

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.T.SANKARAN
&
THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

WP(Crl.).No. 172 of 2015 (S)

PETITIONER(S):

SEENA
W/O.ANWAR, PUTHIYAVEETIL THEKKATHIL, PERINGALAMURI
KAYAMKULAM VILLAGE
FROM KALEEKKAL KIZHAKKATHIL VEEDU, PERINGALAMURI
KAYAMKULAM VILLAGE, ALAPPUZHA DISTRICT.

BY ADV. SRI.C.RAJENDRAN

RESPONDENT(S):

1. STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY
GOVERNMENT OF KERALA (HOME DEPARTMENT)
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.
2. DISTRICT MAGISTRATE
ALAPPUZHA DISTRICT, ALAPPUZHA-688001.
3. DISTRICT POLICE CHIEF
ALAPPUZHA DISTRICT, ALAPPUZHA-688001.
4. SUB INSPECTOR OF POLICE
KAYAMKULAM POLICE STATION
ALAPPUZHA DISTRICT-690502.
5. THE SUPERINTENDENT
CENTRAL PRISON, VIYYUR, THRISSUR-680010.

BY ADV. GOVERNMENT PLEADER SMT.KOCHUMOL KADAVATH

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON
19-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT-P1: A TRUE PHOTOCOPY OF THE DETENTION ORDER BEARING
NO.SC6-51299/14 DATED 15.01.2015.

EXHIBIT-P2: A TRUE PHOTOCOPY OF THE GROUNDS FOR THE DETENTION
ISSUED BY THE 2ND RESPONDENT TO THE DETENU DATED
15.01.2015.

EXHIBIT-P3: A TRUE PHOTOCOPY OF THE MEMO FOR EXECUTING ORDER OF
DETENTION DATED 15.01.2015.

EXHIBIT-P4: A TRUE PHOTOCOPY OF THE JAIL ADMISSION AUTHORIZATION
DATED 15.01.2015 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT-P5: A TRUE PHOTOCOPY OF THE F.I.R. NO.266/2009 AND THE
REPORT SUBMITTED BEFORE THE SUB DIVISIONAL MAGISTRATE
COURT, CHENGANNUR.

EXHIBIT-P6: A TRUE PHOTOCOPY OF THE REPORT DATED 30.10.2014
SUBMITTED BY THE DISTRICT POLICE CHIEF, ALAPPUZHA.

EXHIBIT-P7: A TRUE PHOTOCOPY OF THE ORDER OF APPROVAL GIVEN TO THE
JAIL AUTHORITIES.

EXHIBIT-P8: A TRUE PHOTOCOPY OF THE DETENTION ORDER DATED
21.06.2013.

EXHIBIT-P9: A TRUE PHOTOCOPY OF THE REPRESENTATION SENT TO THE
ADDITIONAL CHIEF SECRETARY, HOME DEPARTMENT DATED
17.03.2015.

EXHIBIT-P10: A TRUE PHOTOCOPY OF THE ORDER SERVED BY THE 5TH
RESPONDENT REJECTING THE REPRESENTATION ON 04.04.2015.

EXHIBIT-P11: A TRUE PHOTOCOPY OF THE ORDER DATED 20.03.2015.

RESPONDENTS' EXHIBITS

NIL

//TRUE COPY//

P.A. TO JUDGE

K.T.SANKARAN & B.SUDHEENDRA KUMAR, JJ.

W.P.(Crl.) No.172 of 2015

Dated this the 19th day of August, 2015

JUDGMENT

K.T.Sankaran, J.

Anwar, the husband of the petitioner, was detained under Section 3(1) of the Kerala Anti-Social Activities (Prevention) Act (hereinafter referred to as 'the KAAPA') as per the order No.S.C6-51299/14 dated 15.1.2015. The order of detention was executed on 26.1.2015. After the Advisory Board gave its opinion, the order of detention was confirmed as per Exhibit P11 order dated 20.3.2015 issued by the Government under Section 10(4) of the KAAPA. The detenu is undergoing detention. The order of detention as well as the continued detention of the detenu are under challenge in this Writ Petition.

2. The detenu who was detained as per an earlier order

of detention dated 21.6.2013, pursuant to which he was arrested and detained on 15.9.2013. Though that order of detention was challenged in a Writ Petition filed before the High Court, the Writ Petition was dismissed. The detenu completed the term of detention as per the order dated 21.6.2013. Thereafter, the allegation is that the detenu is involved in another crime registered as Crime No.1565 of 2014 at Kayamkulam Police Station. The date of occurrence with respect to Crime No.1565 of 2014 was on 1.6.2014.

3. The contention put forward by the learned counsel for the petitioner on the basis of Article 20(1) of the Constitution of India was answered by us in W.P.(CrI.) No.192 of 2015 and we held thus :

“Going by Article 20(1) what is prohibited is the conviction of a person in respect of an offence except for

violation of law in force at the time when the offence was committed. Such an accused shall not be subjected to a penalty greater than the penalty which could be inflicted under the law in force at the time of the commission of the offence. Article 20(1) speaks of conviction for an offence and the penalty to be imposed under the law in force. Preventive detention is not punitive. In the matter of preventive detention, no offence as such is involved for which the detenu is found guilty and detained. On the other hand, a person would be detained under the KAAPA on the ground that he is involved in cases which would satisfy the definition of known goonda or known rowdy and he involves in any anti-social activity as defined under the KAAPA. In other words, the detention is not for having committed the offence mentioned in the detention order, but for preventing him from involving in similar activities in future.

Therefore, the period of detention is not a term of imprisonment on a conviction for an offence nor a penalty imposed on the detenu. Therefore, we are of the view that Article 20(1) of the Constitution of India does not apply in the case on hand as contended by the learned counsel for the petitioner. We are fortified in arriving at this conclusion by the decision of the Bombay High Court in **Pralhad Krishna Kurane v. The State of Bombay : AIR 1952 Bombay (1) and Rameshchandra v. The State : AIR 1955 Bombay 346.**”

4. The next contention raised by the learned counsel for the petitioner is that had not the amended provision been applied, the detenu could have been detained only for a maximum period of six months. Under the amended Section 12, the maximum period for which a person could be detained in pursuance of an order of subsequent detention is up to a

period of one year. In the present case, the petitioner is under detention since 26.1.2015 and the period of six months is over. The authority confirming the order of detention has not shown any reason in Exhibit P11 as to why the maximum period of one year is imposed. That power was exercised in view of the amended Section 12 which came into force after the last prejudicial activity on the basis of which the detention order was passed. It is true that the amended provision would apply in respect of an order of detention passed after the amendment. The number of cases in this category of cases, namely, passing an order of detention after coming into force of the amendment Act in respect of an incident which took place before the amendment, are few and limited. Therefore, though as a matter of principle, it cannot be said that in every order of confirmation, the period should be fixed after stating reasons, in

these category of cases, we are of the view that confirming authority should have applied their mind and decided whether the amended provision should be invoked.

For the aforesaid reasons, we allow the Writ Petition holding that the continued detention of the detenu is illegal and setting him at liberty forthwith, unless his detention is required in connection with any other case. The Registry will communicate the gist of the order to the Superintendent of the prison concerned for complying with the direction.

**K.T.SANKARAN
JUDGE**

**B.SUDHEENDRA KUMAR
JUDGE**

Gist of the Judgment

The detenu, Anwar, who has been detained in Central Prison, Viyyur, as per order No.S.C.6-51299/14 dated 15.1.2015 issued by the District Magistrate, Alappuzha, shall be released forthwith unless his continued detention is required in connection with any other case.