

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.T. SANKARAN

&

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

THURSDAY, THE 1ST DAY OF OCTOBER 2015/9TH ASWINA, 1937

WP(Crl.).No. 364 of 2015 (S)

PETITIONER:

SUJITHA, W/O.SURESH, AGED 29 YEARS
PUTHUVALMANAKKADUPUTHAN VEEDU, KALPANA COLONY
MENAMKULAM, 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-695 001.
2. DISTRICT MAGISTRATE,
THIRUVANANTHAPURAM DISTRICT- 695 001.
3. DISTRICT POLICE CHIEF,
THIRUVANANTHAPURAM CITY, RURAL DISTRICT
THIRUVANANTHAPURAM-695 001.
4. SUB INSPECTOR OF POLICE,
KAZHAKKOOTTAM POLICE STATION
THIRUVANANTHAPURAM DISTRICT - 695 582.
5. THE SUPERINTENDENT,
CENTRAL PRISON, VIYYOOR,
THRISSUR-680 010.

BY PUBLIC PROSECUTOR SMT.KOCHUMOL KODOTH FOR DGP

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON
1.10.2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

- EXT.P1: PHOTOCOPY OF THE DETENTION ORDER DATED 16/05/2015.
- EXT.P2: PHOTOCOPY OF THE GROUNDS FOR PASSING EXT.P1 ORDER.
- EXT.P3: PHOTOCOPY OF THE REPORT SUBMITTED BY THE 3RD
RESPONDENT DATED 21/04/2015.
- EXT.P4: PHOTOCOPY OF THE REPORT OF THE FOURTH RESPONDENT
DATED 11/03/2015.
- EXT.P5: PHOTOCOPY OF THE ORDER DATED 16/05/2015.
- EXT.P6: PHOTOCOPY OF THE F.I.R. ALONG WITH F.I.S. IN CRIME
NO.1322/2013.
- EXT.P7: PHOTOCOPY OF THE FINAL REPORT IN CRIME NO.1322/2013.
- EXT.P8: PHOTOCOPY OF THE F.I.R. ALONG WITH F.I.S. IN CRIME
NO.70/2015.
- EXT.P9: PHOTOCOPY OF THE FINAL REPORT IN CRIME NO.70/2015.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

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“C.R.”

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

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Dated this the 1st day of October, 2015

JUDGMENT

K.T.Sankaran, J.

Suresh @ Kalpana Suresh @ Vettu Suresh was detained as per Ext.P1 order (No.CC46/S13/Camp/15 dated 16.5.2015) issued by the District Magistrate, Thiruvananthapuram under Section 3(1) of the Kerala Anti-Social Activities (Prevention) Act, 2007 (hereinafter referred to as the 'KAAPA'). The order of detention was executed on 19.5.2015. The detenu is classified as a 'known rowdy' in Ext.P1 order. The order of detention was confirmed by the Government on 23.7.2015 and the period of detention was fixed as one year.

2. An order of detention dated 15.6.2007 was issued against the detenu, which was executed on 17.6.2007. The period of detention was six months. The detenu completed the term of six months in jail and he was released on 16.12.2007.

3. Alleging that the detenu involved himself again in criminal

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activities, a second order of detention dated 11.11.2011 was passed and it was executed on 23.11.2011. The period of detention was six months. The present order of detention (Ext.P1) was issued on the ground that the detenu indulged in criminal activities again and criminal cases were registered against him. In Ext.P1 order of detention it is stated that the period of detention as per the second order of detention dated 11.11.2011 was over on 22.5.2012 and the detenu suffered the full term covered by the second order of detention.

4. Ext.P1 order of detention as well as the continued detention are under challenge in this Writ Petition filed by the wife of the detenu. Various grounds have been raised in the Writ Petition challenging the order of detention and the continued detention.

5. The learned counsel for the petitioner submitted that the second order of detention dated 11.11.2011 was challenged by the petitioner in W.P.(Crl) No.18 of 2012 and this Court allowed that Writ Petition by the judgment dated 14.2.2012 on the ground that one of the documents which was relied upon was not furnished to the

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detenu. It is submitted that the detenu was released from jail pursuant to the judgment in W.P.(Crl) No.18 of 2012 and he did not suffer the full term of detention under the second order of detention. In paragraph 6 of the statement of facts in the Writ Petition as well as in ground (Q), the petitioner has raised the aforesaid contention and challenged the order of detention. Paragraph 6 and ground (Q) are extracted below:

“6. The detainee challenged the 2nd detention order before this Hon'ble court in the Writ Petition No.18/2012. This Honourable court set aside the 2nd detention order and set the detainee at free by the judgment dated 14/2/2012. This is against the fact. This shows that the sponsoring and detaining authorities are not aware of setting aside of the 2nd detention order. These authorities are not up-to-date as to the real state of affairs at the issuance of the detention order.”

“(Q) It is humbly submitted that there is non-application of mind on the sponsoring, detaining and 1st respondent in maintaining the detention order.”

6. The aforesaid contention raised by the petitioner in the Writ Petition is not answered in the counter affidavit filed by the first respondent. In the counter affidavit filed by the second respondent (District Magistrate, Thiruvananthapuram), it is stated as follows:

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“13. The allegation and contention in paragraph 6 and 7 of the writ petition (Crl) is lack of any merits. It was reported by the sponsoring authority while furnishing the report for detention stated therein that the 2nd detention order issued in 2011 was completed the full term of 6 months and released thereafter. In the report it is stated that the 2nd detention order was confirmed by the Government vide G.O.(Rt) 409/2012/Home dated 13.02.2012. The order of Hon'ble Court if any had not been produced before this authority. Hence this authority was fully convinced that the term of detention was completed in the 2nd detention and hence the order was issued invoking the provision in section 13(2)(i) of KAAPA.”

7. The third respondent, the sponsoring authority, did not file any counter affidavit in the present Writ Petition. Ext.P3 report submitted by the sponsoring authority to the second respondent states that the detenu suffered the full term of detention as per the second order of detention dated 11.11.2011, while, in fact, that order of detention was interfered with and the detenu was directed to be released forthwith as per the judgment dated 14.2.2012 in W.P.(Crl) No.18 of 2012.

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8. Thus it is clear that the sponsoring authority was not aware of the full facts with respect to the second detention as per the order dated 11.11.2011. Based on the erroneous report submitted by the sponsoring authority, the detaining authority erroneously took the view that the detenu suffered the full term of detention under the second detention order and even thereafter, he indulged in criminal activities. A perusal of Ext.P1 order of detention shows that though reference is made to the second order of detention in the second page of Ext.P1, while discussing the matter at page 3 of Ext.P1, no reference is made to the second detention order. The discussion at page 3 of Ext.P1 order reflects the subjective satisfaction arrived at by the detaining authority and, at that juncture, the detaining authority ignored the second order of detention dated 11.11.2011 and the events which took place pursuant to that order. The report of the sponsoring authority with respect to the second detention order is also not seen discussed while arriving at the subjective satisfaction by the detaining authority.

9. The aforesaid facts would clearly indicate that the subjective satisfaction arrived at by the detaining authority was on the basis of

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erroneous data and insufficient materials. The sponsoring authority committed an error in stating that the detenu suffered the full term of detention under the second order of detention and this report was made the basis for considering the question of issuing an order of detention as per Ext.P1. However, while making the discussion for arriving at the subjective satisfaction, the detaining authority did not refer to the second detention order at all and the report submitted by the sponsoring authority was really ignored. The resultant position is that even the judgment passed by the High Court in a Writ Petition was ignored by the sponsoring authority as well as the detaining authority. There was absolute non-application of mind which vitiates the order of detention.

10. The aforesaid view taken by us is fortified by the decision of the Supreme Court in **Deepak Bajaj v. State of Maharashtra and another** [AIR 2009 SC 628], wherein the Supreme Court held thus:

“42. In Adishwar Jain vs. Union of India and another, 2006(11) SCC 339, this Court observed that where the relevant documents have not been placed before the Detaining Authority, issuing of the detention

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order itself would become vitiated. The same view was taken in V.C.Mohan vs. Union of India, AIR 2002 SC 1205.

43. In Alka Subhash Gadia's case (supra) this Court followed its earlier decision in Rajinder Arora's case (supra) in which case it was held that failure to place the retraction of the confession before the Detaining Authority vitiated the detention order. The same view was taken by this Court in P.Saravanan vs. State of Tamil Nadu and others, 2001 (10) SCC 212, Ahmed Nassar vs. State of Tamil Nadu and others, 1999 (8) SCC 473, Sita Ram Somani vs. State of Rajasthan, AIR 1986 SC 1072, etc.

44. In Union of India & others vs. Manoharlal Narang, 1987 (2) SCC 241 this Court deprecated the contention that the Detaining Authority is not required to collect all materials about any court proceedings etc. from different Ministries or Departments for the purpose of issuance of a detention order. The Court observed that non-consideration of a relevant material will certainly invalidate the detention order. We respectfully agree with the above view, and reiterate it.

45. In A.Sowkath Ali vs. Union of India and others,

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2000(7) SCC 148, this Court observed that if the Detaining Authority has relied on a confessional statement then the retraction of that confession should also have been placed before the Detaining Authority, and should have been considered by it, and failure to do so would invalidate the detention order.

46. In our opinion, failure to place the retractions and other materials referred to in paragraph 4 of the petition before the Detaining Authority would certainly vitiate the impugned detention order.”

For the aforesaid reasons, the Writ Petition is allowed and the order of detention is quashed. The detenu shall be released forthwith unless his detention is required in respect of any other case. The Registry will communicate the gist of the operative portion of this judgment to the Superintendent of Central Prison, Viyyoor forthwith.

K.T.SANKARAN
Judge

RAJA VIJAYARAGHAVAN V.
Judge

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