



2025:KER:7208

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

THURSDAY, THE 30TH DAY OF JANUARY 2025 / 10TH MAGHA, 1946

WP(CRL.) NO. 1392 OF 2024

PETITIONER:

SNEHA VIJAYAN, AGED 27 YEARS, W/O RAJ KIRAN K,
SREERASI, CHATHANMUKKU, PACHAPOIKA, PATHIRAYADU,
THALASSERY, KANNUR, PIN - 670306.

BY ADVS.
M.H.HANIS
T.N.LEKSHMI SHANKAR
NANCY MOL P.
ANANDHU P.C.
ANN MARY ANSEL
SINISHA JOSHY
RIA ELIZABETH T.J.
SAHAD M. HANIS

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,
CIVIL STATION,KANNUR DISTRICT, PIN - 672002
- 3 THE DISTRICT POLICE CHIEF,
CIVIL STATION,KANNUR CITY, PIN - 670002



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:2:

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- 4 THE CHAIRMAN, ADVISORY BOARD, KAAPA,
SREENIVAS, PADAM ROAD, VIVEKANANDA NAGAR,
ELAMAKKARA, ERNAKULAM DISTRICT, PIN - 682026
- 5 THE SUPERINTENDENT OF JAIL,
CENTRAL PRISON, VIYYUR,
THRISSUR DIST, PIN - 670004

BY ADV. SRI. K.A. ANAS, PUBLIC PROSECUTOR

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR
ADMISSION ON 30.01.2025, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

**"C.R."****J U D G M E N T****Jobin Sebastian, J.**

The petitioner is the wife of Raj Kiran K. ('detenu' for the sake of brevity) and her challenge in this Writ Petition is directed against Ext.P1 order of detention dated 22.11.2024 passed by the 2nd respondent under Section 3(1) of the Kerala Anti-Social Activities (Prevention) Act, 2007 ('KAA(P) Act' for brevity). The said order was approved by the Government vide order No.SSA2/252/2024-Home dated 30.11.2024.

2. The records reveal that a proposal was submitted by the District Police Chief, Kannur City on 07.10.2024 seeking initiation of proceedings against the petitioner's husband under the KAA(P) Act before the jurisdictional authority, the 2nd respondent. 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. Altogether 5 cases in which the petitioner's husband was involved have been considered by the detaining authority for passing the impugned order of detention and the details of the said cases are given below:-



Sl. No.	Crime No.	Police Station	Crime Date	Offences involved under Sections	Present status of the case
1	38/2022	Pinarayi	30.01.2022	143, 147, 341, 323, 325 r/w 149 IPC	Pending trial
2	296/2023	Valayam	10.07.2023	3 & 5 of ES Act & 120B, 201, 212 r/w 34 IPC	Under investigation
3	1009/2023	Koothuparambu	05.11.2023	448, 294(b), 506, 323 r/w 34 IPC	Under investigation
4	78/2024	Atholy	12.02.2024	395 r/w 34 IPC	Pending trial
5	353/2024	Pinarayi	17.09.2024	126(2), 115(2), 117(2). 333 r/w 3(5) of BNS	Under investigation

3. The case registered regarding the last prejudicial activity is crime No.353/2024 of Pinarayi Police Station, alleging the commission of offences punishable under Sections 126(2), 115(2), 117(2), and 333 r/w 3(5) of BNS and the detenu is arrayed as the 2nd accused in the said case.

4. We heard Sri. M.H. Hanis, the learned counsel appearing for the petitioner and Sri. K.A. Anas, the learned Government Pleader.

5. The learned counsel for the petitioner would submit that Ext.P1 order is passed without proper application of mind and without adhering to the procedural formalities mentioned under the KAA(P) Act. The learned counsel urged that there is non-compliance with the procedure mentioned under Section 7(2) of the KAA(P) Act. According to



the counsel, though the grounds of detention, specifying the details of the cases reckoned for passing the impugned order was furnished to him, the legible copies of the documents pertaining to the case registered with respect to the last prejudicial activity were not served on him. According to the counsel, the said lapse on the part of the detaining authority prejudiced him as he could not file an effective representation against the detention order before the Advisory Board.

6. In response, the learned Government Pleader submitted that the order of detention was passed after complying with all the necessary legal formalities and after proper application of mind. According to the learned Government Pleader, there is no delay in mooted the proposal for initiation of proceedings and in passing the order of detention. Moreover, he would submit that the copies of all the relevant records and the grounds of detention were furnished to the detenu and the detenu was informed of his right to file representation against the detention order before the Government as well as the Advisory Board.

7. From the rival contentions raised, it is decipherable that the main dispute revolves around is regarding the compliance of the procedure mentioned under Section 7(2) of the KAA(P) Act. Undisputedly, when a person is arrested in pursuance of a detention order, it is obligatory on the part of the arresting officer to supply a copy of the said order to the



detenu. Furthermore, Section 7(2) of the KAA(P) Act, makes it mandatory that the grounds of detention shall be furnished to the detenu, specifying the instances of offences with copies of relevant documents. Moreover, the detenu must be apprised of his right to file representation against the detention order before the Government as well as the Advisory Board. Only when copies of relied-upon documents are duly served, the detenu would get an effective opportunity to file a representation before the Advisory Board.

8. As already mentioned the main grievance of the petitioner is that the copies of the relied-upon documents served on the detenu were illegible. Though such a contention was raised, a perusal of the original records of which the copies were served on the detenu which was made available to us by the learned Government Pleader at the time of hearing shows that the detenu had signed a written acknowledgment endorsing that he had received legible copies of all documents. However, the learned counsel submitted that the said endorsement is incorrect and the copies furnished to the detenu were actually not legible. Since the endorsement is doubted, this Court verified the original documents on which the endorsement is made. On verification of the said documents, we are convinced that some of those documents are not legible. Moreover, a perusal of the representation, made by the detenu before the Advisory



Board, reveals that in the said representation also it is mentioned that the copy of the FIS, the copy of the mahazar etc., furnished to him are not legible. Therefore, the detenu was handicapped in filing an effective representation before the Advisory Board as the copies of the relied-upon documents served on him are illegible.

9. The obligation of the detaining authority to furnish legible copies of relied-upon documents to the detenu is not a mere formality. Only when the said procedure is scrupulously complied with, the detenu can file an effective representation before the Advisory Board and the Government. The right of the detenu to file an effective representation before the Government as well as the Advisory Board is a constitutional right under Article 22(5) and also a statutory right. Therefore, it is the duty of the detaining authority to ensure that the copies of the impugned order as well as the relevant documents which are furnished to the detenu at the time of effecting his arrest are legible so as to enable him to approach the Advisory Board as well as the Government, to make an effective representation.

10. The learned counsel further submitted that the last case reckoned by the detaining authority ought not to have been reckoned, as the same will not come within the purview of a qualified case. In order to buttress the said contention, the learned counsel submitted that the mere



registration of FIR alone is not sufficient to treat a case which is under investigation as a qualified one, but something more is necessary so as to record the objective as well as subjective satisfaction. According to the counsel, as the copies including the FIS and mahazar are not legible, it is highly suspicious as to how the detaining authority arrived at a conclusion that the accused's role in the last prejudicial activity is prima facie established and how the detaining authority arrived at the required subjective and objective satisfaction.

11. It is trite that something more than mere registration of an FIR is required to reckon a case, that is under investigation, for the purpose of passing a detention order. In other words, apart from the FIR, there must be some additional materials to make a case qualified to be reckoned for passing a detention order. As already discussed, on verification by the Court, it is revealed that the copy of the records, including vital documents like FIS, mahazar etc., verified by the detaining authority during the course of its proceedings are not legible. The copies of the said documents furnished to the detenu are also established to be illegible. Therefore, the objective as well as the subjective satisfaction arrived at by the detaining authority is apparently vitiated. As rightly pointed out by the learned counsel for the petitioner, if the case registered with respect to the last prejudicial activity is eschewed from consideration,



there would be a long delay between the registration of the last qualified case and the order of detention. On the said ground, Ext.P1 order warrants interference.

12. The Hon'ble Supreme Court in **State of Manipur v. Buyamayum Abdul Hanan** [2022 SCC online SC 1455] while considering a detention order passed under PITNDPS Act held that:

"The right of personal liberty and individual freedom which is probably the most cherished is not, in any manner, arbitrarily to be taken away from him even temporarily without following the procedure prescribed by law and once the detenu was able to satisfy while assailing the order of the detention before the High Court in the exercise of jurisdiction Article 226 of the Constitution holding that the grounds of detention did not satisfy the rigors of proof as a foundational effect which has enabled him in making effective representation in assailing the order of detention in view of the protection provided under Article 22(5) of the Constitution the same renders the order of detention illegal."

13. In the case at hand, it is established that the copies supplied on the detenu were not legible making him incapacitated to file an effective representation. The said serious lapse is a ground to interfere with the impugned order. An order of detention, under KAA(P) Act has wide ramifications as far as the personal as well as the fundamental rights of an individual are concerned. Therefore, the detaining authority should have acted with much alacrity in ensuring that all the procedural formalities are adhered to.



14. In the result, this Writ Petition is allowed and Ext.P1 order of detention is set aside. The Superintendent of Central Prison, Viyyur, Thrissur is directed to release the detenu, Sri. Raj Kiran K. 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 Central Prison, Viyyur, Thrissur forthwith.

Sd/-

**P.B. SURESH KUMAR
JUDGE**

Sd/-

**JOBIN SEBASTIAN
JUDGE**



APPENDIX OF WP(CRL.) 1392/2024

PETITIONER EXHIBITS

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| Exhibit P1 | A TRUE COPY OF THE ORDER O.DCKNR/12861/2024-SS1
DATED 22.11.2024 OF THE 2ND RESPONDENT |
| Exhibit P2 | A TRUE COPY OF THE REPRESENTATION DATED
28.11.2024 SUBMITTED BY THE PETITIONER BEFORE
THE 1ST RESPONDENT |
| Exhibit P3 | A TRUE COPY OF THE ACKNOWLEDGMENT CARD
EVIDENCING THE RECEIPT OF EXT P2 ON 30.11.2024 |
| Exhibit P4 | A TRUE COPY OF THE ORDER OF APPROVAL NO HOME
SSA2/252/2024- HOME DATED 30.11.2024 OF THE 1ST
RESPONDENT |
| Exhibit P5 | A TRUE COPY OF THE REPRESENTATION DATED
28.11.2024 SUBMITTED BY THE PETITIONER BEFORE
THE 4TH RESPONDENT |
| Exhibit P6 | A TRUE COPY OF THE ACKNOWLEDGMENT CARD
EVIDENCING THE RECEIPT OF EXT P5, DATED
29.11.2024 |