

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

MONDAY, THE 30TH DAY OF NOVEMBER 2015/9TH AGRAHAYANA, 1937

WP(Crl.).No. 450 of 2015 (S)

PETITIONER

LAKSHMI, W/O. DAYANANDA
AGED 55 YEARS, DAYA KRIPA, NEAR ANANTHAPURAM TEMPLE
KOIPADY, KUMBALA, KASARGODE - 671 321.

BY ADVS.SRI.RAAJESH S.SUBRAHMANIAN
SRI.V.R.RAJESH

RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY ITS ADDITIONAL CHIEF SECRETARY
HOME (SSA) DEPARTMENT, THIRUVANANTHAPURAM -695 001.

2. THE DISTRICT MAGISTRATE
KASARGODE DISTRICT, KASARGODE - 671 321.

3. DISTRICT POLICE CHIEF
KASARGODE DISTRICT, KASARGODE -671 321.

4. CIRCLE INSPECTOR OF POLICE
KUMBALA, KASARGODE - 671 121.

5. SUB INSPECTOR OF POLICE
KUMBALA POLICE STATION, KASARGODE - 671 121.

6. THE SUPERINTENDENT
CENTRAL PRISON, KANNUR - 670 001.

BY SR.PUBLIC PROSECUTOR SMT.KOCHUMOL KODUVATH

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD
ON 30-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(Cr1.).No. 450 of 2015 (S)

APPENDIX

PETITIONER'S EXHIBITS

P1 - TRUE COPY OF THE ORDER OF DETENTION BEARING NO.D1/30188/2015
(1) DATED 10.06.2015

P2 - TRUE COPY OF THE GROUNDS OF DETENTION BEARING
NO.D1/30188/2015(2) DATED 10.06.2015

P3 - TRUE COPY OF THE MEMO FOR EXECUTION OF ORDER OF DETENTION
BEARING NO.D1/30188/2015 (3) DATED 10.06.2015 BY THE 2ND
RESPONDENT.

P4 - TRUE COPY OF THE REPORT BEARING NO.692/SB/KSD/2015 DATED:
01.06.2015 ISSUED BY THE 3RD RESPONDENT

P5 - TRUE COPY OF THE FINAL REPORT FILED BEFORE THE JFCM,
KASARGOD IN CRIME NO.597 OF 2012

P6 - TRUE COPY OF THE FINAL REPORT FILED BEFORE THE JFCM,
KASARGOD IN CRIME NO.77 OF 2014

P7 - TRUE COPY OF THE FINAL REPORT FILED BY THE 4TH RESPONDENT
BEFORE THE JFCM KASARGODE IN CRIME NO.545 OF 2014

P7(A) - TRUE COPY OF THE ORDER DATED 12.01.2015 IN BA NO.105 OF
2015

P8 - TRUE COPY OF THE FIR IN CRIME NO.627 OF 2014

P9 - TRUE COPY OF THE PRELIMINARY ORDER DATED 21.01.2015 IN MC
NO.48 OF 2014 IN CRIME 627 OF 2014.

P10 - TRUE COPY OF THE ORDER NO.GO(RT)NO.2059/2015/HOME DATED
13.08.2015

/TRUE COPY/

PA TO JUDGE

**C.T.RAVIKUMAR &
K.P.JYOTHINDRANATH, JJ.**

W.P.(CrI) No.450 OF 2015

Dated this the 30th day of November, 2015

JUDGMENT

Jyothindranath, J.

This petition for issue of a writ of habeas corpus is filed by the mother of Sharathraj @ Sharath, who is detained by the authorities in prison as per order of detention dated 10.06.2015 of the second respondent. He was arrested and detained on 17.06.2015.

2. The main submission made before us when the matter came up for hearing, is that the detaining authority has not applied his mind objectively to satisfy itself as required under Section 3(1) of the Kerala Anti-Social Activities (Prevention) Act, 2007 (KAAPA). The submission is that even though as per the report of the District Police Chief, five cases are mentioned therein, the detaining authority only considered four cases, that also wherein the fourth case is the proceeding under Section 107 of Cr.P.C. which cannot be taken into consideration to treat the detenu as 'known rowdy' under Section 2(p)

(iii) of KAAPA. It is also the submission of the learned counsel that when a proceeding under Section 107 is the basis for passing an order, it is an indication that there was no application of mind which will vitiate the proceeding itself. It is the further submission that when Government passed Ext.P10 order, then also it can be apparently seen from the order that there was no application of mind and has blindly accepted the detaining authority's order of detention and imposed detention for a period of six months. It is also the submission that the Advisory Board also not properly considered these aspects. Under such circumstances the petitioner is entitled for an order as prayed for.

3. We heard the learned Public Prosecutor also. The learned Public Prosecutor submitted before us that it is apparent from the grounds that three cases were considered by the detaining authority. The three cases will bring the detenu under the category of 'known rowdy' mentioned above. When three cases will bring the detenu under the category of 'known rowdy', mentioning of any other cases in the grounds will not and cannot vitiate the proceeding as is evident from

Section 7(4) of KAAPA. Section 7(4) of KAAPA reads as follows :

“7. Ground of order of detention to be disclosed :

(4) The order of detention shall not be deemed to be invalid merely because one or more of the facts or circumstances cited among the grounds are vague, non-existent, irrelevant or invalid for any reason whatsoever and such order shall be deemed to have been made by the Government or the authorised officer after having been satisfied about the need for detention with reference to the remaining facts and circumstances, provided that the minimum conditions for being classified as a known goonda or known rowdy are satisfied.”

4. Thus, it can be seen that in this case when there are three cases satisfying the minimum condition for bringing the detenu in the category of 'known rowdy,' the contention that the victims in two crimes are one and the same cannot be a ground to exclude the said crimes from consideration.

5. We had gone through the impugned order of the Government as well as the detaining authority's order. We also perused the information/report filed by the District Police Superintendent. After going through the Government Order as well as the order of the detaining authority, it can be seen that it refers three specific cases which will bring the detenu under the category of 'known rowdy'. It can be seen that the first crime referred - Crime No.597/12 of Kumbala Police Station is a matter wherein the major offence is under Section 307 r/w 149 IPC. The second crime is that of the same police station with Crime No.77/14 wherein also the major offence is under Section 323 r/w Section 34 of IPC. The third crime is also that of the same police station with Crime No.545/14 wherein the major offence is under Section 302 of IPC.

After going through the facts of the case, it can be seen that there was no illegality committed by the detaining authority in coming to a conclusion that the detenu can be termed as 'known rowdy'. By virtue of Section 7(4) of KAAPA, it can be seen that when there are three

cases which will bring the detenu under the category of 'known rowdy', it cannot be said that the order passed by the detaining authority or the Government is vitiated. There is no merit in the writ petition filed by the petitioner and hence it is dismissed.

C.T.RAVIKUMAR, JUDGE

K.P.JYOTHINDRANATH, JUDGE

SV.