

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 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

WP(Crl.).No. 242 of 2015 (S)

PETITIONER(S):

JAYASEELAN, AGED 35 YEARS
S/O.AMBOONJI, ERANJIKKAL, ACHAMTHURUTHY
CHERUVATHOOR GRAMAM, HOSDURG TALUK
KASARGODE DISTRICT.

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

RESPONDENT(S):

1. STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY
TO GOVERNMENT OF KERALA (HOME DEPARTMENT)
GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM - 695 001.
2. DISTRICT MAGISTRATE/DISTRICT COLLECTOR,
KASARAGODE DISTRICT 671 121.
3. DISTRICT POLICE CHIEF, KASARGODE DISTRICT 671 121.
4. SUB INSPECTOR OF POLICE
CHANDERA POLICE STATION
KASARAGOD DISTRICT 671 121.
5. THE SUPERINTENDENT,
CENTRAL PRISON, VIYYUR, THRISSUR 682010.

R1,R3 BY ADV. DIRECTOR GENERAL OF PROSECUTION SRI.ASAF ALI
BY SR.GOVERNMENT PLEADER SMT.KOCHUMOL KODUVATH

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON
04-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS :

EXT.P1: A TRUE PHOTOCOPY OF THE DETENTION ORDER DATED 20/2/2015.

EXT.P2: THE GROUNDS FOR PASSING THE EXT.P1 ORDER

EXT.P3: A TRUE PHOTOCOPY OF THE REPORT DATED 31/12/2014.

EXT.P4: A TRUE PHOTOCOPY OF THE FIR IN CRIME NO.547/12 OF CHANDERA
POLICE STATION

EXT.P5: A TRUE PHOTOCOPY OF THE FINAL REPORT IN CRIME NO.547/12 OF
CHANDERA POLICE STATION

EXT.P6: A TRUE PHOTOCOPY OF THE FIR OF THE CRIME NO.553/12 OF
CHANDERA POLICE STATION

EXT.P7: A TRUE PHOTOCOPY OF THE WRITTEN COMPLAINT IN CRIME NO.553/12
CHANDERA POLICE STATION

EXT.P8: A TRUE PHOTOCOPY OF THE FINAL REPORT IN CRIME NO.553/12 OF
CHANDERA POLICE STATION.

EXT.P9: A TRUE PHOTOCOPY OF THE WRITTEN COMPLAINT IN CRIME NO.567/12
CHANDERA POLICE STATION.

EXT.P10: A TRUE PHOTOCOPY OF THE WRITTEN COMPLAINT IN CRIME NO.567/12
CHANDERA POLICE STATION.

EXT.P11: A TRUE PHOTOCOPY OF THE FINAL REPORT IN CRIME NO.567/12 OF
CHANDERA POLICE STATION.

EXT.P12: A TRUE PHOTOCOPY OF THE FINAL REPORT OF CRIME NO.584/12 OF
CHANDERA POLICE STATION.

EXT.P13: A TRUE PHOTOCOPY OF THE FINAL REPORT OF CRIME NO.581/12 OF
CHANDERA POLICE STATION.

EXT.P14: A TRUE PHOTOCOPY OF THE FIR REPORT OF CRIME NO.569/12 OF
CHANDERA POLICE STATION.

EXT.P15: A TRUE PHOTOCOPY OF FIS IN CRIME NO.581/12 OF CHANDERA POLICE
STATION.

EXT.P16: A TRUE PHOTOCOPY OF THE FINAL REPORT OF CRIME NO.569/12 OF
CHANDERA POLICE STATION.

EXT.P17: A TRUE PHOTOCOPY OF THE FIR REPORT IN CRIME NO.980/13 OF
CHANDERA POLICE STATION.

EXT.P18: A TRUE PHOTOCOPY OF THE FIS REPORT IN CRIME NO.980/13 OF
CHANDERA POLICE STATION.

WP(Crl.).No. 242 of 2015 (S)

EXT.P19: A TRUE PHOTOCOPY OF THE STATMENT IN CRIME NO.980/13 OF
CHANDERA POLICE STATION.

EXT.P20: A TRUE PHOTOCOPY OF THE REPORT IN CRIME NO.980/13 OF
CHANDERA POLICE STATION.

EXT.P21: A TRUE PHOTOCOPY OF THE FINAL REPORT IN CRIME NO.980/13 OF
CHANDERA POLICE STATION.

EXT.P22:A TRUE PHOTOCOPY OF THE FIR IN CRIME NO.761/12 OF CHANDERA
POLICE STATION.

EXT.P23:A TRUE PHOTOCOPY OF THE REPORT IN CRIME NO.761/12 OF
CHANDERA POLICE STATION.

EXT.P24:A TRUE PHOTOCOPY OF THE BOND DATED 3/4/2014 EXECUTED BY THE
DETENU

EXT.P25: A TRUE PHOTOCOPY OF THE FIR IN CRIME NO.961/2014.

EXT.P26: A TRUE PHOTOCOPY OF THE FIS IN CRIME NO.961/2014.

EXT.P27: A TRUE PHOTOCOPY OF THE FIR, FIS AND FINAL REPORT IN CRIME
NO.960/2014.

EXT.P28: A TRUE PHOTOCOPY OF THE MEMO FOR EXECUTION OF THE
DETENTION ORDER DATED 20/2/2015.

EXT.P29: A TRUE PHOTOCOPY OF THE JAIL ADMISSION ORDER DATED 20/2/2015.

EXT.P30: A TRUE PHOTOCOPY OF THE CONFORMATION OF DENTENTION ORDER
DATED 13/4/2015.

EXT.P31: A TRUE COPY OF THE MADHYAMAM DAILY ONLINE PUBLICATION DATED
1.8.2012.

EXT.P32: A TRUE PHOTOCOPY OF THE ONLINE PUBLICATION OF THE HINDU
NEWS PAPER DATED 1.8.2012.

EXT.P33: A TRUE PHOTOCOPY OF THE NEWS PUBLISHED IN NDTV KERALA NEWS
ONLINE DATED 2.2.2012.

EXT.P34: A TRUE PHOTOCOPY OF THE LETTER NO.DI/223/2015 DATED 29.6.2015
OF THE DISTRICT COLLECTOR, KASARAGOD.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A. TO JUDGE

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

W.P.(Crl.) No.242 of 2015

Dated this the 4th day of November, 2015

JUDGMENT

K.T.Sankaran, J.

As per Exhibit P1 order No.D1/223/2015(1) dated 20.2.2015 issued by the District Magistrate, Kasaragod, under Section 3(1) of the Kerala Anti-Social Activities (Prevention) Act, Azhakesan, the brother of the petitioner, was detained on 22.2.2015. In this Writ Petition, the order of detention as well as the continued detention are under challenge.

2. When the Writ Petition came up before another Division Bench on 24.6.2015, the following order was passed :

“The petitioner, who is the brother of one

Azhakesan, aged 35 years, the detenu, preferred the above writ petition with a prayer to issue a writ in the nature of Habeas Corpus or any other appropriate writ, order or direction compelling and commanding the respondents to produce the detenu before this Court, to quash Ext.P1 detention order, which was approved and confirmed by the Government and to set the detenu at liberty.

2. As per Ext.P1 detention order, on the basis of the various criminal cases pending against the detenu, which are referred therein, the detaining authority issued Ext.P1 on recording the satisfaction that the detenu is coming under the definition of “known rowdy” as defined under Section 2(p) of the Kerala Anti-Social Activities (Prevention) Act,2007 (for short 'the KAAPA Act') and further satisfaction that the detention of the petitioner's brother is absolutely necessary. It is against the said order, the above writ petition is filed.

3. The first respondent has filed a detailed

counter affidavit. The third respondent has also filed a separate counter affidavit. Against the counter affidavits filed by respondents 1 and 3, the petitioner has filed a reply affidavit.

4. Heard the learned counsel for the petitioner and the learned Government Pleader.

5. According to the learned counsel for the petitioner, Crime Nos.547/2012,553/2012,567/2012 and 581/2012 registered in the Chandera Police Station, are connected with certain alleged incidents which occurred when a Hartal was called by C.P.I.(M) in protest of the arrest of the Kannur District Secretary of the said political party of which the detenu is a member and local leader. It is also the case of the petitioner's counsel that Crime No.569/2012 of Chandera Police Station was also registered connected with a similar incident though the date of occurrence is shown as 4.8.2012. Thus, according to the learned counsel, if the above referred five crime cases are excluded, only two crimes are pending against the

petitioner. It is the further claim of the learned counsel that against Crime No.961/2014, there is a counter case registered in Crime 960/2014 in which the detenu and his brother sustained injuries as evident from Ext.P27. But, in the order, neither the sponsoring authority nor the detaining authority referred to Crime No.960 of 2014. It is also the submission of the learned counsel that in Crime No.980/2013, in the F.I.R., his name was not mentioned, but he was subsequently implicated in the said crime for which there is no link evidence. Therefore, according to the learned counsel, Ext.P1 order is issued without application of mind. In the alternative, according to the learned counsel, the detenu is entitled to get the benefit of Proviso (V) to Section 2(p) of the KAAPA Act, which reads as follows:-

“2(p) “known rowdy” means any person, who had been, by reason of acts done within the previous seven years as calculated from the date of the order imposing any restriction or detention under this Act,---

(i) xxxxxxxxxxx xxxxxxxxxxx

(ii) xxxxx xxxxxxxxxxx

(iii) xxxxx xxxxxxxxxxx

Provided that any offence committed by a person,---

(i) xxxx xxxxxxx

(ii) xxxx xxxxxxxxxxx

(iii) xxxxxxxxxxx

(iv)xxxxxxxxxxxx

(V) as a member of a recognised political party, by virtue of his involvement merely by his presence, but without any overt act constituting the offence mentioned in clause(t) of Section 2 without being involved in any criminal conspiracy facilitating the same, in an incident which occurred due to the general involvement of the workers of that party in an agitation or protest or programme organised by the party with prior information given to the police officer or Magistrate having jurisdiction; or”

According to the learned counsel, even as per the materials relied on by the authorities, the detenu is a

worker and local leader of the political party, which called for a Hartal on 2.8.2012 and no overt act is alleged against him in any of the above crime and there is no allegation of conspiracy against the detenu and hence, the detenu deserves for the exemption as per the above proviso.

6. Per contra, Smt.Kochumol Koduvath, the learned Government Pleader appearing for the respondents submitted that the crime registered against the petitioner shows that he is a 'known rowdy' and under the guise of conducting protest, he is not entitled to take law into his hands and to involve in criminal cases. According to her, in view of his involvement in the criminal cases, other than that occurred on 2.8.2012, the sponsoring authority as well as the detaining authority were constrained to invoke the provisions of the KAAPA Act against the brother of the petitioner so as to prevent him from involving in any further criminal activities. According to the learned Government Pleader, the materials furnished to the

detenu itself show that there are sufficient grounds to proceed against the brother of the petitioner under the provisions of the KAAPA Act and Ext.P1 order was issued under due consideration of the materials and application of mind and as such, no interference is warranted. According to the learned Government Pleader, the contention of the petitioner that he is entitled to get the benefit of Proviso (V) to Section 2 (p) of the KAAPA Act, is incorrect and untenable.

7. After considering the rival contentions and on perusal of the materials produced by the petitioner, we are of the view that the petitioner has made out a prima facie case in support of the challenge against Ext.P1 order and we are of the view that there are instances of non-application of mind by the competent authorities, before issuing the order of detention of the brother of the petitioner.

In the result, there will be an interim direction, directing the respondents 1 to 5 to release the detenu temporarily for a period of two weeks on condition of

his executing a bond for ₹50,000/- (Rupees Fifty Thousand only) with two solvent sureties each for the like amount to the satisfaction of the second respondent, to ensure his presence as and when required and also on further condition that the petitioner shall report before the fourth respondent between 10 and 12 a.m. on **30th June and 7th July of 2015.**”

3. In compliance with the order dated 24.6.2015, the detenu was released. The interim order was being extended from time to time and it was extended till the disposal of the Writ Petition as per the order dated 23.7.2015. It is submitted that he is complying with the conditions imposed by this Court without fail.

4. The period of detention would have been over on

21.8.2015. To a query by us as to whether the detenu had indulged in any prejudicial activity after his release pursuant to the interim order passed by this Court, the learned Public Prosecutor submitted that no instructions have been received stating that he has so indulged at any point of time after his release.

5. The order of detention is not punitive. It is intended to maintain public order and to prevent the person concerned from indulging in anti-social activities. In the present case, the detenu having been released as per the interim order passed by this Court on 24th June, 2015, we do not think that this is a fit case where the detenu should be directed to suffer the balance of the term even if ultimately it is found that the order of detention was justified. Therefore, we do not think that it is necessary to consider on the merits as to whether the order of

detention is valid or not. We leave that question as unnecessary.

6. In the facts and circumstances, the interim order is confirmed. Since the period of six months from the date of detention is over, it is not necessary for the detenu to comply with the conditions imposed as per the interim order hereafter.

W.P.(Crl.) is disposed of as above.

**K.T.SANKARAN
JUDGE**

**RAJA VIJAYARAGHAVAN.V.
JUDGE**

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