**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR**

**&**

**THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN**

**FRIDAY, THE 11TH DAY OF APRIL 2025 / 21ST CHAITHRA, 1947**

**WP(CRL.) NO. 130 OF 2025**

**PETITIONER:**

**JASEERA**
**AGED 32 YEARS**
**W/O MUNDUMMAL SAKKEER, MUNDUMMAL HOUSE, KURUPPATHAL, KOLTHOOR P.O, MALAPPURAM, PIN - 676302**

**BY ADVS.**
**NAVANEETH.N.NATH**
**ABHIRAMI S.**
**ABDUL LATHEEF P.M.**

**RESPONDENTS:**

1 **STATE OF KERALA**
**REPRESENTED BY PUBLIC PROSECUTOR,**
**HIGH COURT OF KERALA- 682031**

2 **DISTRICT COLLECTOR**
**COLLECTORATE, CIVIL STATION, MALAPPURAM- 676505**

3 **THE DISTRICT POLICE CHIEF**
**DISTRICT POLICE OFFICE, UP HILL POST, MALAPPURAM - 676505**

**BY ADVS.**
**ADVOCATE GENERAL OFFICE KERALA**
**ADDL.DIRECTOR GENERAL OF PROSECUTION(AG-11)**

**THIS WRIT PETITION (CRIMINAL) HAVING BEEN COME UP FOR HEARING ON 11.04.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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**JUDGMENT**

**Jobin Sebastian, J.**

This writ petition has been directed against an order of detention dated 04.10.2024 passed against one Sakeer Hussain under Section 3(1) of the Kerala Anti-Social Activities (Prevention) Act, 2007 ('KAA(P) Act' for brevity). The petitioner herein is the wife of the detenu. After considering the opinion of the Advisory Board, the Government vide order dated 29.11.2024 confirmed the order of detention, and the detenu was ordered to be detained for a period of six months from the date of execution of the order.

2. The records available before us disclose that a proposal was submitted by the District Police Chief, Malappuram, on 08.08.2024 seeking initiation of proceedings under Section 3(1) of the KAA(P) Act before the jurisdictional authority. For the purpose of initiation of the said proceedings, the detenu was classified as a 'known rowdy' as defined under Section 2p(iii) of the KAA(P) Act. For passing the order of detention the authority reckoned seven cases in which the detenu got involved. The case registered against the detenu with respect to the last prejudicial activity is Crime No. 344/2024 of Pattambi Police Station alleging commission of offences punishable under Sections 365, 342, 323 r/w 34 of





Indian Penal Code.

3. We have heard Sri.Navaneeth N. Nath, the learned counsel appearing for the petitioner and Sri. K.A. Anas, the learned Government Pleader.

4. The learned counsel for the petitioner would submit that the impugned order is vitiated, as the same is passed without proper application of mind and disregarding the procedural safeguards envisaged in the KAA(P) Act. According to the counsel, there is inordinate delay in mooting the proposal as well as in passing the impugned order after the last prejudicial activity and the said delay will render the live link between the last prejudicial activity and the purpose of detention snapped. The learned counsel urged that, if the sponsoring authority was having any bonafide apprehension regarding the repetition of criminal activities by the detenu, the authority would have acted swiftly in making the proposal for initiation of proceedings under KAA(P) Act. Hence the impugned order warrants interference on the ground of delay and is liable to be set aside.

5. In response, Sri. K.A. Anas, the learned Government Pleader, asserted that there is no unreasonable delay either in submitting the proposal or in passing Ext.P2 detention order after the last prejudicial activity. However, some minimal delay is inevitable while passing a

detention order especially when it is the duty of the authority to ensure adherence to the natural justice principles while passing such an order. Moreover, a reasonable time would be necessary for collecting the details of the cases in which the detenu is involved and minimal delay in mooting the proposal and passing the order is quite natural and hence justifiable. According to the learned Government Pleader, the detaining authority passed Ext.P2 order after arriving at the requisite objective as well as subjective satisfaction, and no interference is warranted.

6. We have carefully considered the submissions advanced and have perused the records.

7. The records show that the detenu was classified as a "known rowdy", considering his recurrent involvement in seven cases. While considering the contention of the petitioner, regarding the delay that occurred in submitting the proposal for detention and in passing the order, it cannot be ignored that an order under Section 3(1) of KAA(P) Act has a significant impact on the personal as well as fundamental rights of an individual. So such an order could not be passed in a casual manner instead it can only be passed on credible materials after arriving at the requisite objective and subjective satisfaction. Furthermore, there exists no inflexible rule requiring a detention order to be issued within a specific

time frame following the last prejudicial act. However, when there is undue delay in making the proposal and passing the detention order, the same would undermine its validity particularly when no convincing or plausible explanation is offered for the delay.

8. Keeping in mind the above, while reverting to the facts in the present case it can be seen that, the case registered against the detenu with respect to the last prejudicial activity is Crime No.344/2024 of Pattambi Police Station registered alleging commission of offffences punishable under Sections 365, 342, 323 r/w 34 I.P.C. The last prejudicial activity was committed on 09.05.2024. From the records, it is evident that after the commission of the said crime, the accused absconded and thereafter, he obtained anticipatory bail in the said case on 15.06.2024. The records further reveal that the District Police Chief, Malappuram, submitted the proposal to the competent authority for initiation of proceedings under Section 3(1) of the KAA(P) Act only on 08.08.2024. Therefore, it is decipherable that there is a delay of 90 days in submitting the proposal after the commission of the last prejudicial activity. The said delay cannot be justified as necessary for observing natural justice principles.

9. Curiously, in the impugned order itself it is admitted that there

occurred some delay in mooting the proposal. The reason for the said delay shown in the impugned order is that additional time was required to collect the details of the cases in which the detenu was involved. In the case at hand, seven cases formed the basis for proposing and issuing the detention order. The details of those cases were readily available and could have been obtained without delay, given the technological upgradation attained by the law enforcement authority. Therefore, the explanation that additional time was required to collect the details of the cases in which the detenu is involved is not justifiable. Though it is true that the accused was absconding after the commission of the last prejudicial activity there is no legal impediment in initiating proceedings under KAA(P) Act against an accused who had absconded after the last prejudicial activity. On the other hand, when the accused is neither apprehended nor in custody in connection with the last prejudicial activity the sponsoring authority should have been more vigilant to take quick actions to initiate proceedings under KAA(P) Act especially when the accused is qualified to be booked under the said Act.

10. If the Superintendent of Police who mooted the proposal was having bonafide apprehension regarding the repetition of anti-social activities by the detenu, definitely he would have acted swiftly after the

last prejudicial activity. In the case at hand, as already stated, there is a delay of 90 days in mooting the proposal for the detention order. Therefore, nobody could be blamed if it is found that, the live link between the last prejudicial activity and the purpose of detention is snapped. The delay of 90 days in mooting the proposal itself shows that the proposed officer did not have any genuine apprehension regarding the immediate repetition of criminal activities by the accused. Moreover, after the proposal the order was passed only on 04.10.2024.

11. Therefore, we are of the considered view that the delay in mooting the proposal as well as in passing the order is unreasonable and unjustifiable. If the true objective was to prevent the detenu from engaging in anti-social activities, the authority ought to have acted with greater alacrity in submitting the proposal and issuing the consequent order. Therefore, the only conclusion that can be arrived at is that the live link between the last prejudicial activity and the purpose of detention has been snapped.

12. In the result, this Writ Petition is allowed and Ext.P2 order of detention is set aside. The Superintendent of Central Prison, Viyyur, Thrissur is directed to release the detenu, Sri. Sakeer Hussain forthwith, if his detention is not required in connection with any other case.

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The Registry is directed to communicate the order to the Superintendent of Central Prison, Viyyur, Thrissur forthwith.

**Sd/-**
**P.B. SURESH KUMAR**
**JUDGE**

**Sd/-**
**JOBIN SEBASTIAN**
**JUDGE**

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**APPENDIX OF WP(CRL.)130/2025**

**PETITIONER EXHIBITS**

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| **Exhibit P1** | **THE TRUE COPY OF THE REPORT SUBMITTED BY THE 3RD RESPONDENT TO THE 2ND RESPONDENT DATED 12.08.2024** |
| **Exhibit P2** | **THE TRUE COPY OF THE PREVENTIVE DETENTION ORDER ISSUED BY 2ND RESPONDENT BEARING NO. DCMPM/9252/2024-S1 DATED 04.10.2024 ISSUES BY THE RESPONDENT NO. 2** |
| **Exhibit P3** | **THE TRUE COPY OF THE REPRESENTATION SUBMITTED BY DETENU DATED 23.10.2024** |
| **Exhibit P4** | **THE TRUE COPY OF THE ORDER DATED 24.10.2024 ISSUED BY THE 1ST RESPONDENT** |
| **Exhibit P5** | **A TRUE COPY OF THE JUDGEMENT OF THE HON'BLE SUPREME COURT IN CRIMINAL APPEAL NO 1738-39/2024 DATED 21.03.2024** |
| **Exhibit P6** | **A TRUE COPY OF THE JUDGEMENT OF THE W.P. (CRL.) NO. 1316/2023** |
| **Exhibit P7** | **A TRUE COPY OF THE ORDER OF THE HON'BLE SESSION COURT IN CRL M.C NO. 3360/2024 DATED 15.06.2024** |
| **Exhibit P8** | **A TRUE COPY OF THE JUDGEMENT OF THE HON'BLE HIGH COURT OF KERALA IN WP CRL NO.232 OF 2023 K. SURESH KUMAR V/S STATE OF KERALA & OTHER DATED 10.07.2023** |
| **Exhibit P9** | **A TRUE COPY OF THE JUDGEMENT DATED 22.08.2024 IN WP CRL NO.511/2024** |
| **ExhibitP10** | **A TRUE COPY OF THE JUDGEMENT DATED 09.09.2024 IN WP(CRL) NO. 884/2024** |
| **Exhibit P11** | **A TRUE COPY OF THE JUDGEMENT DATED 31.10.2024 OF THE HON'BLE HIGH COURT OF JAMMU & KASHMIR AND LADAKH** |

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**Exhibit P12** **TRUE COPY OF THE DETENSION ORDER ISSUED BY 2ND RESPONDENT HEAR IN DATED 04.10.2024**

**Exhibit P13** **THE TRUE COPY OF THE APPROVAL ORDER OF EXHIBIT P2 BY 1ST RESPONDENT HERE IN DATED 29.11.2024**