IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR. JUSTICE G.GIRISH

MONDAY, THE 22ND DAY OF JULY 2024 / 31ST ASHADHA, 1946

WP(CRL.) NO. 796 OF 2024

PETITIONER:

PRATHEEKSHA A
AGED 24 YEARS,
W/O.ATHUL, SREE BHAVANAM (THAYYIL),
KALLUMOOD, KAYAMKULAM P.O, KEERIKKAD,
ALAPPUZHA, PIN - 690502

BY ADVS.
M.H.HANIS
P.M.JINIMOL
T.N.LEKSHMI SHANKAR
NANCY MOL P.
ANANDHU P.C.
NEETHU.G.NADH

RESPONDENTS:

1 **STATE OF KERALA**
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY
TO GOVERNMENT, HOME AND VIGILANCE DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM,
PIN - 695001

2 **THE DISTRICT COLLECTOR & DISTRICT MAGISTRATE**
KOLLAM DISTRICT, PIN - 691013

3 **THE DISTRICT POLICE CHIEF**
KOLLAM RURAL, KOLLAM DISTRICT, PIN - 691001

4 **THE CHAIRMAN**
ADVISORY BOARD, KAAPA, SREENIVAS, PADAM ROAD,
VIVEKANANDA NAGAR, ELAMAKKARA, ERNAKULAM
DISTRICT, PIN - 682026

5 **THE SUPERINTENDENT OF JAIL**
CENTRAL JAIL, VIYYUR, THRISSUR DISTRICT,
PIN - 670004

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR FINAL HEARING ON 22.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Raja Vijayaraghavan, J.

The petitioner herein is the wife of the detenu, who is undergoing detention under Section 3 of the Kerala Anti-Social Activities (Prevention) Act, 2007 ('KAAPA' for brevity). The detention order (Ext.P1) was issued on 8.4.2024 and the same was executed on 11.4.2024.

2. Sri. M.H.Hanis, the learned counsel appearing for the petitioner, submitted that the constitutional right of the detenu under Article 22 (4) of the Constitution of India has been violated as there has occurred a delay of more than 3 months in issuing the order confirming the detention under section 10(4) of the KAAPA. The learned counsel has relied on the law laid down by this Court in **Malathy Ravi. v. State of Kerala**[1] and that of the Apex Court in **Deb Sadhan Roy v. State of West Bengal**[2] and it is urged that the failure to pass the confirmation order within a period of three months would violate Article 22(4) of the Constitution of India. It is submitted that in the instant case, the detention order was passed on 08.4.2024, and the same was executed on 11.4.2024. But the confirmation order was passed only on 12.07.2024. According to the learned counsel, the confirmation order having been

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1 [2023 (6) KHC 201]
2 [1972 (1) SCC 308]

passed beyond a period of three months, reckoned from the date of execution of the detention order, the principles of law laid down in **Deb Sadhan Roy** (supra) and **Malathy Ravi** (supra) have been violated.

3. Sri. K.A.Anas, the learned Public Prosecutor, on instructions, submitted that the order of confirmation was issued only on 12.7.2024.

4. We have considered the submissions advanced and have perused the entire records.

5. Section 3 of the KAAPA reads as under:

> Section 3: Power to make orders for detaining Known Goondas and Known Rowdies:
>
> (1) The Government or an officer authorised under sub-section (2), may, if satisfied on information received from a Police Officer not below the rank of a Superintendent of Police with regard to the activities of any Known Goonda or Known Rowdy, that, with a view to prevent such person from committing any anti-social activity within the State of Kerala in any manner, it is necessary so to do, make an order directing that such person be detained.
>
> (2) If having regard to the circumstances prevailing, or likely to prevail in any area, the Government, if satisfied that it is necessary so to do, may, by order in writing, direct that during such period as may be specified in the said order, the District Magistrate having jurisdiction may exercise the powers under sub-section (1) in respect of such persons residing within his jurisdiction or in respect of such persons not so resident who have been indulging in or about to

indulge in or abet any anti-social activities within such jurisdiction.

(3) When any order is made under this section by the authorised officer under sub-section (2), he shall forthwith report the fact to the Government and the Director General of Police, Kerala, together with a copy of the order and supporting records which, in his opinion, have a bearing on the matter and no such order shall remain in force for more than 12 days, excluding public holidays, from the date of detention of such Known Goonda or Known Rowdy, unless, in the meantime, it has been approved by the Government or by the Secretary, Home Department if generally so authorised in this regard by the Government.

6. Under Sub-section (3) of the KAAPA, an order of detention made by the authorized officer under Sub-section (2) is to be reported forthwith in the manner prescribed and it is further stated that no such order shall remain in force for more than 12 days excluding public holidays from the date of detention of such known goonda or known rowdy unless, in the meantime, it has been approved by the Government or by the Secretary, Home Department, if generally so authorized in this regard by the Government.

7. Under Section 9 of the KAAPA, in every case where a detention order has been made under this Act, the Government shall, within three weeks from the date of detention of a person, place before the Advisory Board, the grounds on which the order has been made and the representation, if any, made by the person affected, and, in the case

where the order has been made by an authorized officer, the report by such officer under sub-section (3) of section 3.

8. Section 10 of the KAAPA provides for the procedure to be followed by the Advisory Board and further action. Sub-section (4) stipulates that in every case where the Advisory Board has reported that there is in its opinion sufficient cause for the detention of a person, the Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit and in every case where the Advisory Board has reported that there is in its opinion no sufficient cause for the detention of the person concerned, the Government shall revoke the detention order and cause the person to be released forthwith.

9. Article 22 of the Constitution of India provides for the Constitutional mandate as regards protection against arrest and detention. The said provision reads as under:

> Article 22: Protection against arrest and detention in certain cases.--
>
> (1) xxxx xxxx xxxx
>
> (2) xxxx xxxx xxxx
>
> (3) xxxx xxxx xxxx
>
> (4) No law providing for preventive detention shall authorise

> the detention of a person for a longer period than three months unless--
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> (a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:
>
> Provided that nothing in this subclause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under subclause (b) of clause (7); or
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> (b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7)."

10. In the instant case, Ext.P1 is the order of detention which was issued on 08.04.2024. Undisputedly, the detenu was arrested on 11.04.2024. The question as to whether the confirmation order has to be passed within three months from the date of execution of the order of detention was considered by the Apex Court in **Deb Sadhan Roy** (supra), wherein it was held as under:

> "7.....In such cases a question whether the confirmation and extension has to be made by the appropriate Government within a reasonable period may arise for consideration, but in any case failure to confirm and extend the period within three months will result in the detention becoming illegal the moment the three months period has elapsed without such confirmation. Any subsequent action by the appropriate Government after the three months cannot have the effect of

> extending the period of detention.....It would be meaningless to suggest that the confirmation of the Board's opinion can take place beyond three months when the period of detention has come to an end and has not been extended by the want of it. Looking at it in a different way what these provisions amount to is that no person can be detained for any period beyond three months or for any period thereafter upto 12 months unless the Board's opinion is confirmed within three months."

11. In **Joydeb Gorai v. State of W.B.**[3], after referring to the law laid down in **Ujjal Mandal v. State of West Bengal**[4] and specifically to page 459 of the report and it was noted as under:

> "To put the matter in a nut-shell: the State Government has power under the Act to detain a person without trial beyond a period of three months, but limited to a period of one year. That power the State Government may exercise on receipt of the opinion of the Board that there is sufficient cause for the detention. When the State Government received that opinion, it has still the option to exercise the power and to continue the detention beyond the period of three months or not. Confirmation is the exercise of the power to continue the detention after the expiry of three months. Unless that power is exercised within the period of three months from the date of detention, the detention after the expiry of that period would be without the authority of the law."

12. In **Malathy Ravi** (supra), this Court relying on the law laid down by the Apex Court have held that the detention would become illegal upon the expiry of a three-month period from the date of detention for want of confirmation and continuance. In the case on hand,

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[3] 1972 (2) SCC 417

[4] [1972) 1 SCC 456]

as the confirmation order was passed only on 12.7.2024, well beyond the period of three months from the date of detention. In that view of the matter, the continued detention of the detenu is illegal.

This writ petition is allowed. It is held that the continued detention of the detenu on the strength of Ext.P1 order is illegal. There will be a direction to the Superintendent of Jail, Central Prison, Viyyur to release the detenu, Sri.Athul@ Aluva, forthwith if his detention is not required in connection with any other case. The Registry is directed to communicate the order to the Superintendent of Jail, Central Prison, Viyyur, forthwith.

Sd/-

RAJA VIJAYARAGHAVAN V,
JUDGE

Sd/-
G. GIRISH,
JUDGE

APM

APPENDIX OF WP(CRL.) 796/2024

PETITIONER EXHIBITS

Exhibit P1	**A TRUE COPY OF ORDER NO. DCKLM/2746/2024-M-16 DATED 08.04.2024 OF THE 2ND RESPONDENT**
Exhibit P2	**A TRUE COPY OF THE FSL REPORT DATED 26.02.2024 IN CRIME NO. 117/2024 OF OCHIRA POLICE STATION**
Exhibit P3	**A TRUE COPY OF THE G.O(RT). NO. 1990/2024/HOME DATED 12.07.2024**