity for revoking the detention order before its execution as against the appellant. In that factual background, the Supreme Court held thus:

“6. In our view, there is no reason to discriminate the appellant and the reason given by the authority in not revoking the detention order could hardly be justified. It is true that normally before the execution of the detention order the same is not required to be quashed and set aside. However, considering the peculiar facts and circumstances of the case, in our view, no purpose will be served by continuing the detention order. It is pointed out that the appellant has ceased his activities in the field of import or export. He

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has already paid the tax with penalty as demanded by the authority. There is nothing on record that since the last five years the appellant has indulged in any such activity. It is to be noted that the purpose of passing the detention order is to prevent the detenu from continuing his prejudicial activity but not to punish him.”

7. In the present case, the detention orders of two co-accused were revoked by the Government following the opinion of the Advisory Board as mentioned above. The submission of the learned counsel for the petitioner is that the case of the petitioner is also substantially similar to the case of Rijesh @ Oonda Rijesh as well as Ajesh and the detention orders against them were revoked.

8. In spite of the fact that W.P.(C) No.14956 of 2014 filed by the petitioner was dismissed by us on 12.8.2014, we are of the view that the revocation of the detention orders against Rijesh @ Oonda Rijesh and Ajesh is a relevant factor to be taken note of by the Government before execution of the order of detention against the petitioner. The petitioner submits that he came to know of the revocation of the detention orders against Rijesh @ Oonda Rijesh as well as Ajesh subsequently and therefore, he could not raise that

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point in W.P.(C) No.31954 of 2015. Though the revocation is not a subsequent event, subsequent to the disposal of W.P.(C) No.14956 of 2014, we are of the view that the revocation of the order of detention against the co-accused is also a relevant factor to be taken note of by the Government before executing the order of detention against the petitioner.

Accordingly, the Writ Petition is allowed in part and there will be a direction to the Government to consider the case of the petitioner in the light of the revocation orders in the case of Rijesh @ Oonda Rijesh as well as Ajesh and consider the question whether the detention order passed against the petitioner also requires to be revoked. A decision in this regard shall be taken within a period of three months from today. Till then, the petitioner shall not be arrested in execution of the detention order.

K.T.SANKARAN
Judge

RAJA VIJAYARAGHAVAN V.
Judge

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