

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.T. SANKARAN

&

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

MONDAY, THE 14TH DAY OF SEPTEMBER 2015/23RD BHADRA, 1937

WP(Crl.).No. 324 of 2015 (S)

PETITIONER:

GEETHA SHAJI, AGED 63 YEARS
W/O. SHAJI VAYALILPUTHAN VEEDU
FROM CHAMUNDEEPADINJATTATHIL, NAGAR 8
NEAR CHAMUNDEE SKHETHRAM, MANGADU CHERRY
MANGADU VILLAGE, KOLLAM TALUK, KOLLAM 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 - 695 001.
2. DISTRICT MAGISTRATE
KOLLAM DISTRICT - 695 001.
3. CITY POLICE COMMISSIONER
KOLLAM CITY, KOLLAM 691 001
4. SUB INSPECTOR OF POLICE
KILIKOLLOOR POLICE STATION,
KOLLAM DISTRICT- 691 004.
5. THE SUPERINTENDENT, CENTRAL PRISON
VIYYOOR, THRISSUR - 680 010.

BY DIRECTOR GENERAL OF PROSECUTION SRI.T.ASAF ALI
GOVERNMENT PLEADER SMT.KOCHUMOL KADAVATH

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON
14.9.2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

- EXT.P1: PHOTOCOPY OF THE DETENTION ORDER DATED 31/03/2015
- EXT.P2: PHOTOCOPY OF THE GROUNDS FOR PASSING EXT.P1 ORDER
- EXT.P3: PHOTOCOPY REPORT SUBMITTED BY THE 3RD RESPONDENT
- EXT.P4: PHOTOCOPY OF THE MEMO DATED 31/3/2015 ISSUED BY THE 2ND
RESPONDENT FOR EXECUTING THE DETENTION ORDER TO THE
4TH RESPONDENT.
- EXT.P5: PHOTOCOPY OF THE JAIL ADMISSION AUTHORIZATION DATED
31/3/15.
- EXT.P6: PHOTOCOPY OF THE FIR WITH FIS IN CRIME NO.363/10 OF
KILIKOLLOOR POLICE STATION.
- EXT.P7: PHOTOCOPY OF THE FINAL REPORT IN CRIME NO.363/10 OF
KILIKOLLOOR POLICE STATION.
- EXT.P8: PHOTOCOPY OF THE FIR IN CRIME NO.109/12 OF KILIKOLLOOR
POLICE STATION
- EXT.P9: PHOTOCOPY OF THE FINAL REPORT IN CRIME NO.109/12 OF
KILIKOLLOOR POLICE STATION.
- EXT.P10: PHOTOCOPY OF THE FIR IN CRIME NO.173/12 OF KILIKOLLOOR
POLICE STATION.
- EXT.P11: PHOTOCOPY OF THE FINAL REPORT IN CRIME NO.173/12 OF
KILIKOLLOOR POLICE STATION.
- EXT.P12: PHOTOCOPY OF THE FIR WITH FIS IN CRIME NO.165/13 OF
KILIKOLLOOR POLICE STATION.
- EXT.P13: PHOTOCOPY OF THE FINAL REPORT IN CRIME NO.165/13 OF
KILIKOLLOOR POLICE STATION.
- EXT.P14: PHOTOCOPY OF THE FIR WITH FIS IN CRIME NO.325/14 OF
KILIKOLLOOR POLICE STATION.
- EXT.P15: PHOTOCOPY OF THE FINAL REPORT IN CRIME NO.325/14 OF
KILIKOLLOOR POLICE STATION.
- EXT.P16: PHOTOCOPY OF THE FIR WITH FIS IN CRIME NO.1649/14 OF
KILIKOLLOOR POLICE STATION.
- EXT.P17: PHOTOCOPY OF THE FINAL REPORT IN CRIME NO.1649/14 OF
KILIKOLLOOR POLICE STATION.

EXT.P18: PHOTOCOPY OF DEFINITION OF ANTI SOCIAL ACTIVITY IN SEC.2(a)
OF THE KERALA ANTI-SOCIAL ACTIVITIES (PREVENTION) ACT.

EXT.P19: PHOTOCOPY OF THE REPRESENTATION OF THE DETENU SENT
TO THE FIRST RESPONDENT.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

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

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Dated this the 14th day of September, 2015

JUDGMENT

K.T.Sankaran, J.

Sajan, son of the petitioner, was detained as per Ext.P1 order of detention dated 31.3.2015 (No.M9-5020/2015) passed by the District Magistrate, Kollam under Section 3(1) of the Kerala Anti-Social Activities (Prevention) Act (hereinafter referred to as the 'KAAPA'). The order of detention was executed on 13.4.2015. The Government referred the case to the Advisory Board on 28.4.2015. Based on the report and opinion of the Advisory Board, the order of detention was confirmed. In the Writ Petition, the order of detention as well as the continued detention are under challenge.

2. The learned counsel for the petitioner submitted that the detenu submitted a representation dated 23.4.2015 to the Government, but that representation was not disposed of by the

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Government nor did the Government forward that representation to the Advisory Board. It is thus submitted that there is violation of Article 22(5) of the Constitution of India as well as Section 9 of the KAAPA.

3. The averments in the Writ Petition in this regard are the following:

“The detenu had submitted a representation before the 1st respondent through the 5th respondent. A true photocopy of the said representation is produced herewith and marked as **Exhibit.P19**. The 1st respondent did not forward the said representation to the Advisory Board. Thus the 1st respondent had violated the safeguard given to the detenu under KAAPA.”

4. There is no direct answer to the aforesaid contention raised by the petitioner. However, the learned Special Government Pleader submitted that in paragraph 16 of the counter affidavit filed by the first respondent, it is stated as follows:

“16. The case of the detenu was referred in time under Section 9 of the Kerala Anti-social Activities

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(Prevention) Act to the Advisory Board constituted under the Act. The Advisory Board after considering the case have given their opinion to Government that there is sufficient cause to detain the detenu. Subsequently Government have examined the case afresh and confirmed the Order of detention passed against the detenu and ordered that the detention would be continued for one year from the date of detention. Hence it is submitted that the Order of detention and its execution are in conformity with the relevant provisions of the Kerala Anti-social Activities (Prevention) Act and the safeguards provided under the Constitution of India, to a person proposed to be in preventive custody.”

The counter affidavit of the first respondent is not at all an answer to the contention raised by the petitioner.

5. Section 9 of the KAAPA provides that in every case where a detention order has been made under the KAAPA, the Government shall, within three weeks from the date of detention of the person concerned, place before the Advisory Board, the grounds on which the order has been made and the representation, if any, made by the person affected. In the present case, the counter affidavit does not

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indicate that the representation submitted by the petitioner on 23.4.2015 was placed by the Government before the Advisory Board. There is no mention in the counter affidavit as to when did the Government receive the representation dated 23.4.2015. There is also no averment that the said representation was placed before the Advisory Board. Thus there is violation of Section 9 of the KAAPA. On that ground, it is to be held that the continued detention of the detenu is illegal.

For the aforesaid reasons, the Writ Petition is allowed and we hold that the continued detention of the detenu is illegal. The detenu is liable to be released forthwith, if his detention is not required in any other case.

K.T.SANKARAN
Judge

RAJA VIJAYARAGHAVAN V.
Judge

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