



2024:KER:64256

W.P (Crl.) No. 511 of 2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR. JUSTICE G.GIRISH

THURSDAY, THE 22ND DAY OF AUGUST 2024 / 31ST SRAVANA, 1946

WP(CRL.) NO. 511 OF 2024

PETITIONER:

SUNEERA T
AGED 29 YEARS
W/O ABDUL LATHEEF, PULIYANMADATHIL
HOUSE, VATTALLOOR P.O, KURUVA,
MALAPPURAM DISTRICT, PIN - 676507

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

RESPONDENTS:

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



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- 2 THE DISTRICT COLLECTOR & DISTRICT
MAGISTRATE, MALAPPURAM DISTRICT,
PIN - 676505
- 3 THE DISTRICT POLICE CHIEF
MALAPPURAM DISTRICT, PIN - 676504
- 4 THE CHAIRMAN
ADVISORY BOARD, KAAPA, SREENIVAS, PADAM
ROAD, VIVEKANANDA NAGAR, ELAMAKKARA,
PIN - 682026
- 5 THE SUPERINTENDENT OF JAIL,
CENTRAL JAIL, VIYYUR, PIN - 670004

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

OTHER PRESENT:

SRI K.A. ANAS, PUBLIC PROSECUTOR

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION
ON 22.08.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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'CR'

J U D G M E N T

Raja Vijayaraghavan, J.

The above Writ Petition is filed seeking for issuance of a writ of Habeas Corpus and mounts a challenge against Ext.P1 order passed by the 2nd respondent. The prayers sought are as follows:

- i. Call for the records leading to Exts.P1 and quash the same by the issuance of a writ of certiorari or any other appropriate writ, order or direction;
- ii. issue a writ of habeas corpus commanding the respondents to produce the body of the detenu, Sri. Abdul Latheef, aged 32 years, S/o. Muhammed, Puliyanmadathil House, Vattalloor P.O., Kuruva, Malappuram District, PIN - 676 507, the husband of the petitioner who is illegally detained in Central Prison, Viyyur before this Hon'ble Court and set him at liberty forthwith.

2. The petitioner herein is the wife of Sri. Abdul Latheef. Sri Latheef has been ordered to be preventively detained, in terms of Ext.P1 detention order dated 16.04.2024 issued by the 2nd respondent under Section 3(1) of the Kerala Anti-Social Activities (Prevention) Act, 2007 ('KAAP Act').

3. The brief facts leading to this case are as follows:



- a) The District Police Chief, Malappuram has furnished a report dated 18.03.2024 before the 2nd respondent recommending the initiation of proceedings under the KAAP Act against the detenu to interdict him from continuing to indulge in anti-social activities. Based on his criminal antecedents it was urged that the detenu is a fit person to be classified as a 'known rowdy' under Section 2(p)(iii) of the Act. The details of the involvement of the detenu in about 23 crimes committed from the year 2018 till 2023 were furnished before the detaining authority and it was also requested that Crime No. 117 of 2018 of the Kondotty Police Station be excluded from the list. It was mentioned that proceedings under Section 107 of the Cr. P.C had been initiated against the detenu by registering M.C.No. 473 of 2023 on the file of the SDM, Perinthalmanna, and a rowdy history sheet had been opened at the Kolathur Police Station. Despite initiating all measures, the detenu got himself involved in Crime No. 1234 of 2023 of the Kottakkal Police Station.
- b) Based on the above report, the authorized detaining authority issued Ext.P1 detention order dated 22.04.2024, wherein, after arriving at the subjective satisfaction based on the materials, came to the conclusion that the detenu falls under the category



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of a 'known rowdy' as defined under Section 2(p)(iii) of the KAAP Act and that he is to be preventively detained with a view to preventing him from committing further prejudicial anti-social activities. The order was executed on 01.05.2024 and the same was approved by order dated 15.05.2024. The matter was referred to the opinion of the Advisory Board, and the Board by report dated 14.06.2024, after hearing the detenu, took the view that there is sufficient cause for the preventive detention of the detenu. Based on the opinion so obtained, the detention order was confirmed by 1st respondent by order dated 11.07.2024. In the meantime, separate representations were submitted before the Advisory Board and the Government by the detenu on 07.05.2024. The representations were forwarded to the Government, which at the time of confirming the detention order, considered and rejected the same as is evident from the records produced by the learned Public Prosecutor along with a memo.

4. Sri M.H. Hanis, the learned counsel appearing for the petitioner raised the following contentions:

- a) The last prejudicial activity referred to in the order of detention is Crime No. 1234 of 2023 of the Kottakkal Police Station. The



occurrence of offence was on 16.10.2023. The detenu was arrested in the said case on 23.10.2023 and bail was granted to him by imposing stringent conditions on 20.12.2023. The final report was laid in the said case on 23.12.2023. However, the sponsorship report was submitted by the 3rd respondent only on 18.03.2024 and the detention order was passed only on 16.04.2024. The maximum period of detention as provided under Section 12 of the Act is six months and therefore the period of about three months from his release on bail in submitting the letter of sponsorship and about four months in passing the order of detention is inordinate. Furthermore, the reasons given by the respondents for explaining the delay are seriously inadequate.

- b) From the detention order, it is evident that proceedings under Section 107 of the Cr.P.C. and a rowdy history sheet have been opened against the detenu. If that be the case, the respondents shall be presumed to have the details of all the crimes in which he is involved and therefore, it can only be deduced that there is no urgent need to preventively detain the detenu.
- c) Though the detention order was issued on 16.04.2024, it was executed only on 01.05.2024. There is a 15-day delay, for which no explanation is given.



d) Separate representations were submitted by the detenu before the Government and the Advisory Board on 07.05.2024. However, the same was taken up and considered only at the time of confirming the order of detention. There is thus a delay of about two months in considering the representation, which is fatal. To substantiate his contention, reliance is placed on the judgment in **Sulaiman v. State of Kerala**¹.

5. Sri. K.A. Anas, the learned Senior Public Prosecutor, would oppose the submissions. It is submitted that for the purpose of classifying the detenu as a 'known rowdy', the respondents have reckoned 22 Crimes in which the detenu is involved. While preparing the proposal, the sponsoring authority noted that the detenu was involved in not less than 50 crimes during the past several years. The crimes were all spread out in four Districts and 13 Police Stations limits and the proceedings were pending before 9 Criminal Courts. It was necessary to secure details with regard to the pendency of the cases, including the fact as to whether the final report had been laid, whether the accused was on bail, and all other relevant details. It was after the initiation of proceedings under Section 107 of the Cr.P.C. that steps were initiated against the detenu under the KAAP Act. Relying on the law laid down in **Licil Antony v. State of Kerala and**

¹ [2010 KHC 683]



Ors.², it is submitted that the detention order would become vulnerable only if no satisfactory explanation was offered for delay in initiating the proceedings under the KAAP Act and in passing the order of detention. It is further submitted that the representation was submitted on 7.5.2024 after the passing of the detention order on 16.04.2024. In the meantime, on 10.05.2024 itself, the writ petitions were filed before this Court. Relying on the observations in **Senthamil Selvi v. State of Tamil Nadu and Another**³; it is submitted that after having filed the writ petitions immediately after submitting the representations, the detenu cannot raise any grievance that the State had not explained the position as to how his representation was dealt with.

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

7. The first contention advanced by the learned counsel is with regard to the delay in passing the order of detention. The records made available before this Court disclose that the last prejudicial activity was the involvement of the detenu in Crime No.1234 of 2023.

² [(2014) 11 SCC 326]

³ [2006 (5) SCC 676]



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The aforesaid Crime was registered at the Kottakkal Police Station on 16.10.2023. There is no disputing fact that the detenu is a habitual offender and that proceedings under Section 107 of the Cr.P.C. had been initiated against him. A Rowdy History Sheet had also been opened against him at the Kolathur Police Station. The detenu was granted bail by the jurisdictional court in Crime No. 1234 of 2023 on 20.12.2023, and the final report had been laid in the said case on 23.12.2023. However, the report of sponsorship was submitted only on 18.03.2023 and the detention order was issued only on 16.04.2024, about six months from the last prejudicial activity and about four months from the date on which bail was granted to the detenu.

8. The question is whether there is any proximity in time to provide a rational nexus between the last prejudicial activity and the passing of the impugned order of detention, and also as to whether any reasonable or satisfactory explanation has been provided by the respondents for the delay. If the credible chain between the grounds of the alleged criminal activity and the purpose of detention gets snapped, then the order of detention cannot be sustained.



9. In **Hemlata Kantilal Shah v. State of Maharashtra**⁴, the Apex Court had observed that delay ipso facto in passing an order of detention after an incident is not fatal to the detention of a person, for, in certain cases, delay may be unavoidable and reasonable. What is required by law is that the delay must be satisfactorily examined by the detaining authority. The mere passage of time before issuing a detention order following an incident does not automatically invalidate the detention, as delays may sometimes be unavoidable and reasonable. However, the law mandates that any delay must be thoroughly and satisfactorily justified by the detaining authority. In the present case, the delay has been attributed to the time required to gather records from various police stations and jurisdictional courts. This justification is unacceptable, particularly in light of the fact that the Kerala Police Department has implemented an integrated core policing system, known as 'iCoPS,' to replace the existing Crime and Criminal Tracking Network and Systems (CCTNS). With this advanced technology, the police have the capability to quickly and efficiently access all relevant information about an offender. Given these technological advancements, the respondents' claim that they had to

⁴ [(1981) 4 SCC 647]



spend much time to collect the necessary details is untenable. The failure of the police department to leverage the available technology to expedite the process and instead offer weak excuses for the delay undermine the principles of personal liberty that are to be scrupulously adhered to before venturing to preventively detain a citizen. Such explanations are not only unsatisfactory but also incompatible with the duty to protect an individual's right to timely and just legal processes. As observed by M.N Venkatachaliah, J in **Ayya v. State of U.P.**⁵, under our Constitution, the mandate is clear and the envoy is left under no dilemma. The constitutional philosophy of personal liberty is an idealistic view, the curtailment of liberty for reasons of State's security, public order, disruption of national economic discipline, etc. being envisaged as a necessary evil to be administered under strict constitutional restrictions.

10. In **T.A. Abdul Rahman v. State of Kerala**⁶, the Apex Court had occasioned to observe as follows in paragraph No. 10 of the judgment:

"10. The conspectus of the above decisions can be

⁵ [(1989) 1 SCC 374]

⁶ [(1989) 4 SCC 741]



summarised thus: The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the court has to investigate whether the causal connection has been broken in the circumstances of each case.”

11. Applying the principles above, we have no doubt in our mind that the explanation offered by the respondents for the delay of about six months from the last prejudicial activity to the passing of the order of detention is not at all convincing and acceptable.

12. Another matter of concern arises from the timeline of events. The records reveal that the detention order was executed on 01.05.2024. The detenu submitted a representation to both the



Advisory Board and the 1st respondent on 07.05.2024. The Government referred the matter to the Advisory Board on 17.05.2024. However, the representation was not considered and disposed of until the time of the confirmation order on 11.07.2024. This significant delay in addressing the detenu's representation raises serious questions about the safeguarding of personal liberty and the timeliness of the legal process.

13. In **Rama Dhondu Borade v. V.K. Saraf, Commissioner of Police**⁷, the Apex Court after referring to past precedents had observed as under in paragraph Nos. 19 and 20 of the judgment:

"19. The detenu has an independent constitutional right to make his representation under Article 22(5) of the Constitution of India. Correspondingly, there is a constitutional mandate commanding the authority concerned to whom the detenu forwards his representation questioning the correctness of the detention order clamped upon him and requesting for his release, to consider the said representation with reasonable dispatch and to dispose the same as expeditiously as possible. This constitutional requirement must be satisfied with respect but if this constitutional imperative is observed in breach, it would amount to negation of the constitutional obligation

⁷ [(1989) 3 SCC 173]



rendering the continued detention constitutionally impermissible and illegal, since such a breach would defeat the very concept of liberty — the highly cherished right — which is enshrined in Article 21 of the Constitution.

20..... What is reasonable dispatch depends on the facts and circumstances of each case and no hard and fast rule can be laid down in that regard. However, in case the gap between the receipt of the representation and its consideration by the authority is so unreasonably long and the explanation offered by the authority is so unsatisfactory, such delay could vitiate the order of detention.”

14. The right of the detenu to have his representation considered by the Government is independent of his right to have his representation/case considered by the Advisory Board. There was enough time for the Government to consider the representation, which was admittedly filed on 07.05.2024, particularly when the Government had forwarded the case to the Advisory Board only on 17.05.2024. As held by this Court in **Sulaiman** (supra), the law cherishes and values the citizens' rights to freedom and liberty. It frowns on preventive detention unless it is shown to be justified in substance and in compliance with the procedure. Compliance with the procedural stipulations has constantly been zealously insisted by constitutional Courts when it comes to the question of the freedom and liberty of the



individual. Zealous insistence on compliance is made on the rules of procedure not necessarily because the detenu's are paragons of virtues. It is a civilizational finesse well recognized in a system wedded to the rule of law that before a person is deprived of his liberty under the jurisprudence of suspicion, procedural stipulations must be observed and complied to the hilt. In the case on hand, the representation was considered by the Government only on 11.07.2024, which can only be deemed as inordinate. No valid explanation has also not been offered.

15. In **Ayya** (supra) it was held as under in paragraph No. 13 of the judgment:

"13. Personal liberty, is by every reckoning, the greatest of human freedoms and the laws of preventive detention are strictly construed and a meticulous compliance with the procedural safeguards, however technical, is strictly insisted upon by the courts. The law on the matter did not start on a clean slate. The power of courts against the harsh incongruities and unpredictabilities of preventive detention is not merely "a page of history" but a whole volume. The compulsions of the primordial need to maintain order in society, without which the enjoyment of all rights, including the right to personal liberty, would lose all their meaning are the true justifications for the laws of preventive detention. The pressures of the day in regard



to the imperatives of the security of the State and of public order might, it is true, require the sacrifice of the personal liberty of individuals. Laws that provide for preventive detention posit that an individual's conduct prejudicial to the maintenance of public order or to the security of State provides grounds for a satisfaction for a reasonable prognostication of a possible future manifestations of similar propensities on the part of the offender. This jurisdiction has been called a jurisdiction of suspicion; but the compulsions of the very preservation of the values of freedom, or democratic society and of social order might compel a curtailment of individual liberty. "To lose our country by a scrupulous adherence to the written law" said Thomas Jefferson "would be to be lose the law itself, with life, liberty and all those who are enjoying with us; thus absurdly sacrificing the end to the means". This is, no doubt, the theoretical justification for the law enabling preventive detention."

16. In view of the discussion above, we are of the considered opinion that the detenu is entitled to succeed, both on the ground of delay in passing the order of detention and also on the ground that his right under Article 22(5) of the Constitution of India to have his representation considered expeditiously has been frustrated.

Resultantly, this Writ Petition will stand allowed. The continued detention of the detenu, Sri. Abdul Latheef, S/o. Muhammed is set aside. He shall be released forthwith, if his further detention is not



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necessary or not required in connection with any other case. The Registry shall forthwith communicate this judgment with the respective authorities.

Sd/-

**RAJA VIJAYARAGHAVAN V,
JUDGE**

Sd/-

**GIRISH.G,
JUDGE**

PS&APM



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APPENDIX OF WP(CRL.) 511/2024

PETITIONER EXHIBITS

- Exhibit -P1 A TRUE COPY OF THE ORDER NO.
DCMPM/3764/2024-S1 DATED 16.04.2024 OF
THE 2ND RESPONDENT
- Exhibit P2 A TRUE COPY OF THE REPRESENTATION DATED
7.05.2024 SUBMITTED BEFORE THE LST
RESPONDENT
- Exhibit P3 A TRUE COPY OF THE ACKNOWLEDGMENT CARD
EVIDENCING THE RECEIPT OF EXT P2 BY THE
LST RESPONDENT
- Exhibit P4 A TRUE COPY OF THE REPRESENTATION DATED
7.05.2024 SUBMITTED BEFORE THE 4TH
RESPONDENT
- Exhibit P5 A TRUE COPY OF THE ACKNOWLEDGMENT CARD
EVIDENCING THE RECEIPT OF EXT P4 BY THE
4TH RESPONDENT
- Exhibit P6 A TRUE COPY OF THE DETENTION ORDER VIDE
GO (RT)NO. 1963/2024/HOME,
THIRUVANANTHAPURAM, DATED 11/07/2024