

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.T. SANKARAN

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P. JOSEPH

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

WP(Crl.).No. 45 of 2015 (S)

PETITIONER:

UMMER FAROOQ, AGED 29 YEARS
S/O. AHAMMED, PONNENGLA HOUSE,
P.O. CHIPPER, VIA UPPALA,
KASARAGOD DISTRICT, KERALA.

BY ADVS. SRI. SOJAN MICHEAL
SMT. JENCY MICHEAL

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY
THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT
HOME DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695 001.
2. PRINCIPAL SECRETARY TO THE GOVERNMENT
HOME DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695 001.
3. THE DISTRICT COLLECTOR AND DISTRICT MAGISTRATE
KASARAGOD-671 121.
4. THE DISTRICT POLICE CHIEF
KASARAGOD, PIN-671 121.
5. DEPUTY SUPERINTENDENT OF POLICE
KASARAGOD, PIN-671 121.
6. SUB INSPECTOR OF POLICE
MANJESWARAM POLICE STATION, KASARAGOD-671 323.
7. THE SUPERINTENDENT OF CENTRAL PRISON
VIYYUR, THRISSUR DISTRICT-680 010.

BY ADDL. DIRECTOR GENERAL OF PROSECUTION
SRI. TOM JOSE PADINJAREKKARA

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON
05.03.2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1: TRUE COPY OF THE DETENTION ORDER DATED 20.11.2014 OF THE 3RD RESPONDENT.
- EXT.P2: TRUE COPY OF THE GROUNDS OF DETENTION DATED 20.11.2014.
- EXT.P3: TRUE COPY OF THE REPORT DATED 6.11.2014 OF THE 4TH RESPONDENT.
- EXT.P4: TRUE COPY OF THE REPRESENTATION DATED 2.12.2014 BEFORE THE 1ST RESPONDENT.
- EXT.P5: TRUE COPY OF THE REPRESENTATION DATED 2.12.2014 BEFORE THE 2ND RESPONDENT.
- EXT.P6: TRUE COPY OF THE COMMUNICATION BY THE UNDER SECRETARY DATED 11.12.2014.
- EXT.P7: TRUE COPY OF THE CERTIFICATE ISSUED BY HEADMASTER, GOVERNMENT HIGH SCHOOL, PAIVILIKE DATED 27.4.2005.
- EXT.P8: TRUE COPY OF THE EARLIER REPRESENTATION WITH COVERING LETTER DATED 27.9.2013.
- EXT.P9: TRUE COPY OF THE ORDER IN BA NO.6558/2014 DTD.16.9.2014.

RESPONDENTS' EXHIBITS:

//TRUE COPY//

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

W.P.(Crl.) No.45 of 2015 (S)

Dated this the 5th day of March, 2015

JUDGMENT

Babu Mathew P.Joseph, J.

This Writ Petition (Criminal) has been filed under Article 226 of the Constitution of India for quashing Ext.P1 detention order dated 20.11.2014 passed by the third respondent invoking his power under Section 3 of the Kerala Anti-Social Activities (Prevention) Act, 2007 (for short, KAAPA).

2. The petitioner is the first cousin of the detenu. The detenu was placed under preventive detention at the Central Prison, Kannur, by Ext.P1 order of detention passed by the third respondent, the District Magistrate. The third respondent has passed Ext.P1 exercising his powers under Section 3 of KAAPA. Pursuant to Ext.P1, the detenu was taken into custody on 25.11.2014 and admitted him to the Central Prison, Kannur. Subsequently, he was

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transferred to the Central Prison, Viyyur, and he is continuing under detention there. Ext.P1 order has been approved by the Government, the first respondent, as per order dated 4.12.2014. The Advisory Board sent a report dated 15.1.2015 finding that there was sufficient cause to detain the detenu. Thereafter, the first respondent has issued order dated 22.1.2015 confirming the order of detention and directing to continue the detention for six months from the date of detention. The petitioner challenges Ext.P1 order of detention on various grounds in this Writ Petition.

3. Heard Sri.Sojan Micheal, the learned counsel appearing for the petitioner, and Sri.Tom Jose Padinjarekkara, the learned Additional State Public Prosecutor appearing for the respondents.

4. The District Police Chief, the fourth respondent, submitted Ext.P3 report dated 6.11.2014 before the third respondent requesting him to pass an order under Section 3 of KAAPA for detaining the detenu as he is a 'known rowdy' indulging himself in anti-social activities necessitating his detention. The third respondent, after considering Ext.P3, found the detenu to be a 'known rowdy' as

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defined under Section 2(p) of KAAPA. The third respondent, in Ext.P1 order of detention, relied on six criminal cases in which the detenu is involved. For disposing of this matter, the details of those cases are not necessary.

5. The detenu was ordered to be detained on an earlier occasion invoking the powers under Section 3 of KAAPA as per order dated 5.9.2013 of the third respondent. But, based on the report of the Advisory Board, that detention order was revoked by order dated 28.10.2013 and, accordingly, he was released from jail on 31.10.2013.

6. The petitioner has raised various contentions challenging Ext.P1 detention order. For the purpose of disposing of this Writ Petition, we need not go into all those contentions. Learned counsel for the petitioner submits that the detenu knows only Kannada. He does not know Malayalam. The grounds relied on by the third respondent while passing Ext.P1 order and all other documents supplied to the detenu were in Malayalam, a language not known to the detenu. When the earlier order of detention was passed by the

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third respondent, the copies of the relevant documents given to the detenu were also in Malayalam. In view of the fact that the documents supplied to the detenu were in Malayalam, the detenu was deprived of an opportunity to understand the contents of those documents enabling himself to effectively represent against the detention order. Moreover, it is a violation of Article 22(5) of the Constitution of India.

7. There is no dispute regarding the fact that all the documents supplied to the detenu were in Malayalam. We have perused the relevant records and satisfied ourselves that the detenu made the endorsements, while receiving the documents, in Kannada. Moreover, the respondents could not point out any reason to believe that the detenu is a person knowing Malayalam. Learned Additional State Public Prosecutor submitted that the detenu made a representation on the earlier occasion in Malayalam after receiving the documents in Malayalam. On this occasion also, after receiving the documents, he has submitted a representation prepared in English. So, on both the occasions, the detenu could effectively represent the matter against the detention order before the

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authorities. Therefore, he cannot be treated as a person who was deprived of an opportunity to understand the contents of the documents which were supplied to him in Malayalam. This argument of the learned Additional State Public Prosecutor is far fetched. Supplying documents in the language known to the detenu is a constitutional mandate as enshrined under Article 22(5) of the Constitution. A person after receiving the documents supplied in a language not known to him may be able to contact a person who knows that language and prepare a representation in the language known to the person to whom he has contacted. That does not mean the detenu was given an effective opportunity to represent against the detention order and the grounds relied on for passing such an order. In that view of the matter, the argument so advanced by the learned Additional State Public Prosecutor is liable to be rejected and hence, we do so.

8. The Honourable Supreme Court has dealt with this question in **A.C.Razia v. Govt. of Kerala and others (2004 SCC (Cri) 618)** and has held as follows:

“10. We are concerned here with clause (5) of

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Art. 22. The dual rights under clause (5) are : (i) the right to be informed as soon as may be of the grounds on which the order has been made, that is to say, the grounds on which the subjective satisfaction has been formed by the detaining authority, and (ii) the right to be afforded the earliest opportunity of making a representation against the order of detention. By judicial craftsmanship certain ancillary and concomitant rights have been read into this Article so as to effectuate the guarantees/safeguards envisaged by the Constitution under Clause (5) of Article 22. For instance, it has been laid down by this Court that the grounds of detention together with the supporting documents should be made available to the detenu in a language known to the detenu.”

Therefore, in the light of the ruling of the Honourable Supreme Court, the grounds of detention together with the supporting documents should be made available to the detenu in a language known to him.

9. A Division Bench of this Court in **Riswana Begam v. State of Kerala & Others** (2009(2) KLJ 233) has also considered such a question and has held as follows:

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“11. The right of the detainee to make an effective and meaningful representation cannot be doubted. To make an effective and meaningful representation, the allegations made against the detainee in the grounds of detention and the materials on which such grounds are founded must be made known to the detainee. If the grounds of detention and the documents supplied to him are in a language not known to him, it cannot be said that there was a communication within the meaning of Article 22(5) of the Constitution of India. Communication means an effective communication and making known to the detainee the facts and circumstances and the grounds on which the order of detention is founded. Without such an effective communication, it cannot be said that the detainee was afforded the earliest opportunity of making a representation against the order of detention, as provided in Article 22(5) of the Constitution. In the light of the decisions of the Supreme Court and of the Madras High Court referred to above, we are of the view that the respondents have not complied with the mandate of Article 22(5) of the Constitution of India. The order of detention is, therefore, liable to be set aside.”

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10. In the light of the foregoing rulings of the Honourable Supreme Court as well as this Court, there was violation of the mandatory provisions under Article 22(5) of the Constitution by not supplying the documents to the detenu in a language known to him and supplying the documents in a language not known to him. This vitiates the detention order in question.

11. For the foregoing reasons, Ext.P1 detention order passed by the third respondent is liable to be quashed and the detenu is entitled to be released forthwith.

12. In the result, Ext.P1 order No.D1/52201/2014(1) dated 20.11.2014 passed by the third respondent, the District Magistrate, Kasargode, is quashed. The seventh respondent, the Superintendent, Central Prison, Viyyur, is directed to release the detenu Sri.P.Mohammed Sakariya @ Jakki @ Saakki forthwith unless he is wanted in some other cases.

13. The Writ Petition (Criminal) is allowed.

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The Registry is directed to send the gist of the judgment forthwith to the Superintendent, Central Prison, Viyyur, for compliance.

K.T.SANKARAN
Judge

BABU MATHEW P. JOSEPH
Judge

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