

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.T.SANKARAN
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

WP(Crl.).No. 8 of 2015 (S)

PETITIONER(S):

ALIYARKUNJU, AGED 75 YEARS
S/O.KASSIM KUNJU, KAMAL NIVAS
RANDU THAYYIL, PAZHAVEEDU P.O.
ALAPPUZHA - 688 009.

BY ADV. SRI.P.SHANES METHAR

RESPONDENT(S):

1. STATE OF KERALA
REPRESENTED BY ITS HOME SECRETARY
SECRETARIAT, THIRUVANANTHAPURAM -695 001
2. THE DISTRICT COLLECTOR & DISTRICT MAGISTRATE
ALAPPUZHA - 688 001.
3. THE DISTRICT POLICE CHIEF
ALAPPUZHA - 688 001.
4. THE CIRCLE INSPECTOR OF POLICE
ALAPPUZHA SOUTH POLICE STATION - 688 001

BY DIRECTOR GENERAL OF PROSECUTION SRI.ASAF ALI

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON
04-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(CRL) NO.8/2015

APPENDIX

EXT.P1: TRUE COPY OF THE ORDER OF DETENTION DATED 18.11.2014
PASSED BY THE SECOND RESPONDENT.

EXT.P2: TRUE COPY OF THE FINAL REPORT DATED 14.8.2014 SUBMITTED BY
THE THIRD RESPONDENT.

EXT.P3: TRUE COPY OF THE GROUNDS OF DETENTION DATED 18.11.2014.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A. TO JUDGE

K.T.SANKARAN & BABU MATHEW P JOSEPH, JJ.

W.P.(Crl) No.8 of 2015

Dated this the 4th day of March, 2015

JUDGMENT

K.T.Sankaran, J.

Kapil @ Kapil Shaji, the son of the petitioner, was detained under Section 3 of the Kerala Anti-Social Activities (Prevention) Act (hereinafter referred to as 'the KAAPA'), in execution of Exhibit P1 order of detention dated 18.11.2014. The son of the petitioner was arrested on 28.11.2014. In the order of detention, it is stated that the detainee was involved in four criminal cases, namely, Crime Nos.45 of 2010 and 540 of 2010 of Alappuzha North Police Station and also Crime Nos.96 of 2013 and 814 of 2014 of Alappuzha South Police Station. The first of the two cases were registered for the offences under the Narcotic Drugs and Psychotropic Substances Act while the

other two cases were registered for the offences under the Indian Penal Code and Juvenile Justice (Care and Protection of Children) Act. The order of detention is under challenge in this Writ Petition.

2. The learned counsel for the petitioner submitted that the last prejudicial activity in which the detenu was allegedly involved was on 16.6.2014 while the order of detention was dated 18.11.2014. There is inordinate and unexplained delay in passing the order of detention and therefore, the live link between the prejudicial activity and the purpose for which the detention is invoked has been snapped.

3. The last prejudicial activity mentioned in Exhibit P1 is with respect to Crime No.814 of 2014. It was alleged that the offence was committed on 16.6.2014. After completing the investigation, final report was filed in that case on 20.9.2014.

The detention order having been passed on 18.11.2014, it cannot be said that there is inordinate and unexplained delay in passing the order of detention. In Exhibit P1 order of detention, it is stated that the District Police Chief (Sponsoring authority) submitted a report dated 14.8.2014 in which reference was made to four cases out of which three cases were pending trial. It is stated in Exhibit P1 that since the incident in the last of the said three cases occurred more than one year before it was not expedient to invoke Section 3 of the KAAPA. It is further stated that the last of the crimes mentioned in the report (Crime No.814 of 2014) was under investigation and therefore, the sponsoring authority was directed to submit further report after filing the final report in that crime. After filing the final report in Crime No.814 of 2014 and getting a further report from the sponsoring authority, Exhibit P1 order of detention was passed on 18.11.2014. Thus it is clear that there is no unexplained delay in passing the order of detention.

4. The learned counsel for the petitioner submitted that the detenu was granted anticipatory bail in Crime No.814 of 2014 on 18.8.2014, but the detaining authority did not consider that fact before passing the order of detention. In Crime No.814 of 2014, final report was filed on 20.9.2014. An order granting anticipatory bail would have no force after the final report is filed in the case. Section 438 of the Code of Criminal Procedure enables an accused to apply under that Section to the High Court or Court of Session when he has reason to believe that he may be arrested on accusation of having committed a non-bailable offence. The consequence of making a direction by the court under Section 438 Crl.P.C. is contained in sub-section (3) of Section 438 Crl.P.C. which reads as follows :

“(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer

to give bail, he shall be released on bail, and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).”

5. After the final report is filed, the investigating officer would have no jurisdiction to arrest an accused without the warrant issued by the Magistrate having jurisdiction. Therefore, the currency of an order of anticipatory bail under Section 438 CrI.P.C. would come to an end by the filing of the final report. In the present case, the final report having been filed on 20.9.2014, it was not necessary for the detaining authority to consider the factum of granting anticipatory bail when it passed the detention order on 18.11.2014. The contention raised by the learned counsel for the petitioner in this regard is, therefore, unsustainable.

For the aforesaid reasons, we do not find any merit in the Writ Petition. The Writ Petition is accordingly dismissed.

K.T.SANKARAN
JUDGE

BABU MATHEW P.JOSEPH
JUDGE

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