

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

WP(Crl.).No. 303 of 2015 (S)

PETITIONER:

LALITHA, W/O.SASI,
THOTTUVARAMPIL VEEDU, T.C.NO.13/952
KANNAMMOOLA , VANCHIYOOR VILLAGE
THIRUVANANTHAPURAM DISTRICT.

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

RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY
GOVERNMENT OF KERALA (HOME DEPARTMENT)
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695001.
2. DISTRICT MAGISTRATE, THIRUVANANTHAPURAM DISTRICT
THIRUVANANTHAPURAM 695001.
3. DISTRICT POLICE CHIEF, THIRUVANANTHAPURAM DISTRICT
THIRUVANANTHAPURAM 695001.
4. SUB INSPECTOR OF POLICE
PETTA POLICE STATION, THIRUVANANTHAPURAM 695024
5. SUB INSPECTOR OF POLICE
VATTIYOORKAVU POLICE STATION
THIRUVANANTHAPURAM-695006
6. THE SUPERINTENDENT
CENTRAL PRISON, VIYYUR, THRISSUR 680010

R1-R6 BY ADV. ADDL.DIRECTOR GENERAL OF PROSECUTION
SRI.K.I.ABDUL RASHEED

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON
20-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1:-A TRUE PHOTOCOPY OF THE DETENTION ORDER NO.CC42/S.13/CAMP/15
DTD 30/4/2015

EXT.P2:-A TRUE PHOTOCOPY OF THE GROUNDS FOR THE DETENTION ISSUED BY
THE 2ND RESPONDENT TO THE DETENU DTD 30/4/2015

EXT.P2(a):-A TRUE PHOTOCOPY OF THE INDEX OF THE DOCUMENTS GIVEN TO
THE DETENU

EXT.P3:-A TRUE PHOTOCOPY OF THE REPORT SUBMITTED BY THE 3RD
RESPONDENT DATED 8.4.2015.

EXT.P4:-A TRUE PHOTOCOPY OF THE FIR IN CRIME NO.1291/2014 OF PETTA
POLICE STATION

EXT.P5:-A TRUE PHOTOCOPY OF THE WRITTEN COMPLAINT SUBMITTED BY THE
DE-FACTO COMPLAINANT DTD 19/11/2014 IN CRIME NO 1291/2014

EXT.P6:-A TRUE PHOTOCOPY OF THE FINAL REPORT DTD NIL IN CRIME NO
1291/2014

EXT.P7:-A TRUE PHOTOCOPY OF THE FIR IN CRIME NO 5/2015 OF PETTA POLICE
STATION

EXT.P8:-A TRUE PHOTOCOPY OF THE WRITTEN COMPLAINT IN CRIME NO 5/2015
OF PETTA POLICE STATION DTD 16/12/2014

EXT.P9:-A TRUE PHOTOCOPY OF THE STATEMENT DTD 16/12/2014 RECORDED
BY THE POLICE IN CRIME NO.5/2015

EXT.P10:-A TRUE PHOTOCOPY OF THE FIR IN CRIME NO.148/2015 OF PETTA
POLICE STATION

EXT.P11:-A TRUE PHOTOCOPY OF THE ORDER DTD 21/12/2012 IN CR.M.C.NO
2990/2012

EXT.P12:-A TRUE PHOTOCOPY OF THE ORDER DTD 10/9/2013 IN CR.M.P.NO
3001/2013

EXT.P13:-A TRUE PHOTOCOPY OF THE REPRESENTATION TO THE GOVERNMENT
DTD 18/5/2015

EXT.P14:-A TRUE PHOTOCOPY OF THE REPLY DTD 21/5/2015

EXT.P15:-A TRUE PHOTOCOPY OF THE ENVELOPE IN WHICH EXT.P 14 WAS SENT
TO THE PETITIONER DTD 27/5/2015

RESPONDENT(S)' EXHIBITS :

EXHIBIT R3(a) : A PHOTOCOPY OF THE RELEVANT PAGES OF THE ROWDY HISTORY SHEET BEING MAINTAINED AGAINST THE DETENU AT PETTA POLICE STATION BEARING DETAILS OF HIS UNENDING CRIMINAL ACTIVITIES.

EXHIBIT R3(b) : A PHOTOCOPY OF THE SPECIAL BRANCH REPORT IN NO.SB/3392/GL/2014 TC DATED 8.11.2014.

EXHIBIT R3(c) : A PHOTOCOPY OF THE JAIL ADMISSION AUTHORISATION NO.CC42/S13/CAMP/15 DATED 30.4.2015.

EXHIBIT R3(d) : MEMO FOR EXECUTING DETENTION ORDER PASSED BY THE 2ND RESPONDENT VIDE NO.CC42/S13/CAMP/15 DATED 30.4.2015.

EXHIBIT R3(e) : A PHOTOCOPY OF THE OFFICIAL MEMORANDUM BEARING THE BAIL CONDITIONS IN CRIME NO.148/15 OF PETTAH POLICE STATION.

EXHIBIT R3(f) : A PHOTOCOPY OF THE ORDER OF APPROVAL OF DETENTION VIDE NO.40281/SSA5/2015/HOME DATED 13.5.2015 ISSUED BY THE FIRST RESPONDENT.

EXHIBIT R3(g) : A PHOTOCOPY OF THE CONFIRMATION OF THE DETENTION ORDER NO.G.O.(RT) 1611/2015/HOME DATED 27.6.2015.

//TRUE COPY//

P.A. TO JUDGE

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

W.P.(Crl.) No.303 of 2015

Dated this the 20th day of November, 2015

JUDGMENT

K.T.Sankaran, J.

Rajesh @ Kannammoola Rajesh @ Puthanpalam Rajesh, son 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 Exhibit P1 detention order dated 30.4.2015. Rajesh was arrested on 5.5.2015 and he was detained. The order of detention was confirmed on 27.6.2015. Since the petitioner was detained under the KAAPA on two earlier occasions, the period of detention was fixed at one year invoking Section 12 of the KAAPA.

2. The first detention order against the detenu was

passed on 25.6.2007 on the ground that he was involved in six criminal cases and he was a known rowdy. W.P.(CrI.) No.220 of 2007 was filed on behalf of the detenu challenging the order of detention dated 25.6.2007. That Writ Petition was dismissed on 6.11.2007. The detenu suffered the full term of detention as per the first detention order.

3. The second detention order was dated 11.6.2009. Seven criminal cases in which the detenu was involved, formed the subject matter of consideration in the order of detention dated 11.6.2009. Though the petitioner herein challenged the second detention order in W.P.(CrI.) No.8 of 2010, that Writ Petition was dismissed as infructuous since the period of detention was over by the time the Writ Petition came up for consideration.

4. In this Writ Petition, the petitioner challenges the detention order as well as the continued detention of the detenu.

5. The learned counsel for the petitioner submitted that in the present order of detention, only three cases were taken into account to classify the detenu as a known rowdy, though a total number of six cases were reported by the sponsoring authority. The learned counsel submitted that Crime No.1291 of 2014 of Pettah Police Station was registered on the basis of Exhibit P5 petition submitted by one Sandhya Arun. It is submitted that Exhibit P5 complaint would only indicate that Puthanpalam Rajesh, the detenu, was instrumental for the attack by some miscreants. It is pointed out that there is no mention in Exhibit P5 that the detenu as such was directly involved in the incident. It is seen that in Crime No.1291 of 2014, Exhibit P6 final report was submitted after completing the investigation.

The detenu is accused No.1 in the case. The final report was filed after the investigating officer being satisfied that the detenu was involved in the offence. The detaining authority is not entitled to sit in judgment over the conclusion arrived at by the investigating officer and take an independent view as to whether the detenu was really involved in the crime. In W.P. (Crl.) No.322 of 2015, a similar contention raised by the petitioner therein was rejected by us, in the following words :

“7. The submission of the learned counsel for the petitioner is that the detaining authority should satisfy himself that there were materials to arrive at the conclusion that it was the detenu who committed the offence. In other words, the submission is that apart from the investigation conducted by the investigating officer the detaining authority also should have arrived at the conclusion whether the detenu had committed the crime. To consider this contention, it is necessary to advert to the scheme of the KAAPA in the matter of issuing an order of preventive detention under Section 3. An order under Section 3 can be issued either by the Government or by an officer authorised under sub-section (2) of Section 3. The government or the officer authorised must arrive at the satisfaction on information received from a police officer not below the rank of

Superintendent of Police. That information should be with regard to the activities of any 'known goonda' or 'known rowdy'. 'Known goonda' and 'known rowdy' are defined respectively under clauses (o) and (p) of Section 2 of the KAAPA. The requirement to satisfy the definition of 'known goonda' or 'known rowdy' is either finding of guilt of the detenu by a competent Court or finding in any investigation or enquiry by a competent police officer or other authority that the detenu had committed any offence within the meaning of 'goonda' as defined in clause (j) of Section 2 or the particular sub-clause in clause (t) of Section 2. When a person is made guilty by a competent Court, no other authority can look into the case to find out whether the person concerned is guilty or not. Likewise, where it is found, on investigation or enquiry by a competent police officer or authority, that the detenu has committed any offence mentioned in the respective clauses, a further scrutiny by the detaining authority under Section 3 as to the complicity of the detenu in the offence is not contemplated. The detaining authority has to arrive at the objective satisfaction that the person concerned was convicted or found, on investigation or enquiry, to have committed the offence alleged. In other words, the satisfaction in this regard is only with respect to just verifying that the person sought to be detained is the person who is reported to be involved in the offence. The objective satisfaction further requires that the detaining authority must be satisfied that the offence alleged comes within the purview of clause (j) of Section 2 in the case of 'known goonda' and clause (t) of Section 2 in respect of a 'known rowdy'. The detaining authority has also to satisfy that any of the provisos to clause (p) of Section 2 applies so that if the proviso applies in respect of a particular case, that

case shall be omitted from the computation of the number of offences to be taken into account for deciding whether a person is a 'known rowdy'. In the case of a 'known goonda', the detaining authority has also to satisfy whether the proviso to clause (o) of Section 2 is satisfied and that the offence in respect of which a report was filed by a police officer before a lawful authority was consequent to the seizure of any of the items mentioned in the proviso. When the aforesaid tests are applied and requirements are satisfied, it can be said that the detaining authority has arrived at the objective satisfaction. Then comes the question of subjective satisfaction under Section 3(1) of the KAAPA as to whether with a view to prevent the person concerned from committing any anti-social activity within the State of Kerala in any manner, it is necessary to make an order directing that the person concerned be detained. Though it is the duty of the detaining authority, namely, the Government or the officer authorised, to arrive at the objective as well as subjective satisfaction, it is not within the domain of the detaining authority to make an enquiry as to whether the person concerned has really committed the offence, whether there is sufficient evidence to arrive at a conclusion that he is guilty of the offence or whether any plausible defence is available to the accused in the particular case. Those are all matters beyond the jurisdiction of the detaining authority.

8. A Division Bench of this Court in **Safiya v. State of Kerala** [2009(1) KLT 7] (in which one of us was a party to the judgment), considered the question whether the District Magistrate is expected to scrutinize the records leading to the final report under Section 173(2) before passing an order of preventive detention under Section 3(1) of the KAAPA. The Division Bench

held thus:

“4. Once the investigating officer has come to a conclusion that the accused person has committed an offence referred to in cl.(j) or cl.(t) of S.2 as the case may be and when that finding (police report) is forwarded along with the information by the police officer not below the rank of the Superintendent of Police to the detaining authority under the Act, the detaining authority cannot look into the sufficiency or otherwise of the materials leading to the finding by the police officer regarding the commission of the offence. That is within the exclusive jurisdiction of the criminal court. The detaining authority cannot and shall not appreciate the materials leading to the police report and come to a different finding or comment on the finding as to whether on the materials thus made available by the police officer a report under S.173(2)(i)(d) regarding the commission of offence could have been made or not. As held by the Supreme Court in *Union of India v. Paul Manickam* (2004(1) KLT 364 (SC) = AIR 2003 SC 4622) “In case of preventive detention no offence is proved, nor any charge is formulated and the justification of such detention is suspicion or reasonability and there is no criminal conviction which can only be warranted by legal evidence” (para 14). Thus if the detaining authority cannot go beyond the finding of the investigating officer, it is not necessary for the Superintendent of Police to furnish the materials leading to the police report to the detaining authority in a situation of S.173(2) report.

5. Therefore in circumstances where the detaining authority has furnished the police report under S.173(2)(i) (d) of the Code of Criminal Procedure, the competent

officer need not furnish materials leading to the finding of the investigating officer to the detaining authority since the detaining authority cannot make a different assessment as to the sufficiency of the materials leading to the finding in the report. The satisfaction of the detaining authority need only be based on the final report and the further information furnished by the police officer not below the rank of the Superintendent of Police regarding the need for preventive detention under the Act.””

6. Therefore, we are not inclined to accept the first submission made by the learned counsel for the petitioner.

7. The learned counsel for the petitioner submitted that since the crime cases taken into consideration in the first and second detention orders were beyond 7 years of the present order of detention, those crimes should not have been considered by the detaining authority to classify the detenu as a known rowdy and the detaining authority could not have arrived at a conclusion that the detenu “continues to be a person

falling within the definition of known rowdy or known goonda” as provided in sub-section (2) of Section 13 of the KAAPA. The learned counsel submitted that it could only be taken that the present order of detention was passed on the basis three crimes registered in 2014 and 2015. If so, the period of detention could be only for a period of six months. To consider the contention whether the period of detention could be for a period of one year or six months, it is not necessary to consider the first part of the submission whether the lapse of 7 years would have any impact on the satisfaction to be arrived at under sub-section (2) of Section 13 of the KAAPA. Even if it is taken that the present order is passed not under Section 13(2), but exclusively under Section 3(1) without the aid of Section 13 (2), even then Section 12 can be invoked and the period of detention could be fixed at one year. In W.P.(Crl.) No.202 of 2015, we had held :

“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.”

8. It is not in dispute that the present order is the third detention order against the detenu. If so, Section 12 as amended will apply and a maximum period of one year can be imposed as the period of detention.

9. The learned counsel for the petitioner submitted that

the detenu was in judicial custody at the time when the order of detention was passed. It is submitted that he continues to be in judicial custody. The contention of the petitioner is that the detaining authority did not apply his mind properly as to whether an order of detention under the KAAPA is necessary when the detenu is in judicial custody.

10. The learned Additional Director General of Prosecution submitted that in Exhibit P1 order of detention itself it is stated that the detenu was involved in about 36 criminal cases and in spite of initiating proceedings under Sections 107 and 110 of the Code of Criminal Procedure, the detenu did not mend his ways and he continued to indulge in anti-social activities. Even if he suffered detention under the first and second detention orders, he indulged in several criminal cases affecting public order. It is stated in the detention

order itself that the detenu is in judicial custody and he has submitted applications for bail. It is also recorded in the order of detention that if the detenu is released on bail, he would again indulge in anti-social activities and to prevent him from indulging in such activities, it is necessary to detain him under the KAAPA.

11. The learned counsel for the petitioner relied on the decision of the Supreme Court in **Rekha v. State of Tamil Nadu (2011 (5) SCC 244)** in support of the contention that the detaining authority did not properly consider the fact that the petitioner was in judicial custody and whether there was a real possibility of the release of the detenu on bail. In Rekha's case, the Supreme Court has also held that if details are given by the detaining authority that co-accused was granted bail, in such cases the detaining authority can reasonably conclude that there

is likelihood of the detenu being released on bail even though no bail application was pending. In the present case, the detention order clearly states that there was every likelihood of bail being granted to the detenu and that he has moved an application for bail. In **Ahamed Nassar v. State of Tamil Nadu and others** (1999 (8) SCC 473), it was held that merely because no bail application was pending, it cannot be held that there is no likelihood of the detenu being released on bail. It was held that the set of circumstances in each case would vary and it cannot be said that in the absence of any Bail Application being filed there cannot be any conclusion by the detaining authority that there is a likelihood of the detenu being released on bail.

12. In **Kamarunnissa v. Union of India and another** (AIR 1991 Supreme Court 1640), it was held thus :

“13. From the catena of decisions referred to above it seems clear to us that even in the case of a person in custody a detention order can validly be passed (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity and (3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition to question it before a higher Court. What this court stated in the case of Ramesh Yadav, (AIR 1986 SC 315) (supra) was that ordinarily a detention order should not be passed merely to pre-empt or circumvent enlargement on bail in cases which are essentially criminal in nature and can be dealt with under the ordinary law. It seems to us well settled that even in a case where a person is in custody, if the facts and circumstances of the case so demand, resort can be had to the law of preventive detention. This seems to be quite clear from the case law discussed above and there is no need to refer to the High Court decisions to which our attention was drawn since they do not hold otherwise. We, therefore, find it difficult to accept the contention of the counsel for the petitioners that there was no valid and compelling reason for passing the impugned orders of detention because the detenus were in custody.”

13. In **A.Geetha v. State of Tamil Nadu and another**

(AIR 2006 Supreme Court 3053), it was held thus:

“10. It has to be noted that whether prayer for bail would be accepted depends on circumstances of each case and no hard and fast rule can be applied. The only requirement is that the detaining authority should be aware that the detenu is already in custody and is likely to be released on bail. The conclusion that the detenu may be released on bail cannot be ipse dixit of the detaining authority. On the basis of materials before him, the detaining authority came to the conclusion that there is likelihood of detenu being released on bail. That is his subjective satisfaction based on materials. Normally, such satisfaction is not to be interfered with.”

14. In **Union of India v. Paul Manickam and another** (AIR 2003 Supreme Court 4622), the Supreme Court relied on the decision in *Kamarunnissa v. Union of India* and other decisions and held thus:

“12. Even in the case of a person in custody, a detention order can be validly passed, (1) If the authority passing the order is aware of the fact that he

is actually in custody ; (2) If he has reason to believe on the basis of reliable material placed before him; (a) that there is a real possibility of his release on bail, and (b) that on being released, he would in all probability indulge in prejudicial activities, and (3) if it is felt essential to detain him to prevent him from so doing. If an order is passed after recording satisfaction in that regard, the order would be valid.”

15. In the facts and circumstances mentioned above, the subjective satisfaction arrived at by the detaining authority that an order of detention is necessary in spite of the detenu being in judicial custody cannot be faulted.

16. Lastly, the learned counsel for the petitioner submitted that Exhibit P13 representation submitted by the petitioner on behalf of the detenu was received by the Additional Chief Secretary on 18.5.2015 and the representation was disposed of as per Exhibit P14 order dated 21.5.2015.

However, Exhibit P14 was dispatched only on 27.5.2015 and it was received by the petitioner on 28.5.2015. It is submitted that the delay is not explained.

17. In the counter affidavit filed by the first respondent, it is stated in paragraph 17 thus :

“With regard to the contention of non consideration of the representation submitted by the detenu by this respondent in time, it is humbly submitted that the Exhibit P13 representation was received by this respondent on 18.5.2015. The same was disposed of within 2 working days from the date of receipt of the same by the Government. The request in the representation was declined after a real and proper consideration of the representation by the Government and the fate of the representation was communicated to the petitioner as per letter No.40281/SSA5/15/Home dated 21.5.2015. It is humbly submitted that this respondent properly, impartially, carefully and expeditiously considered the representation from the point of view of arriving at an opinion whether the order was in conformity with relevant

provisions of the Act and there was sufficient cause for the detention. All that is necessary is that there should be a real and proper consideration by the Government. It is humbly submitted that even though a speaking order is not necessary, the detenu in the instant case was given a detailed reply. A perusal of Exhibit P14 would amply show that the representation of the detenu was given a zealous scrutiny and proper consideration. A representation submitted by the detenu himself was also received by this respondent on 27.5.2015. This was also replied on 29.5.2015, after proper consideration. The contention to the contrary, is totally incorrect and is seen raised simply for the sake of contention.”

18. We have perused the original files. It is seen that the detenu himself had submitted a representation on 20.5.2015 and that was disposed of on 29.5.2015. Thus it can be seen that two representations were disposed of by the first respondent and that too without delay. In the facts and circumstances, it cannot be said that there is any undue and unexplained delay in

disposing of the representation or in dispatching the same. No other contention has been put forward by the petitioner.

We are not inclined to grant the relief prayed for in the Writ Petition. The Writ Petition is accordingly dismissed.

**K.T.SANKARAN
JUDGE**

**RAJA VIJAYARAGHAVAN.V.
JUDGE**

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