

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.T.SANKARAN
&
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

WP(Crl.).No. 457 of 2015 (S)

PETITIONER(S):

MUHAMMED KUNJI, AGED 60 YEARS
S/O.ABDULLA, CHOYICHINKAL, MANGAD
BARA 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-695001.
2. DISTRICT MAGISTRATE AND DISTRICT COLLECTOR
COLLECTORATE, VIDYANAGAR P.O., KASARGOD DISTRICT
PIN:671123.
3. DISTRICT POLICE CHIEF
KASARGOD, VIDYANAGAR P.O.
KASARGOD DISTRICT, PIN:671123.
4. SUB INSPECTOR OF POLICE
BEKAL POLICE STATION, BEKAL, PIN:671318.

R1,R2,R3,R4 BY ADV. ADDL.DIRECTOR GENERAL OF PROSECUTION
SRI.TOM JOSE PADINJAREKKARA

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON
25-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(Crl.).No. 457 of 2015 (S)

APPENDIX

PETITIONER'S EXHIBITS :

EXHIBIT P1: TRUE COPY OF THE ORDER OF DETENTION DATED 29.6.2015 ISSUED
BY THE 2ND RESPONDENT.

EXHIBIT P2: TRUE COPY OF THE REPORT DATED 27.6.2015 SUBMITTED BY THE
3RD RESPONDENT.

EXHIBIT P3: TRUE COPY OF THE ORDER DATED 20.8.2015 ISSUED BY THE 1ST
RESPONDENT.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A. TO JUDGE

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

W.P.(Crl.) No.457 of 2015

Dated this the 25th day of November, 2015

JUDGMENT

K.T.Sankaran, J.

Ajmal Faraz.M., son of the petitioner, was detained as per the order dated 29.6.2015 passed by the District Magistrate, Kasaragod, under Section 3(1) of the Kerala Anti-Social Activities (Prevention) Act (hereinafter referred to as 'the KAAPA'). The order was executed on 30.6.2015 and it was confirmed as per the order dated 20.8.2015.

2. The grounds of detention indicates that the detenu is involved in eight criminal cases. Nine items of cases are mentioned out of which one crime is registered under Section 107 of the Code of Criminal Procedure. Therefore, it cannot be

taken into account for the purpose of the objective satisfaction under Section 2(p)(iii) of the KAAPA.

3. The learned counsel for the petitioner raised the following contentions challenging the order of detention as well as the continued detention of the detenu.

4. It is submitted that there was total non application of mind by the detaining authority. The petitioner raised ground D in the Writ Petition in this regard. Ground D reads as follows :

“D. The detaining authority failed to consider that the offences alleged in respect of Crime 692/2012 are under Sections 341, 323, 324, 506(ii) r/w 34 I.P.C. and so it is triable by a Magistrate Court. But in the order of the detaining authority as well as in the report submitted by the sponsoring authority it is stated that the said case is pending as S.C.615/2015 before the Hon'ble Adhoc-3 Court.”

This contention is answered in paragraph 13 of the counter affidavit filed by the third respondent. For the sake of convenience, the said paragraph is extracted below:

“13. It is true that offence in Cr. No.692/12 i.e, 341, 323, 324, 506(ii) read with 34 I.P.C. are fit to be triable by a Magistrate Court. But the sole victim in this case is a minor child where the judicial process insists to triable by the Honourable Sessions Judge. Hence the case committed to Additional Sessions Court, Kasaragod (Adhoc III) and the case came up for trial in S.C.615/15. Hence, there is no error in the report submitted by me.”

5. The next contention raised by the learned counsel for the petitioner is that Crime No.410 of 2015 was registered suo-motu by the police and therefore, that case cannot be counted for the purpose of Section 2(p)(iii) of the KAAPA. It is submitted that ground F in the Writ Petition is the relevant ground in this regard. Ground F reads as follows :

“F. The detaining authority failed to consider the fact that the defacto complainant in Crime 410/2015 sustained injury in the attack of the CPI(M) workers and they were arrayed as prime accused in the said crime. No overt act has been alleged against the detainee. Moreover on reading of the FIR and connected papers submitted by the detaining authority it is crystal clear that the detainee and his co-workers were attacked by the CPI(M) workers. The detaining authority has suppressed the fact that the petitioner is an active member of the Youth Congress and the issues in which he was arrayed as an accused is purely political in nature.”

Nowhere in ground F it is stated that Crime No.410 of 2015 was registered suo-motu by the police and therefore, it should not have been taken into account for the purpose of either the objective satisfaction or the subjective satisfaction. Since no specific contention has been taken by the petitioner in this regard, the court cannot expect any specific reply from the

respondents. Even assuming that Crime No.410 of 2015 was registered suo-motu and therefore, that crime cannot be taken into account, in view of Section 7(4) of the KAAPA that would not be a sufficient ground for invalidating the order of detention.

6. The learned counsel for the petitioner submitted that in Crime No.419 of 2015, the detenu has been arrayed as an accused only on suspicion. After detention of the detenu, the real accused persons were arrested and at present the police had no case about detenu's involvement in that crime. It is submitted that the detenu was not arrested in Crime No.419 of 2015. The learned counsel submitted that the detenu was falsely implicated in Crime No.419 of 2015 due to the personal grudge of a police officer. The contention put forward by the petitioner in this regard is denied in the counter affidavit. On a

perusal of the original records, it is seen that even in the F.I.Statement in Crime No.419 of 2015, the name of the detenu is mentioned. Therefore, it cannot be said that the detenu was implicated only on the basis of suspicion or that there is no material to arrive at the conclusion that the detenu is involved in the offence. The fact that the detenu was not arrested in Crime No.419 of 2015 is not by itself a sufficient ground to hold that he is not involved in Crime No.419 of 2015. Even in the order of detention, it is stated that the detenu was absconding and he used to indulge in crimes all of a sudden with the help of his friends and relatives without giving any room for the police to apprehend. The fact that the accused is not arrested during the stage of investigation is not a ground to suspect the genuineness of the prosecution case.

7. None of the grounds raised in the Writ Petition is

sustainable as mentioned above. No other point has been raised by the learned counsel for the petitioner. In the facts and circumstances, we do not find any ground to interfere with the order of detention or the continued detention of the detenu.

The Writ Petition fails and it is accordingly dismissed.

**K.T.SANKARAN
JUDGE**

**RAJA VIJAYARAGHAVAN.V.
JUDGE**

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