

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.T. SANKARAN

&

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

WP(Crl.).No. 380 of 2015 (S)

PETITIONER:

SHAIKKALI, AGED 60 YEARS
MUBARAK MANZIL, MANGALPADI VILLAGE,
KASARGOD DISTRICT.

BY ADVS. SRI.SALIM V.S.
SRI.H.NUJUMUDEEN

RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY PRINCIPAL SECRETARY TO GOVERNMENT
HOME DEPARTMENT, GOVERNMENT OF KERALA
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.
2. DISTRICT MAGISTRATE AND DISTRICT COLLECTOR
COLLECTORATE, VIDYANAGAR P.O., KASARGOD DISTRICT
PIN-671 123.
3. DISTRICT POLICE CHIEF
KASARGOD, VIDYANAGAR P.O.,
KASARGOD DISTRICT, PIN-671 123.
4. SUB INSPECTOR OF POLICE
KUMBALA POLICE STATION, PIN-671 321.
5. SUB INSPECTOR OF POLICE
KASARGOD RAILWAY POLICE STATION, PIN-671 121.
6. SUB INSPECTOR OF POLICE
MANJESWARAM POLICE STATION, PIN-671 323.

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

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON
13.10.2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1 TRUE COPY OF THE ORDER OF DETENTION DATED
8.5.2015 ALONG WITH THE DOCUMENTS SERVED TO THE
DETENUE.
- EXT.P2 TRUE COPY OF THE ORDER DATED 10.7.2015.
- EXT.P3 TRUE COPY OF THE ORDER DATED 13.5.2015 OF JUDICIAL
FIRST CLASS MAGISTRATE COURT - I, KASARGOD IN
C.M.P.NO.1111/2015 IN CRIME NO.23/2015.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

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

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Dated this the 13th day of October, 2015

JUDGMENT

K.T.Sankaran, J.

The petitioner is the father of Abdul Ameer, Mubarak Manzil, Mangalpadi Village, Kasaragod District, who has been detained in Central Prison, Viyyur in execution of Ext.P1 order of detention dated 8.5.2015, passed under Section 3(1) of the Kerala Anti-Social Activities (Prevention) Act (hereinafter referred to as the 'KAAPA') by the District Magistrate, Kasaragod. Pursuant to Ext.P1 order of detention, Abdul Ameer was arrested on 13.5.2015. The order of detention was confirmed as per the order dated 10.7.2015. The petitioner challenges the order of detention as well as the continued detention of Abdul Ameer, who is hereinafter referred to as 'the detenu'.

2. The order of detention shows that the detenu was involved in nine crimes, the latest being Crime No.79 of 2015 of

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Manjeswaram Police Station, which was allegedly committed on 4.2.2015. The detenu was classified as a 'known rowdy' and accordingly, the order of detention was passed.

3. The learned counsel for the petitioner submitted that the order of detention is vitiated due to non-application of mind by the detaining authority, which, according to the learned counsel, was due to non-supply of essential information by the sponsoring authority. It is submitted that in Crime No.23 of 2015, the detenu was in judicial custody. He filed a bail application which was dismissed by the learned Magistrate as per Ext.P3 order dated 13.5.2015, the date on which the detenu was arrested and detained. It is submitted that the detenu continues to be in judicial custody even now in Crime No.23 of 2015.

4. In the order of detention, Crime No.23 of 2015 is shown as having been registered under Section 324 of the Indian Penal Code. On a perusal of the First Information Report in Crime No.23 of 2015, it is seen that the said crime was registered under Sections 341, 324, 308 and 506(ii) read with Section 34 IPC. Ext.P3 order refusing

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bail indicates that the offences involved in Crime No.23 of 2015 are under Sections 341 and 308 IPC. Thus, on a mere perusal of the order of detention it is clear that the detaining authority was not even aware of the Section of offences under which Crime No.23 of 2015 was registered at Manjeswaram Police Station in which the detenu was involved. This is obviously because in the report submitted by the sponsoring authority it is mentioned that Crime No.23 of 2015 was registered under Section 324 IPC. In the report submitted by the sponsoring authority it is stated that Crime No.23 of 2015 was under investigation. Nothing was stated by the sponsoring authority in the report as to whether the detenu was arrested in Crime No.23 of 2015 and whether he was detained in judicial custody. There is nothing in the report submitted by the sponsoring authority about the application for bail submitted by the detenu. Based on that report, the detaining authority also proceeded as if the detenu was not arrested in Crime No.23 of 2015 and that he was not in judicial custody.

5. It is seen from the order of detention that the detenu had applied for bail and that if he is granted bail, he would indulge in anti-

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social activities. But that statement was made with respect to Crime No.79 of 2015 and not with respect to Crime No.23 of 2015.

6. It is well settled that a person can be detained under the KAAPA even if he is in judicial custody in respect of one of the crimes taken into account by the detaining authority for his objective and subjective satisfaction. But the detaining authority must be alive of the fact that the detenu was under judicial custody. Still, the detaining authority could pass an order of detention if he is satisfied that in spite of the detenu being in judicial custody, there is a likelihood of the detenu being released on bail and a likelihood of his indulging in anti-social activities. For that purpose, necessary information must be available before the detaining authority and the detaining authority must consider the facts and circumstances and arrive at a subjective satisfaction as to whether detention of the person concerned is required even in such a situation. Under Section 3 of the KAAPA, the detaining authority is expected to arrive at the objective and subjective satisfaction on information received from a police officer not below the rank of Superintendent of Police. In the present case, the information supplied by the sponsoring

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authority was defective and the necessary details were lacking in that report. Necessarily, the detaining authority was not alive of the full facts which makes the order of detention bad in law.

Accordingly, the Writ Petition is allowed and the order of detention No.D1/21018/2015(1) dated 8.5.2015, passed by the District Magistrate, Kasaragod is quashed. The detenu shall be released forthwith if his detention is not required in respect of any other case.

K.T.SANKARAN
Judge

RAJA VIJAYARAGHAVAN V.
Judge

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