

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.T.SANKARAN
&
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

TUESDAY, THE 8TH DAY OF DECEMBER 2015/17TH AGRAHAYANA, 1937

WP(C).No. 34326 of 2015 (M)

PETITIONER(S):

ELBIN, AGED 29 YEARS
S/O.DEVASSY, MITTAPILLY VEEDU, CHUNANGUMVELY BHAGOM
KEEZHMADUKARA, ALUVA EAST VILLAGE, ERNAKULAM DISTRICT

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

RESPONDENT(S):

1. STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY
GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695 001
2. DISTRICT MAGISTRATE
ERNAKULAM DIST., COLLECTORATE
KAKKANAD-682 030
3. DISTRICT SUPERINTENDENT OF POLICE CHIEF
ERNAKULAM RURAL, ERNAKULAM DIST. 682 031
4. SUB INSPECTOR OF POLICE
ALUVA POLICE STATION-683 101
5. SUB INSPECTOR OF POLICE
PERUMBAVOOR POLICE STATION, PERUMBAVOOR-683542
6. SRI.CLEETUS
SUB INSPECTOR OF POLICE, PERUMBAVOOR POLICE STATION
PERUMBAVOOR 683 542

R1-R5 BY ADV. ADDL.DIRECTOR GENERAL OF PROSECUTION
SRI.K.I.ABDUL RASHEED
R3 BY ADV. GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
08-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: A TRUE PHOTOCOPY OF THE REMAND APPLICATION OF THE 8TH
ACCUSED

EXT.P2 A TRUE PHOTOCOPY OF THE REMAND APPLICATION OF THE ACCUSED
14 TO 20

EXT.P3:A TRUE PHOTOCOPY OF THE WOUND CERTIFICATE OF THE PETITIONER

EXT.P4:A TRUE PHOTOCOPY OF THE WOUND CERTIFICATE OF THE 14TH
ACCUSED

EXT.P5:A TRUE PHOTOCOPY OF THE WOUND CERTIFICATE OF THE 19TH
ACCUSED

EXT.P6: A TRUE PHOTOCOPY OF THE PRIVATE COMPLAINT DT 24/10/14 FILED BY
THE PETITIONER

EXT.P7: A TRUE PHOTOCOPY OF THE FIR ALONG WITH THE FIS IN CRIME NO
2233/15 OF ALUVA POLICE STATION

EXT.P8: A TRUE PHOTOCOPY OF ONLINE PAGE OF MADHYAMAM DAILY DT.
27/10/15

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A. TO JUDGE

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

W.P.(C) No.34326 of 2015

Dated this the 8th day of December, 2015

JUDGMENT

K.T.Sankaran, J.

The petitioner filed this Writ Petition praying for the following reliefs:

- “(i)To issue a writ in the nature of mandamus or any other appropriate writ, order or direction compelling and commanding respondents 2 to 4 not to execute the detention order passed by the second respondent against the petitioner.
- (ii) To issue a writ in the nature of mandamus or any other appropriate writ, order or direction compelling and commanding the first respondent to produce the detention order passed by the second respondent before this Honourable Court along with the records relied on for passing the detention order.
- (iii)To call for the detention order passed against the petitioner along with the connected records and quash

- the same by the issuance of a writ in the nature of certiorari any other appropriate writ order or direction.
- (iv) To declare that the detention order passed against the petitioner by the second respondent is liable to be quashed at the pre-execution stage itself.
- (v) To grant such other reliefs as this Honourable Court may deem fit and proper in the interest of justice.”

2. The third respondent filed a counter in which it is stated as follows :

“It is respectfully submitted that this respondent not taking any further proceeding on the primary report of the Sub Inspector of Police, Aluva against the petitioner under Section 3(1) of Kerala Anti-Social Activities (Prevention) Act, 2007. This respondent is perusing the records obtained from the Sub Inspector of Police, Aluva, whether it is a fit case or not & will it fall within the ambit of Section 3(1) of Kerala Anti-Social Activities (Prevention) Act, 2007. No Action has been taken in this report so far by this respondent. Hence the approach of the petitioner by way of filing this Writ Petition is premature.”

So far, no order of detention has been passed against the petitioner. Even a challenge against the detention order at its pre-execution stage would arise when an order is already in existence. It is clear from the counter affidavit that no order of detention has so far been passed under Section 3(1) of the Kerala Anti-Social Activities (Prevention) Act. Hence, this Writ Petition is pre-mature. Accordingly, the Writ Petition is dismissed on the ground that it is pre-mature.

K.T.SANKARAN
JUDGE

RAJA VIJAYARAGHAVAN.V.
JUDGE

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