

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 9TH DAY OF SEPTEMBER 2015/18TH BHADRA, 1937

WP(Crl.).No. 202 of 2015 (S)

PETITIONER(S):

SEETHADEVI, AGED 59 YEARS
W/O.BHUVANACHANDRAN, T.C.28/2603
PANDARAVILAKAM VEEDU
VANCHIYOOR BHAVAN, VANCHIYOOR VILLAGE
THIRUVANANTHAPURAM.

BY ADV. SRI.C.RAJENDRAN

RESPONDENT(S):

1. STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY TO
GOVERNMENT OF KERALA (HOME DEPARTMENT)
GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695001.
2. DISTRICT MAGISTRATE
THIRUVANANTHAPURAM DISTRICT – 695 001.
3. DISTRICT POLICE CHIEF
THIRUVANANTHAPURAM DISTRICT – 695 001.
4. SUB INSPECTOR OF POLICE
FORT POLICE STATION
THIRUVANANTHAPURAM DISTRICT-695 001.
5. SUB INSEPCTOR OF POLICE
VANCHIYOOR POLICE STATION
THIRUVANANTHAPURAM DISTRICT.
6. THE SUPERINTENDENT
CENTRAL PRISON, VIYYUR
THRISSUR 680 010.

R1 BY GOVERNMENT PLEADER SMT.KOCHUMOL KADAVATH

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON
09-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

- EXT. P1 : TRUE COPY OF THE DETENTION ORDER DT.15-3-2015.
- EXT. P2 : TRUE COPY OF THE GROUNDS FOR PASSING EXT.P1 ORDER.
- EXT. P3 : TRUE COPY OF THE REPORT DT.22-2-15.
- EXT. P4 : TRUE COPY OF THE MEMO DT.15-3-15.
- EXT. P5 : TRUE COPY OF THE JAIL ADMISSION ORDER DT.15-3-15.
- EXT. P6 : TRUE COPY OF THE INDEX OF DOCUMENTS GIVEN TO THE DETENU.
- EXT. P7 : TRUE COPY OF THE MEMORANDUM GRANTING BAIL TO THE DETENU BY
THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT,
THIRUVANANTHAPURAM DT.17-2-2011.
- EXT. P8 : TRUE COPY OF THE FIR, FIS IN CRIME 1274/12 OF VANCHIYOOR POLICE
STATION.
- EXT. P9 : TRUE COPY OF THE FIR, FIS IN CR.NO.44/15 OF FORT POLICE STATION.
- EXT.P10: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE DETENU
DT.23-4-15.
- EXT.P11 : TRUE COPY OF THE KERALA ANTI-SOCIAL ACTIVITIES (PREVENTION)
AMENDMENT ACT BILL, 2014.
- EXHIBIT P12: TRUE COPY OF THE PREVENTIVE DETENTION ACT, 1950.
- EXHIBIT P13: TRUE COPY OF THE BAIL ORDER DATED 22.1.2015 OF THE JUDICIAL
FIRST CLASS MAGISTRATE COURT, THIRUVANANTHAPURAM.
- EXHIBIT P14: TRUE COPY OF THE APPROVAL ORDER DATED 31.3.2015.
- EXHIBIT P15: TRUE COPY OF THE ORDER DATED 2.5.2015 REJECTING THE
REPRESENTATION.
- EXHIBIT P16: TRUE COPY OF THE CONFIRMATION ORDER DATED 19.5.2015.

RESPONDENT(S)' EXHIBITS :

- EXHIBIT R3(a) : TRUE COPY OF THE CONFIRMATION ORDER NO.27829/SS
A5/2015 HOME DATED 31.3.2015.
- EXHIBIT R3(b): TRUE COPY OF THE INDEX OF ITEMS HANDED OVER TO THE
DETENU.

//TRUE COPY//

P.A. TO JUDGE

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

W.P.(Crl.) No.202 of 2015

Dated this the 9th day of September, 2015

JUDGMENT

K.T.Sankaran, J.

The petitioner, the mother of Bejoy @ Kunnumpuram Unni who has been detained under Section 3(1) of the Kerala Anti-Social Activities (Prevention) Act (hereinafter referred to as 'the KAAPA'), challenges Exhibit P1 order of detention dated 15.3.2015 as well as the continued detention of the detenu.

2. The detenu was involved in several criminal cases and an order of detention under Section 3(1) of the KAAPA was passed on 28.3.2009 which was executed on 7.6.2009. Though that order of detention was challenged in W.P.(Crl) No.430 of

2009, this Court dismissed the Writ Petition. The detenu completed the period of detention on 6.3.2009.

3. The present order of detention dated 15.3.2015 was passed alleging that after the detenu was released from jail, he was involved in four criminal cases of serious nature affecting public order. Therefore, Exhibit P1 order of detention dated 15.3.2015 was passed on the ground that the detenu is a known rowdy and his detention is required to prevent him from committing anti-social activities within the State of Kerala. The order of detention was executed on 22.3.2015. The Government approved the order of detention on 31.3.2015. As per Exhibit P16 order dated 19.5.2015, the order of detention was confirmed and the detenu was directed to be detained for a period of one year with effect from the date of detention.

4. The learned counsel for the petitioner submitted that there was no justification for ordering detention of the detenu for a period of one year since the order of detention was not issued as provided under Section 13(2) of the KAAPA, but it was issued on the ground that four new cases were registered against the detenu. The other cases taken into account as per the previous detention order are not in existence. The counsel submitted that since the order of detention is a fresh one, the maximum period for which the detenu could be detained would be only six months and not the extended period of one year under Section 12 of the KAAPA as amended by the Kerala Anti-Social Activities (Prevention) Amendment Act, 2014.

5. To consider the contentions put forward by the learned counsel for the petitioner, it would be apposite to refer to Section 12 before its amendment and Section 12 as amended.

Section 12 of the KAAPA before its amendment by Act 41 of 2014 was as follows :

“12. The maximum period for which any person may be detained in pursuance of any detention order made under this Act, which has been confirmed under Section 10, shall not exceed six months from the date of detention.”

6. Section 12 was substituted by Amendment Act 41 of 2014 and after the amendment that Section reads as follows :

“12. Maximum period of detention. In pursuance of the first detention order made against any person under this Act and confirmed under Section 10, he may be detained for a period which may extend up to six months from the date of the detention and in pursuance of such subsequent detention order made against such person, he may be detained for a period which may extend up to a maximum of one year.”

7. Section 13 of the KAAPA is also relevant in this context which reads as follows :

“13. Revocation of detention order :- (1) A detention order may, at any time, be revoked or modified by the Government.

(2) The revocation or expiry of a detention order shall not be a bar for the issuance of another detention order under Section 3 against the same person, if he continues to be a person falling within the definition of known rowdy or known goonda as given in Section 2(o) or Section 2(p) and if, -

(i) after release, he is, found to have, again involved in an offence of the nature described in Section 2(o) or Section 2(p) at least in one instance ; or

(ii) the facts, which came to the notice of the Government or the authorised officer after the issuance of the earlier detention order, considered along with previously known facts are sufficient to cause a reasonable apprehension that he is likely to indulge in or promote or abet anti-social activities ; or

(iii) the procedural errors or omissions, by reason of which the first order was revoked, are rectified in the procedure followed with regard to the

subsequent order, even if the subsequent order is based on the very same facts as the first order.”

8. The revocation or expiry of a detention order is not a bar for the issuance of another detention order under Section 3 against the same person, if any of the conditions mentioned in sub-clauses (i), (ii) or (iii) of sub-section (2) of Section 13 is satisfied. Section 13(2) as such does not provide for a detention order to be passed under that section, but it provides that there is no bar for the issuance of another detention order under Section 3. That means if another order of detention is to be passed on satisfaction of any of the conditions mentioned in Section 13(2), that order of detention has to be passed under Section 3(1) of the KAAPA. Thereafter, all the procedures and safeguards as provided under Sections 4 to 13 as well as the other relevant provisions under the KAAPA would apply.

9. Section 13(2) (iii) as well as Section 12 as amended mentions about “subsequent” detention order even after the expiry of a previous detention order. If the person concerned is found to have again involved in an offence of the nature described in Section 2(o) or Section 2(p), at least in one instance, a subsequent order of detention can be passed under Section 3(1). Even without committing any further offence, a subsequent order of detention can be passed, if the conditions mentioned in sub-clause (ii) of sub-section (2) of Section 13 are satisfied. If an order of detention is revoked on the ground of procedural errors or omissions, a subsequent order can be passed after rectifying such errors or omissions. Even without invoking the conditions mentioned in clauses (i), (ii) and (iii) of sub-section (2) of Section 13, nothing prevents the detaining authority from passing an order of detention, if the necessary conditions to classify the person as a known goonda or known

rowdy are satisfied. That order does not cease to be a “subsequent order” of detention within the meaning of Section 12 as amended. That means even if a person is detained by a subsequent order without taking shelter under any of the clauses in sub-section (2) of Section 13, he can be detained for more than six months, provided all the other conditions to term the detention as a subsequent detention order are satisfied. If the contention put forward by the learned counsel for the petitioner is accepted, it would have anomalous results. For example, if a person who commits a single offence after release under the first detention order, a subsequent detention order can be passed under Section 3(1). Without referring to any previous order of detention, an order of detention can be passed against a person, if the person concerned is involved in sufficient number of crimes to satisfy the definition of known goonda or known rowdy. If the contention of the petitioner is

accepted, the person who is involved in more crimes after the expiry of the first detention order cannot be detained for more than six months whereas a person who has committed only one crime after expiration of the first detention order could be detained for a period of one year. This anomalous result is not what is contemplated under Section 12 of the Amended Act. What is intended by Section 12 as amended is that if the person concerned indulges in any anti-social activity even after he is detained under the earlier order of detention, he can be detained further and that further detention could be for a larger period, namely, up to one year. It is mentioned in the order of detention in the case on hand that the earlier order of detention has not deterred the detenu from committing anti-social activities even after the expiry of his detention under the first order of detention. All the necessary grounds to attract Section 12 have been mentioned in the order of detention itself. Moreover, even

in the representation submitted by the detenu, there is mention of the previous detention order and his release after completing the period of detention. Therefore, we are not inclined to accept the contention put forward by the learned counsel for the petitioner that there is no justification for invoking Section 12 to impose an extended term of detention for a period of one year under Section 12 as amended.

10. The learned counsel for the petitioner submitted that the order of detention was passed on 15.3.2015, it was executed on 22.3.2015 and the order of detention was approved on 31.3.2015 under Section 3(3) of the KAAPA. It is submitted that in the counter affidavit filed by the first respondent, it is mentioned that the submission of proposal to the Government was made on 26.3.2015 and it was approved on 31.3.2015. The learned counsel submitted that Section 3(3) mandates that when

an order is made under Section 3 by the authorised officer, he shall forthwith report the fact to the Government and the Director General of Police, Kerala, together with a copy of the order and supporting records. The learned counsel submitted that the word “forthwith” occurring in Section 3(3) means that the authorised officer could not have waited to submit the proposal till 26.3.2015 after passing the order on 15.3.2015. It is also submitted that in the present case, since the proposal was stated to be made on 26.3.2015, the Government did not get sufficient time to apply mind before approving the order on 31.3.2015. The learned counsel relied on the decision of the Supreme Court in **Keshav Nilkanth Joglekar and others v. The Commissioner of Police, Greater Bombay and others : AIR 1957 Supreme Court 28.**

11. The learned Government Pleader submitted that the

report under sub-section (3) of Section 3 was sent on 16.3.2015 itself and it was received by the Government on that date. The relevant records were produced for our perusal which clearly shows that the report dated 15.3.2015 was received by the Government on 16.3.2015. It would appear that on 26.3.2015, another letter was addressed by the District Collector to the Additional Chief Secretary to the Government. But that letter was sent to intimate that the order of detention was executed on 22.3.2015. The averment in the counter affidavit of the first respondent that the report was sent on 26.3.2015 under Section 3(3) is a mistake.

12. In **Keshav Nilkanth Joglekar and others v. The Commissioner of Police, Greater Bombay and others : AIR 1957 Supreme Court 28**, an order of detention under Section 3(2) of the Preventive Detention Act, 1950 was passed. Arrest

was made on 16.1.1956. Report was made by the authorised officer on 21.1.1956 to the State Government. The Government approved the order of detention on 23.1.1956. Section 3(3) of the Preventive Detention Act, 1950 provides that when any order of preventive detention is made, the authorised officer shall forthwith report the fact to the State Government. Section 3(3) also provides that no such order shall remain in force for more than twelve days after making thereof unless in the mean time it has been approved by the State Government. Section 3(3) of the KAAPA is more or less similarly worded as Section 3(3) of the Preventive Detention Act. (However, the period of 12 days under Section 3(3) of the KAAPA is to be computed from the date of detention, whereas under the Preventive Detention Act, 1950, the period of twelve days is to be computed from the date of making the order.) In **Keshav Nilkanth Joglekar v. The Commissioner of Police, Greater**

Bombay and others : AIR 1957 Supreme Court 28,
interpreting the words “forthwith” occurring in Section 3(3)
and the words “as soon as may be” occurring in Section 7, the
Supreme Court held thus :

“(10) We agree that “forthwith” in Section 3(3) cannot mean the same thing as “as soon as may be” in Section 7 and that the former is more peremptory than the latter. The difference between the two expression lies, in our opinion, in this that while under Section 7 the time that is allowed to the authority to send the communication to the detenu is what is reasonably convenient, under Section 3(3) what is allowed is only the period during which he could not, without any fault of his own, send the report.

Under Section 7, the question is whether the time taken for communicating the grounds is reasonable requisite. Under Section 3(3) it is whether the report has been sent at the earliest point of time possible, and when there is an interval of time between the date of the order and the date of the report, what has to be considered is whether the delay in sending the report could have been avoided.”

13. In that case, the report under Section 3(3) was made on the eighth day of issuing the order of detention whereas five days is provided under Section 7(3) where the words “as soon as may be” occurred. The Supreme Court further held thus :

“It will be as erroneous to read 5 days into the period allowable under the expression “as soon as may be” as to read the 12 days within which the State has to approve the order under Section 3(3) into the period which is allowable under the expression “forthwith”. The result then is that the report sent by the Commissioner to the State on 21.1.1956 could be held to have been sent “forthwith” as required by Section 3(3), only if the authority could satisfy us that, in spite of all diligence, it was not in a position to send the report during the period from 13th to 21st January 1956.”

14. The Supreme Court in Keshav Nilkanth's case also noticed that there occurred riots in Bombay at the time when

the order of detention was passed and which continued for about a week.

15. The order of detention made by the authorised officer under Section 3 of the KAAPA shall not remain in force for more than 12 days, excluding public holidays, from the date of detention of the known goonda or known rowdy, unless before the expiry of that period, the order has been approved by the Government or by the Secretary, Home Department if generally so authorised in this regard by the Government. The period of 12 days commences from the date of detention. There may be cases where the order of detention is executed after several weeks of the date of the order. Is it sufficient that the report contemplated under Section 3(3) be sent after the date of detention or is it necessary that the report should be forthwith sent to the Government after making the order of detention?

The order of detention made by the authorised officer is required to be approved by the Government. That approval should be made within 12 days from the date of detention of the person concerned. Whatever may be the date on which the order of detention is executed and the person detained, the report to be made by the authorised officer to the Government shall be done forthwith after making the order of detention. In other words, irrespective of the date of execution of the order of detention, the authorised officer is bound to forthwith make the report under Section 3(3) to the Government. The making of the report under Section 3(3) and the execution of the order of detention is not interconnected. The authorised officer need not be concerned about the execution of the order to comply with the mandate under Section 3(3) to make the report to the Government. The authorised officer has to forthwith report the fact to the Government after making the order of detention.

The contention put forward by the learned counsel for the petitioner in this regard is worthy of acceptance. However, on facts, we find that in the present case, the order of detention dated 15.3.2015 was forwarded along with the report to the Government by the authorised officer immediately after the order is made and the report was received by the Government on 16.3.2015. Therefore, there is no violation of the mandate under Section 3(3) of the KAAPA. The ground raised by the petitioner in this regard challenging the validity of the order of detention is liable to be rejected, though the contention raised by the petitioner with respect to the interpretation of the word “forthwith” is liable to be accepted.

16. The learned counsel for the petitioner submitted that Exhibit P10 representation dated 23.4.2015 submitted by the detenu was disposed of and it was served on the detenu on

6.5.2015. The representation was disposed of on 2.5.2015. It is submitted that the delay in disposing of the representation is not satisfactorily explained. On a perusal of the records, it is seen that the representation dated 23.4.2015 was forwarded by the Superintendent of Prison, Viyyur, to the Additional Chief Secretary on 24.4.2015. It was received by the Additional Chief Secretary on 29.4.2015. The first day of May being a holiday, the representation disposed of on 2.5.2015 cannot be said to be delayed. The order rejecting the representation was served on the detenu on 6.5.2015. In the facts and circumstances, it cannot be held that there was delay in disposing of the representation submitted by the detenu.

17. The learned counsel for the petitioner submitted that Exhibit P1 order of detention makes it clear that the detaining authority relied on the bail orders passed by the learned

Magistrate. But copies of the bail orders were not supplied to the detenu and there is infraction of Section 7(2) of the KAAPA.

18. The learned Government Pleader submitted that the official memoranda from court received by the investigating officer indicating grant of bail was served on the detenu. The bail order as such was not before the detaining authority and what the detaining authority relied on was the official memoranda from court which contains all the conditions of bail. Therefore, it is submitted that there is no violation of Section 7(2) of the KAAPA. The official memorandum issued by court to the investigating officer shows the crime number, the names of the accused and the conditions on which bail was granted. The official memoranda in respect of various crimes were served on the detenu and such memoranda are produced in

the Writ Petition by the Writ Petitioner.

19. Exhibit P10 representation submitted by the petitioner shows that the sponsoring authority did not produce the orders granting bail before the detaining authority. Thus it is clear that the documents placed before the detaining authority and relied upon by the detaining authority were the official memoranda issued by the court and not the bail orders as such. Duty of the detaining authority is to supply copies of the documents relied upon by him and it was complied with in the present case. Then the question arises whether the subjective satisfaction of the detaining authority is vitiated since the order granting bail as such was not considered by the detaining authority. On a perusal of the official memorandum, it is seen that all the necessary details with respect to the case, namely, crime number, police station, name of the accused, the fact that

bail was granted to the accused and the conditions of bail have been incorporated in the official memorandum. Therefore, it cannot be said that the subjective satisfaction arrived at by the detaining authority is vitiated due to non-perusal of the orders granting bail as such.

20. The learned counsel for the petitioner submitted that in the last case, namely, Crime No.44 of 2015 referred to in the order of detention, bail was granted to the detenu as per the order dated 22.1.2015. One of the conditions imposed while granting bail is that the detenu shall report before the investigating officer on every Wednesday till 31.3.2015. The order of detention was passed on 15.3.2015, that is, before the expiry of 31.3.2015. It is submitted that the subjective satisfaction arrived at by the detaining authority is vitiated, since the fact that the detenu had to appear till 31.3.2015 was

not considered by the detaining authority. The learned counsel submitted that the detaining authority was under the wrong impression that the conditions of bail in Crime No.44 of 2015 were not in existence, and such a statement is seen made in Exhibit P1 order of detention and Exhibit P2 grounds of detention. The learned Government Pleader submitted that in all the four cases referred to in the order of detention, final reports were filed and the conditions of bail would cease to exist on the filing of the final report in the cases. Therefore, the condition imposed while granting bail in Crime No.44 of 2015 did not survive after 30.1.2015, the date on which final report was filed in that case. It is submitted that the detention order was passed thereafter and it cannot be faulted on the ground that the subjective satisfaction arrived at by the detaining authority is vitiated.

21. It is true that in Crime No.44 of 2015, one of the conditions stipulated while granting bail was that detenu should appear before the investigating officer till 31.3.2015. Bail granted at the crime stage would be operative during the stage of investigation. After the final report is filed, the court will issue either the summons or warrant to the accused and on production before court, the accused has to execute fresh bond for bail. It cannot be said that after filing the final report on 30.1.2015 in Crime No.44 of 2015, the condition in the bail order that the accused should appear before the investigating officer till 31.3.2015 would survive. Therefore, it cannot be said that the subjective satisfaction arrived at by the detaining authority is vitiated.

22. Lastly, the learned counsel for the petitioner submitted that in Exhibit P5 jail admission authorisation dated

15.3.2015 issued by the authorised officer to the Superintendent of Central Jail, Thiruvananthapuram, it was stated as follows :

“It is further informed that the Government will communicate to you an order of the Government confirming this detention. If you do not receive such an order within 12 days, excluding gazetted holidays, of the date of the detention, you shall set the detenu at liberty immediately thereafter.”

In ground No.'E' of the Writ Petition, it is stated that the detenu was not given a copy of the order approving Exhibit P1 order of detention. It is submitted that, therefore, his continued detention is illegal. In the counter affidavit filed by the first respondent, this contention is denied and it is stated that a copy of the order of approval was served on the detenu through a Superintendent of Central Prison, Viyyur on 31.3.2015 “and obtained the dated acknowledgment of the detenu”. In the reply affidavit filed by

the petitioner, it is denied that the order approving the detention order was served on the detenu on 31.3.2015.

23. On a perusal of the records, it is seen that the order of approval was communicated to the detenu and he put his signature and thump impression on the order of approval. However, no date is affixed under his signature. It was countersigned by the Superintendent of Central Prison, Viyyur. However, there is no date also under the signature of the Superintendent of Central Prison, Viyyur. On the face of the document, there is only one date, namely, 31.3.2015, the date on which the Additional Chief Secretary to the Government (Home&Vigilance) put her signature. There is no other date on the document to indicate as to when it was dispatched, as to when it was received by the Superintendent of Central Prison and on what date it was communicated to the detenu. The

necessary details to be entered in an official record are conspicuously absent on the order of approval which was communicated to the detenu and countersigned by the Superintendent of Central Prison. It is possible to reject the contention put forward in the counter affidavit that the order of approval was served on the detenu on 31.3.2015 on the basis of the casual manner in which the records are kept. But at the same, we take it that the official acts were performed properly after the order of approval dated 31.3.2015 was passed and the order of approval was duly forwarded by the Government to be served on the detenu. There is no reason to believe that the Superintendent of Central Prison did not take necessary steps promptly to communicate the order of approval to the detenu. It is relevant to note in this context that the contention raised by the detenu that the order of approval was not served on him is incorrect on the face of the record.

24. The jail admission authorisation issued by the authorised officer to the Superintendent of Jail indicates that if the Superintendent of Jail does not receive an order confirming the detention within 12 days, the Superintendent shall set the detenu at liberty immediately thereafter. This statement is contrary to Section 3(3) of the KAAPA. If the order of detention is not approved within 12 days, excluding public holidays from the date of detention of the person concerned, as provided in Section 3(3), the order of detention shall not remain in force beyond that period. It is not the date of communication to the Superintendent of Jail that is relevant under Section 3(3), but the date on which the approval is made by the Government or by the Secretary (Home Department), as the case may be. The date on which the Superintendent of Jail receives the order approving the detention is not relevant at all for considering whether the order of detention is in force or not. The only

relevant factor is the date of approval and not the date of its communication. It can be illustrated as follows : It is possible to communicate an order of approval passed by the Government to a detenu in the Central Prison, Thiruvananthapuram, on the same day, but it may not be possible always to serve the order of approval to a detenu who is detained in the Central Prison, Viyyur or Kannur, on the same date on which the order of approval is made. If the date of communication of the order of approval is taken as the relevant date, it would have different results in respect of different detenus detained under different orders executed on the same date. Therefore, we are of the view that the last paragraph in Exhibit P5 jail admission authorisation (as extracted in paragraph 22 above) does not contain the correct interpretation of Section 3(3) of the KAAPA.

25. It is true that the order of approval under Section 3(3) of the KAAPA should also be communicated to the detenu, since he has got a right to know whether the order of detention has ceased to be in force due to the failure to approve the same within the time stipulated under Section 3(3). If in any case, there is a failure to approve the order of detention within time and if the same is not communicated at all to the detenu, there may arise a situation where he will have to continue to remain in jail, though he is entitled to be released forthwith. However, the date of communication of the order of approval to the detenu is not the criterion for considering the question whether the mandate of Section 3(3) has been complied with.

26. We are of the view that the grounds raised by the petitioner challenging the order of detention as well as the continued detention are devoid of merit. There is no ground to

interfere with the order of detention or to hold that the continued detention of the detenu is illegal.

The Writ Petition fails and it is accordingly dismissed.

**K.T.SANKARAN
JUDGE**

**RAJA VIJAYARAGHAVAN.V.
JUDGE**

csi

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

W.P.(Crl.) No.202 of 2015

Dated this the 1st day of September, 2015

O R D E R

K.T.Sankaran, J.

We heard the learned counsel for the petitioner as well as the learned Government Pleader for a period of more than three hours.

2. One of the contentions raised in ground 'G' is that the second respondent (District Magistrate, Thiruvananthapuram) did not forward to the first respondent, the records pertaining to the detention forthwith after passing of the detention order. It is also contended that since the first respondent did not get sufficient opportunity to apply its mind, the detenu was prejudiced. In the counter affidavit filed on behalf of the first respondent, it is mentioned in paragraph 4 thus :

“c) Submission of proposal to Government : 26.3.2015.”

3. The learned counsel for the petitioner submitted that the detention order was passed on 15.3.2015 and the detenu was arrested on 22.3.2015. If the proposal for approval was seen on 26.3.2015, it is submitted that there was violation of Section 3(3) of the Kerala Anti-Social Activities (Prevention) Act (hereinafter referred to as 'the KAAPA'). It is submitted that under Section 3(3), the District Magistrate (the authorised officer) shall forthwith report the fact of passing the order to the Government and the Director General of Police, Kerala, together with a copy of the order and supporting records. The contention of the petitioner is that had the report been sent sufficiently early to the Government, the Government could have exercised the power to reject the proposal in which case it would not have been necessary to arrest the detenu. In other words, the contention is that the authorised officer is duty

bound to forthwith send the records to the Government, after passing the order of detention. Though ground 'G' has to be answered by the second respondent, the second respondent has not filed any counter affidavit. The counter affidavit filed by the first respondent or by the third respondent does not contain any proper reply with respect to ground 'G' raised in the Writ Petition.

4. We have perused the files made available by the learned Government Pleader. It is seen from the files that on 15.3.2015, the District Collector, Thiruvananthapuram, has addressed a letter to the Principal Secretary to Government, Home (SS.A) Department, informing that an order of detention was passed. Copies of the order, grounds of detention and other records were also mentioned as enclosed. On 15.3.2015, the District Collector & District Magistrate, the authorised officer, issued jail admission authorisation to the

Superintendent of Central Jail, Thiruvananthapuram, copy of which was received by the detenu. The letter dated 15.3.2015 sent by the District Collector to Principal Secretary to the Government is not seen signed or initialled by anybody. There is nothing to indicate that the records were sent on 15.3.2015. The learned counsel for the petitioner submitted that 15.3.2015 was a Sunday and therefore, there was no possibility of sending such a letter dated 15.3.2015. There is no material to indicate as to when the Government received the report submitted by the District Magistrate. Counter affidavit filed by the first respondent indicates that the proposal for approval was made on 26.3.2015 which may be a mistake, since on 26.3.2015, another letter was sent by the District Collector to the Additional Chief Secretary reporting that the detention order was executed on 22.3.2015.

5. We have also perused the report submitted by the

Advisory Board in which column 14c shows that by the letter dated 15.3.2015, the fact of passing the order of detention was reported under Section 3(3).

6. In the light of the facts mentioned above, there will be a direction to respondents 1 and 2 to produce all the relevant records (original) pertaining to the case with reference to the date on which the report was sent by the District Magistrate to the Government under Section 3(3) of KAAPA and the date on which the Government received the report.

Post on 9.9.2015.

K.T.SANKARAN
JUDGE

RAJA VIJAYARAGHAVAN.V.
JUDGE

