

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. 417 of 2015 (S)

PETITIONER:

GAYATHRI, AGED 26 YEARS
D/O. SANTI, SASTHA NIVAS, T.C 43/916
MUTTATHARA WARD, MUTTATHARA VILLAGE
THIRUVANANTHAPURAM

BY ADV. SRI.T.P.SANTHOSH KUMAR

RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY SECRETARY, DEPARTMENT OF HOME AFFAIRS
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM
2. DISTRICT COLLECTOR/DISTRICT MAGISTRATE,
THIRUVANANTHAPURAM.
3. POLICE DEPUTY COMMISSIONER(LAW AND ORDER)
THIRUVANANTHAPURAM CITY.

R1-R3 BY ADDL.DIRECTOR GENERAL OF PROSECUTION
SRI.TOM JOSE PADINJAREKKARA

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

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE FIR IN CRIME NO.364/2013 OF POOTHURA POLICE STATION, REGISTERED U/S 20(b) (ii) (B) OF NDPS ACT.
- EXHIBIT P2 TRUE COPY OF THE FIR IN CRIME NO 3/2013 OF EXCISE ENFORCEMENT AND ANTI NARCOTIC SPECIAL SQUAD OF THIRUVANANTHAPURAM, REGISTERED U/S 20(b) (ii) A,B AND SECTION 29 OF THE NDPS ACT
- EXHIBIT P3 TRUE COPY OF THE FIR IN CRIME NO.132/2014 OF THIRUVALLAM POLICE STATION, REGISTERED U/S 20(b) (ii),(A) OF THE NDPS ACT.
- EXHIBIT P4 TRUE COPY OF THE FIR IN CRIME NO.781/2014 OF VALIYATHURA POLICE STATION, REGISTERED U/S. 20(b) (ii) B OF THE NDPS ACT .
- EXHIBIT P5 TRUE COPY OF THE FIR IN CRIME NO.221/2015 OF POOTHURA POLICE STATION, REGISTERED U/S. 20(b) (ii) B OF THE NDPS ACT .
- EXHIBIT P6 TRUE COPY OF THE DETENTION ORDER BEARING NO.CC 57/S13/CAMP/15 DATED 28/5/2015 PASSED U/S 3(1) OF THE KERALA ANTI SOCIAL ACTIVITIES(PREVENTION) ACT, 2007.
- EXHIBIT P7 THE REPLY BEARING NO.48824/SSA5/2015/HOME DATED 10/7/2015 ISSUED BY THE UNDER SECRETARY FOR ADDITIONAL CHIEF SECRETARY TO GOVERNMENT, HOME(SECRET SECTION-A) DEPARTMENT, THIRUVANANTHAPURAM.

RESPONDENTS' EXHIBITS:

- EXHIBIT R3(a) TRUE COPY OF THE RELEVANT PAGES OF THE 'ROWDY HISTORY SHEET' MAINTAINED AGAINST THE DETENU IN POONTHURA POLICE STATION.
- EXHIBIT R3(b) TRUE COPY OF THE BAIL ORDER IN CRIME NO.364/2013 OF POONTHURA POLICE STATION.
- EXHIBIT R3(c) TRUE COPY OF THE BAIL ORDER IN CRIME NO.3/2013 OF EXCISE ENFORCEMENT AND ANTI NARCOTIC SQUAD, THIRUVANANTHAPURAM.
- EXHIBIT R3(d) TRUE COPY OF THE ORDER OF APPROVAL.
- EXHIBIT R3(e) TRUE COPY OF THE ORDER OF CONFIRMATION.

//TRUE COPY//

AHZ/

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

W.P.(CrI) No.417 of 2015 (S)

Dated this the 13th day of October, 2015

JUDGMENT

K.T.Sankaran, J.

Santhi, D/o.Santha, Sastha Nivas, Muttathara Village, Thiruvananthapuram District, the mother 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 Ext.P6 order of detention No.C.C.57/S.13/Camp/15 dated 28.5.2015, passed by the District Magistrate, Thiruvananthapuram. The order of detention was executed on 3.6.2015 and Santhi was detained in Central Prison, Viyyur. The order of detention and the continued detention of Santhi is challenged in this Writ Petition filed by her daughter. Santhi is hereinafter referred to as the detinue.

2. In the order of detention, it is stated that the detinue was involved in five crimes registered under Section 20 of the Narcotic Drugs and Psychotropic Substances Act. In all the cases in which the detinue

W.P.(Crl) No.417 of 2015 (S)

:: 2 ::

was involved, it was alleged that she was in possession of intermediate quantity of ganja. She was also involved in the sale of ganja.

3. The contentions raised by the petitioner in the Writ Petition are covered by four Division Bench decisions of this Court.

4. In **Elizebath George v. State of Kerala [2008(4) KLT 425]**, a Division Bench of this Court held that final report as provided under Section 173(2) is not a precondition to pass an order of detention under Section 3 of the KAAPA against a 'known goonda' or a 'known rowdy'. The decision in **Elizebath George v. State of Kerala [2008(4) KLT 425]** was followed by another Division Bench in **Beji v. State of Kerala [2012 (3) KLT 255]** wherein it was held that it is sufficient if investigation is pending and on investigation made by the investigating officer, he is satisfied that the person concerned has committed the offence. Therefore, even if final reports are not filed in the cases in which the detainee in the present case is involved, that would not be a bar for invoking Section 3(1) of the KAAPA against her.

5. In **Devaki v. State of Kerala [2014 (3) KLT 725]**, the question

W.P.(Crl) No.417 of 2015 (S)

:: 3 ::

considered was whether a drug-offender as defined in Section 2(i) of the KAAPA can be considered as a 'goonda' under Section 2(j) so as to classify him as a 'known goonda' under Section 2(o), without proving that he is involved in any illegal activity which is harmful to the maintenance of public order. A question as to whether it is necessary to show that the activities of the person concerned are harmful to the maintenance of public order as mentioned in Section 2(j) of the KAAPA, if it is shown that he has been indulging in any anti-social activities as defined in Section 2 (a) of the KAAPA also arose for consideration. Answering the questions, the Division Bench held:

“8. Indulging in any anti-social activity or being a bootlegger, a counterfeiter, a drug-offender etc. mentioned in Section 2(j) would by itself make him a “goonda”, even without proof of his activities being harmful for the maintenance of public order. Going by the definition of “anti-social activity”, it would be clear that the same by itself pertains to public order. No further proof of public order factor is required once it is shown that the person concerned is a drug-offender or a person coming under any of the categories of persons mentioned in Section 2(j) of the KAAPA as bootlegger, counterfeiter etc.. The public order element would apply to only those illegal activities which are

W.P.(Crl) No.417 of 2015 (S)

:: 4 ::

not included in the definition of “anti-social activity”. Therefore, we are of the view that it is not necessary to show that the activities of the detenu were harmful for the maintenance of the public order, in order to consider him as a “known goonda”.

13. Even assuming that the public order element has to be satisfied to term the detenu as a “known goonda”, we are of the view that the activities alleged against him would certainly be harmful to the maintenance of public order. Sale or distribution of ganja among the school going children who are minors, would certainly lead to health hazards of the young generation. The number of affected students are many. A particular individual or a certain number of individuals are not targeted. Any minor student in the schools may become a prey to the illegal acts of the detenu. Consumption of narcotic drugs by the students of young age may affect their health and future, which may cause great impact not only on their families but also on the society at large. The peaceful atmosphere in the educational institutions also would be prejudicially affected if the students become addicts to narcotic drugs. Any attempt to make the students drug addicts must be nipped in the bud. Rampant use of drugs by the student community would even mar the future of our country. Going by any standard, there is no doubt in our mind that the alleged activities of the detenu

W.P.(Crl) No.417 of 2015 (S)

:: 5 ::

would be harmful for the maintenance of public order. On that ground also, the order of detention can be justified.”

6. In **Rajitha v. State of Kerala [2014 (4) KLT 276]**, one of the questions considered was whether it is necessary that there should be at least one case initiated by persons other than police officers to consider a person as a 'known goonda' even if there are sufficient number of cases covered by Section 2(o), but all of which were initiated by police officers. Answering the question, the Division Bench held:

“6. The proviso to sub-clause (ii) of clause (o) of Section 2 is an exception to the requirement in sub-clause (ii) that the complaints should have been initiated by persons other than police officers. Even if the police suo motu registers a case that can also be taken into account for arriving at the objective satisfaction that the detenu satisfies the term “known goonda”, provided the report was filed by the police officer before a lawful authority consequent to seizure, in the presence of witnesses, of alcohol, spirit, counterfeit notes, sand, forest produce, articles violating copyright, narcotic drugs, psychotropic substances, or currency involved in hawala racketeering. The seizure of any of the contraband mentioned in the proviso is an assurance that the case is not foisted by the police. The stipulation in sub-clause (ii) of clause (o) of Section (2) that the complaints

W.P.(Crl) No.417 of 2015 (S)

:: 6 ::

must be those initiated by persons other than police officers is to ensure that the cases are not foisted against a particular person by the police officer only to see that the person concerned is termed as a known goonda and incarcerated under Section 3(1). That does not mean that even in serious cases of the nature mentioned in the proviso, a person other than a police officer should complain. In the nature of the offence involved in such cases, the police officer is entitled to or is rather bound to seize the contraband, register the case and deal with the accused according to law, for which the police officer cannot be expected to wait for an individual to complain. It is idle to expect an individual to complain in respect of an offence which does not directly affect him, unless the person concerned is a public spirited person or a person interested in the welfare of the society as a whole. Such serious cases as mentioned in the proviso should be dealt with utmost speed and the offender should be dealt with accordingly. In the proviso to sub-clause (ii) of clause (o) of Section 2, certain offences of serious nature which affect the society are included and if there is a seizure by the police officer and a report thereof, such offences can also be included for consideration though the report had resulted from an action initiated by a police officer suo motu. The contention raised by the learned counsel for the petitioner is that the words "may be included for consideration" occurring in the proviso would mean that the cases of the nature

referred to therein also can be taken into account, provided, there is at least one other case which was initiated at the instance of a person other than the police officer. We are not inclined to accept this contention. If this contention is accepted, it would mean that even if the person concerned is involved in several serious offences involving narcotic drugs or psychotropic substances, cases in respect of which were initiated at the instance of the police, he cannot be ordered to be detained under Section 3(1) of the KAAPA, if he is not involved in any other offence initiated by a person other than a police officer. The interpretation placed by the learned counsel for the petitioner, if accepted, it would lead to a situation where a person can cleverly avoid detention under the KAAPA. For example, a seasoned drug-offender as defined under Section 2(i) of the Act may guardedly indulge in his illegal activities without giving any room for complaint against him by any individual with respect to any offence and thus avoid a detention order being passed against him. The purpose of the proviso to sub-clause (ii) of clause (o) of Section 2 is not as contended by the learned counsel for the petitioner. The intended purpose is to avoid deliberate and calculated attempts to brand a person a “known goonda” by registering crimes falsely and detain him under the KAAPA. It is not the intention of the legislature that even if a person has committed hundreds of crimes involving narcotic drugs or psychotropic substances, he should not be ordered to be

W.P.(Crl) No.417 of 2015 (S)

:: 8 ::

detained unless he is involved in any case which was initiated by persons other than police officers. Any such interpretation would defeat the very purpose of preventive detention of a known goonda. Therefore, we reject the second contention raised by the learned counsel for the petitioner.”

Since the grounds raised in the Writ Petition are covered against the petitioner in the aforesaid judgments, we are of the view that the Writ Petition is liable to be dismissed. Accordingly, the Writ Petition is dismissed.

K.T.SANKARAN
Judge

RAJA VIJAYARAGHAVAN V.
Judge

ahz/