

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 7TH DAY OF SEPTEMBER 2015/16TH BHADRA, 1937

WP(Crl.).No. 359 of 2015 (S)

PETITIONER(S):

LEKHA, AGED 29 YEARS
W/O. VISHNU, BHAGEERATHI, ANIYOOR
CHEMPAZHANTHI, THIRUVANANTHAPURAM.

BY ADV. SRI.SHAJIN S.HAMEED

RESPONDENT(S):

1. STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
2. THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT
(HOME & VIGILANCE), SECRETARIAT
THIRUVANANTHAPURAM - 695 001.
3. THE DISTRICT MAGISTRATE
THIRUVANANTHAPURAM
COLLECTORATE, KUDAPPANAKKUNNU P.O
THIRUVANANTHAPURAM - 695 043.
4. THE SUPERINTENDENT OF PRISON
CENTRAL PRISON, VIYYUR, THRISSUR DISTRICT - 680 010.

R1-R4 BY ADV. ADDL.DIRECTOR GENERAL OF PROSECUTION
SRI.K.I.ABDUL RASHEED
BY GOVERNMENT PLEADER SRI.P.S.ABDUL KAREEM

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON
07-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1 - PHOTOCOPY OF THE ORDER NO. CC 37/S.13-24188/CAMP/15 DT.
20.3.2015 OF THE 3RD RESPONDENT.

EXT.P2 - PHOTOCOPY OF THE GROUNDS OF DETENTION PASSED BY THE 3RD
RESPONDENT.

EXT.P3 - PHOTOCOPY OF THE PROPOSAL NO. 54/CAMP/15 T DT. 04.3.2015 OF
THE DISTRICT POLICE CHIEF, THIRUVANANTHAPURAM.

EXT.P4 - PHOTOCOPY OF THE ORDER OF APPROVAL NO.
28408/SS/A5/2015/HOME DT. 31.3.2015 PASSED BY THE 2ND
RESPONDENT.

EXT.P5 - PHOTOCOPY OF THE ORDER NO.GO(RT) NO. 1170/2015/HOME DT.
THIRUVANANTHAPURAM 19.5.2015 OF THE 2ND RESPONDENT UNDER
SECTION 10(4) OF ACT

EXT.P6 - PHOTOCOPY OF THE REPORT NO. 1549/GL/2014 BSD DT. 12.5.2014 OF
THE DEPUTY SUPERINTENDENT OF POLICE, ATTINGAL.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A. TO JUDGE

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

W.P.(Crl.) No.359 of 2015

Dated this the 7th day of September, 2015

JUDGMENT

K.T.Sankaran, J.

Vishnu, the husband of the petitioner, has been detained under Section 3(1) of the Kerala Anti-Social Activities (Prevention) Act (hereinafter referred to as 'the KAAPA') as per Exhibit P1 order of detention dated 20.3.2015. Exhibit P1 order was executed on 26.3.2015. Exhibit P2 grounds of detention was served on him. The order of detention was confirmed under Section 10(4) of the Act on 19.5.2015. The order of detention and the continued detention are under challenge in this Writ Petition.

2. The detenu is involved in eight crimes registered at

Kazhakkootam Police Station in 2009, 2011, 2012 and 2014. In all the cases, final reports were filed and the cases are pending before the respective courts. In Crime No.262 of 2009 of Kazhakkootam Police Station, final report was filed on 26.12.2011 and it was pending as C.P.No.28 of 2012. It is stated that now the case is pending as C.P.No.110 of 2014 due to non-appearance of the accused. In respect of crime No.176 of 2011, it is now pending before the Sessions Court as S.C.No.814 of 2013.

3. The order of detention further shows that M.C.No.254 of 2012 was registered under Section 107 of the Code of Criminal Procedure and as per the order passed by the Magistrate, the detenu had executed a bond on 26.3.2014. It is alleged that even thereafter, the detenu committed three crimes in the year 2014. Exhibit P1 order of detention was passed on

the ground that the detenu satisfied the definition of known rowdy and he was indulging in anti-social activities.

4. The learned counsel for the petitioner submitted that the order of detention is illegal since certain vital documents relied upon by the detaining authority were not supplied to the detenu along with the grounds of detention. He contended that Exhibit P3 report dated 4.3.2015 submitted by the District Police Chief to the District Magistrate refers to a report dated 27.1.2015 submitted by the Dy.S.P. to the District Police Chief, but copy of that document was not supplied to the detenu. Due to non supply of this vital document, the detenu was prevented from making an effective and meaningful representation, which would vitiate the order of detention as well as the continued detention.

5. This contention is answered in the counter affidavit filed on behalf of respondents 1 and 2, in which it is stated that the letter dated 27.1.2015 is only a forwarding letter and no prejudice is caused to the detenu by the non-communication of the letter and it has not impaired the right of the detenu to make an effective representation against the detention.

6. The learned counsel for the petitioner pointed out that Exhibit P6 letter dated 12.5.2014 from the Deputy Superintendent of Police to the District Police Chief was supplied to the detenu and Exhibit P3 shows that on 27.1.2015, there was another letter from the Dy.S.P. to the District Police Chief. The detaining authority having thought it fit to supply a copy of the letter dated 12.5.2014, ought to have supplied copy of the letter dated 27.1.2015 as well.

7. We have perused the original file which has been produced before us. We do not find copy of any letter dated 27.1.2015 issued by the Dy.S.P., in the files.

8. Clause (5) of Article 22 of the Constitution of India mandates that when any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order. This constitutional protection is reflected in Section 7 of the KAAPA. Sub-section (2) of Section 7 of the KAAPA shows that “the grounds of detention”, specifying the instances of offences, with copies of relevant documents, as far as practicable, on the basis of which he is considered as a “known goonda” or “known rowdy” and

giving such materials relating to his activities on the basis of which his detention has been found necessary, shall be furnished to him as soon as possible, nevertheless, in any case, within five days of detention. Section 7(2) provides for supplying copies of relevant documents as well as giving such materials. Copies of relevant documents on the basis of which the person concerned is considered as a known goonda or known rowdy shall be supplied to the detenu. But in so far as his activities on the basis of which his detention has been found necessary, Section 7(2) provides for giving such materials. Giving such materials means supplying the necessary information, which is distinct and different from supplying copies of documents. If the relevant information has been given in the grounds of detention, which constituted sufficient materials relating to the activities of the person concerned on the basis of which his detention was found necessary, it would

be a sufficient requirement. Supply of copies of the documents with respect to arriving at the conclusion on this aspect is not contemplated under sub-section (2) of Section 7. In other words, Section 7(2) contemplates supplying of documents as well as giving such materials to the detenu with respect to two different contingencies; one is with respect to the basis on which the person concerned is considered as a known goonda or known rowdy while the second is with respect to his activities.

9. Section 7(2) which provides for supply of copies of relevant documents is with respect to the aspect of considering whether the person concerned satisfies the definition of known goonda or known rowdy. On the other hand, “giving such materials” is relating to the activities of the person concerned on the basis of which his detention has been found necessary.

The activities of the person concerned are with respect to his indulging in anti-social activities as defined in Section 2(a) of the KAAPA and incidental matters.

10. In the present case, there is no contention for the petitioner that with respect to the basis on which the detenu is considered as a known goonda or known rowdy, copies of relevant documents have not been supplied. All the FIRs and relevant papers have been supplied to the detenu. The grievance is with respect to the non supply of documents relating to his activities on the basis of which his detention has been found necessary. In this context, we do not agree with the contention raised by the learned counsel for the petitioner that the report dated 27.1.2015 referred to in the letter dated 4.3.2015 addressed by the District Police Chief to the District Magistrate is a relevant material within the meaning of Section

7(2) of the KAAPA. Therefore, non supply of the letter dated 27.1.2015 is not fatal to the detention order or the continued detention of the detenu.

11. We are fortified in taking the above view in the light of the decisions of the Supreme Court in **State of Tamil Nadu and another v. Abdullah Kadher Batcha and another : AIR 2009 SC 507, Radhakrishnan Prabhakaran v. State of T.N. and others : 2000 (9) SCC 170, J.Abdul Hakeem v. State of T.N. and others : (2005) 7 SCC 70, Sunila Jain v. Union of India and another : (2006) 3 SCC 321 and Madan Lal Anand v. Union of India and others : AIR 1990 Supreme Court 176.**

12. In **Radhakrishnan Prabhakaran v. State of T.N.**

and others : 2000(9) SCC 170, the Supreme Court held :

“8. We may make it clear that there is no legal requirement that a copy of every document mentioned in the order shall invariably be supplied to the detenu. What is important is that copies of only such of those documents as have been relied on by the detaining authority for reaching the satisfaction that preventive detention of the detenu is necessary shall be supplied to him. It is admitted by the learned counsel for the petitioner that the order granting bail has been supplied to him. Application for bail has been submitted by the detenu himself when the order of detention was passed which was subsequent to the order granting bail. We cannot comprehend as to how a prior order rejecting bail would be of any relevance in the matter when it was later succeeded by the order granting bail. But learned counsel emphasised that the counter filed by the Department was a relevant document, a copy of which has not been supplied to him. In support of the said contention learned counsel invited our attention to para 4 of the grounds of detention which reads thus :

“4. While arriving at the subjective satisfaction to detain you under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, the State Government have taken into consideration all the facts and materials referred to and relied upon in these grounds mentioned above and also the statements, mahazars, etc. accompanying thereto.”

13. The aforesaid view taken in Radhakrishnan Prabharan's case was followed in **J.Abdul Hakeem v. State of T.N. and others (2005) 7 SCC 70** and **Sunila Jain v. Union of India and another : (2006) 3 SCC 321.**

14. In **State of Tamil Nadu and another Abdullah Kadher Batcha and another (AIR 2009 Supreme Court 507)**, it was held thus :

“7. The Court has a duty to see whether the

non supply of any document is in any way prejudicial to the case of the detenu. The High Court has not examined as to how the non supply of the documents called for had any effect on the detenu and/or whether non supply was prejudicial to the detenu. Merely because copies of some documents have been supplied they cannot by any stretch of imagination be called as relied upon documents.

8. While examining whether non-supply of a document would prejudice a detenu the Court has to examine whether the detenu would be deprived of making an effective representation in the absence of a document. Primarily, the copies which form the ground for detention are to be supplied and non supply thereof would prejudice to the detenu. But documents which are merely referred to for the purpose of narration of facts in that sense cannot be termed to be documents without the supply of which the detenu is prejudiced.”

15. In Madan Lal Anand v. Union of India and others

(AIR 1990 Supreme Court 176), a case coming under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, the Supreme Court held that when the detaining authority relied on three Civil Miscellaneous Applications filed in a revision, it was not necessary to supply copy of the Civil Revision Petition and non supply of the same did not cause prejudice to the detenu. It was held thus :

“25. In the instant case, the detaining authority had placed reliance upon three civil miscellaneous applications filed in the said C.R.No.3694 of 1985 and supplied to the detenu copies of the said three civil miscellaneous applications. We do not find any substance in the contention made on behalf of the detenu that a copy of the civil revision petition should have also been supplied to him. The decision of this Court in Kirit Kumar Chaman lal Kundaliya v. Union of India (1981) 2 SCC 436 ; (AIR 1981 SC 1621) does not, in our opinion, help the contention of the detenu. In

the instance case, really the three civil miscellaneous applications have been referred to in the grounds of detention and not the civil revision petition, mentioning of which is necessary in order to identify the civil miscellaneous applications.

26. As regards C.R.No.306 of 1986, the detaining authority has in paragraph 28 of the grounds of detention referred to the shifting of the factory premises by M/s.Expo international somewhere in Mohali, but no specific address of the factory was declared by the firm either to the Joint Chief Controller of Imports & Exports or to any other authority. Mentioning of that fact in the grounds of detention does not, in our opinion, necessarily require the detaining authority to supply a copy of the civil revision petition in C.R.No.306 of 1986. At the same time, it has to be presumed that the petition in the said civil revision case was before the detaining authority and he had to go through it otherwise he could not mention in the grounds of detention the fact of the shifting of the factory premises without disclosing any specific address of

the same. In the circumstances, we are of the view that the detenu was not prejudiced for the non-supply to him of the copies of the documents mentioned above and, accordingly there is no substance in the contention that there was non-application of mind by the detaining authority.”

16. In the present case, we do not think that any prejudice was caused to the detenu due to the non supply of the letter dated 27.1.2015 referred to in Exhibit P3 report submitted by the District Police Chief. We are of the view that it was not necessary to supply the letter dated 27.1.2015. Section 3(1) of the KAAPA provides that the Government or an officer authorised under sub-section (2) of Section 3, may, if satisfied on information received from a Police Officer not below the rank of a Superintendent of Police may make an order under Section 3(1). The satisfaction is to be arrived at on the basis of

the information received from the said Police Officer. The information received by the detaining authority in the present case is what is contained in Exhibit P3 report dated 4.3.2015 forwarded by the District Police Chief and not the information, if any, contained in the letter dated 27.1.2015 issued by the Dy.S.P. to the District Police Chief and which is referred to in Exhibit P3 report. Therefore, the document with respect to which the contention of the petitioner is based is not a document which furnishes the information as contemplated under Section 3(1) of the KAAPA. If so, it cannot be said that the subjective satisfaction was arrived at on the basis of the letter issued by the DY.S.P. to the District Police Chief, but only on the basis of the information received from the District Police Chief as evidenced by Exhibit P3. Moreover, the Government or the authorised officer is not expected to arrive at the subjective satisfaction on the basis of any information supplied

by a Police Officer below the rank of a Superintendent of Police. Non supply of copy of which is projected as a non compliance, is a letter issued by a Police Officer below the rank of Superintendent of Police, which under no circumstance would constitute “information” within the meaning of Section 3 (1) of the KAAPA. On that ground also, the submission made by the learned counsel for the petitioner is devoid of merit.

For the aforesaid reasons, we do not find any merit in the Writ Petition. The Writ Petition is accordingly dismissed.

**K.T.SANKARAN
JUDGE**

**RAJA VIJAYARAGHAVAN.V.
JUDGE**