

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

MONDAY, THE 3RD DAY OF JULY 2023 / 12TH ASHADHA, 1945

WP(CRL.) NO. 544 OF 2023

PETITIONER:

AMBIKA B, AGED 57 YEARS
W/O AJAYAKUMAR, VISHWAKAMAL, THALIKONAM,
CHIRAYANKEEZHU, ALTHARAMOODU P.O,
THIRUVANANTHAPURAM,, PIN - 695601

BY ADV M.H.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
THIRUVANANTHAPURAM DISTRICT,, PIN - 695043
- 3 THE DISTRICT POLICE CHIEF
THIRUVANANTHAPURAM RURAL, PIN - 695033
- 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 SRI.K.A. ANAS, GOVERNMENT PLEADER

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY
HEARD ON 26.06.2023, THE COURT ON 03.07.2023 DELIVERED
THE FOLLOWING:

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C.R.

P.B.SURESH KUMAR & C.S.SUDHA, JJ.

W.P.(CrI.) No.544 of 2023

Dated this the 3rd day of July, 2023

JUDGMENT

P.B.Suresh Kumar, J.

This writ petition(CrI) is instituted seeking a writ of *habeas corpus* directing the respondents to produce the body of Ajeesh, the son of the petitioner who is detained in terms of Ext.P1 order issued under Section 3 of the Kerala Anti-social Activities (Prevention) Act, 2007 (the Act), and set him at liberty. The petitioner seeks the relief aforesaid on the premise that the detention of her son is illegal.

2. Ext.P1 order proceeds on the premise that the detenu, who is a 'known rowdy' in terms of the provisions of the Act, needs to be detained in order to prevent him from committing further anti-social activities. It is alleged in Ext.P1 order that the detenu has indulged in various prejudicial activities, the last of which is his involvement in Crime No.360

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of 2022 of Nagarur Police Station. The occurrence which is the subject matter of the said crime took place on 30.07.2022. The detenu was arrested in the case on 31.07.2022 and he was released on bail on 24.08.2022. It is seen that the need to detain the detenu under the Act was brought to the notice of the sponsoring authority by the Station House Officer, Nagarur on 06.09.2022. Promptly, the sponsoring authority recommended to the detaining authority to initiate proceedings against the detenu under the Act on 22.09.2022 itself. On the said recommendation, the detaining authority sought additional particulars from the sponsoring authority thrice, one on 29.10.2022, another on 16.11.2022 and another one on 04.01.2023. After receiving the additional particulars, the detention order was issued on 07.01.2023 and the detention was confirmed by the Government on 02.03.2023 for a period of six months from the date of detention.

3. Although several grounds have been raised in the writ petition to impugn the detention order, at the time of arguments, the learned counsel for the petitioner urged only four grounds. The first ground is that there is unreasonable and unexplained delay in passing the detention order, thereby

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throwing considerable doubt on the genuineness of the subjective satisfaction rendered by the detaining authority as to the live and proximate link between the prejudicial activities and the purpose of detention. In order to substantiate the said ground, the learned counsel has pointed out that there is a delay of 4 months and 14 days between the date of release of the detenu on bail in Crime No.360 of 2022 and the detention order. A detenu under the Act is entitled to be furnished the grounds of detention, specifying the instances of offences, with copies of the relevant documents, on the basis of which he is considered as a 'known rowdy' and also the materials relating to his activities, on the basis of which his detention has been found necessary in terms of Section 7(2) of the Act, so as to enable him to exercise his right to represent to the Government and before the Advisory Board against the detention. The second ground is that the requirement under Section 7(2) is mandatory and there is non-compliance of the said requirement, inasmuch as page Nos.65, 66, 67, 71, 133, 142, 144 and 180 of the compilation of documents served on the detenu were not legible and the detenu was consequently, deprived of his right to prefer effective representations to the

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Government and before the Advisory Board as guaranteed under Article 22(5) of the Constitution of India. The third ground is that the detenu preferred a representation on 03.02.2023 to the Government and before the Advisory Board and the said representations were not considered before the confirmation of the order of detention. The last ground is that there is non-compliance of the mandatory procedural requirement provided for under Section 3(3) of the Act, inasmuch as the detaining authority has not reported the detention order to the Government and the Director General of Police, Kerala together with the supporting records which, in his opinion, have a bearing on the matter.

4. Per contra, the learned Government Pleader contended that additional particulars were required for the detaining authority to ensure that there exists a live and proximate link between the prejudicial activities in which the detenu had indulged in and the purpose of detention, and the delay occasioned only on account of the time taken for obtaining the additional particulars and the same cannot be regarded as a delay vitiating the order. It was pointed out by the learned Government Pleader that inasmuch as the detenu

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has preferred representations to the Government and before the Advisory Board and inasmuch as he has no case in the said representations that he could not prefer an effective representation for want of legible copies of the documents, the order of detention cannot be said to be vitiated on the said ground. It was asserted by the learned Government Pleader that the representations submitted by the detenu have been considered by the Government and the Advisory Board, prior to the confirmation of the detention order. Similarly, it was asserted by the learned Government Pleader that there is due compliance of the requirement under Section 3(3) of the Act.

5. We have examined the arguments advanced by the learned counsel for the parties on either side. We have also perused the files made available by the learned Government Pleader.

6. A perusal of the files of the detaining authority indicates that a copy of the detention order and all supporting documents were forwarded by the detaining authority to the State Government as also the State Police Chief on the date of the order itself. The ground raised by the petitioner in this regard, therefore fails. The files of the State Government

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contain the representations submitted by the detenu to the State Government and before the Advisory Board. The detenu has no case in the representations that the documents furnished to him in terms of the requirement under Section 7(2) of the Act are not legible and that he was, therefore, unable to prefer an effective representation against the order of detention. If the detenu had no grievance either before the State Government or the Advisory Board that the right guaranteed to him under Article 22(5) of the Constitution of India has been infringed on account of the illegibility of the documents furnished to him, the ground raised by the petitioner in this regard is also liable to be rejected and we do so. A perusal of the files of the State Government would also indicate that the representation submitted by the detenu before the Advisory Board has been considered by the Advisory Board in the matter of forwarding its opinion to the State Government, and on receipt of opinion of the Advisory Board, the State Government considered the representation of the detenu and it is only thereafter that the confirmation order was issued on 02.03.2023. In other words, the ground raised by the petitioner in this regard also fails.

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7. The question remaining to be considered is whether the detention order is vitiated for the reason that the live and proximate link between the prejudicial activities of the detenu and the purpose of detention has been snapped due to the delay in issuing the detention order. There cannot be any doubt that there has to be a live and proximate link between the prejudicial activities of the detenu and the purpose of detention, for otherwise, the purpose of detention will not be served and the order of detention would result in infringement of the fundamental rights guaranteed to the detenu under Articles 21 and 22 of the Constitution. There cannot also be any doubt that the unreasonable delay between the prejudicial activities of the detenu and the purpose of detention would create a serious doubt as to the genuineness of the subjective satisfaction rendered by the detaining authority as to the live and proximate link. Reverting to the facts, as noted, the last prejudicial activity in which the detenu has indulged in, is the occurrence in Crime No.360 of 2022 that took place on 30.07.2022 and the detention order was passed only on 07.01.2023, after a period of 5 months and 9 days. Of course, in the matter of considering the question of live and proximate

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link between the prejudicial activities and the purpose of detention, the delay from the date of the last prejudicial activity and the date of release of the detenu on bail in the said case namely, 24.08.2022 would not affect, in any manner, the purpose of detention, as the detenu was in custody till then. The question, however, is whether the delay for the period from 24.08.2022 to 07.01.2023 can be said to be a delay which throws doubt on the genuineness of the subjective satisfaction of the detaining authority on the aspect of the live and proximate link, in order to justify an interference with the order on that ground. This is a question to be decided on the facts of the case, having regard to the explanation offered for the delay by the detaining authority.

8. As indicated in the opening paragraphs of this judgment, the concerned Station House Officer apprised the sponsoring authority as to the need to detain the detenu in terms of his letter dated 06.09.2022 and the sponsoring authority promptly acted upon the request made by the Station House Officer and forwarded to the detaining authority his recommendation to detain the detenu under the Act on 22.09.2022 itself. The time taken from the date of release of

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the detenu on bail in Crime No.360 of 2022 viz, 24.08.2022 upto 22.09.2022 cannot be said to be an unreasonable delay. But, the order of detention was passed by the detaining authority thereafter, only on 07.01.2023. As noted, the argument advanced by learned Government Pleader in this regard is that additional particulars were required by the detaining authority and the delay occasioned for obtaining the additional particulars. No doubt, the procedural requirements under the Statute need to be complied with before issuing an order of detention and the reasonable time required for the same cannot be a reason to contend that the live and proximate link between the prejudicial activities and the purpose of detention is snapped. But, if the time consumed for complying with the procedural requirements is unreasonable, according to us, the same is a matter that would affect the validity of the order, for if the said delay is held to be a delay not affecting the validity of the order, it would appear that if additional particulars are required by the detaining authority for due application of mind as to the need to detain the person concerned, the detention order can be passed at any time. It is all the more so since the detaining authority is obliged under

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law to adopt procedures to expedite the consideration of the matter, for the administrative delay is no answer to a demand for liberty. A perusal of the files of the detaining authority indicates that though the sponsoring authority recommended for detention as early as on 22.09.2022, additional particulars were sought by the detaining authority for the first time only on 29.10.2022. It is seen that the particulars sought for were given by the sponsoring authority to the detaining authority on 29.10.2022 itself. The next requirement of particulars came from the detaining authority only on 16.11.2022. The file indicates that the sponsoring authority had furnished the said particulars also on the same day itself. The next requirement of particulars came from the detaining authority only after about 1 month and 3 weeks, and the sponsoring authority had furnished the said particulars also on the same day itself and it is thereafter that the order was issued on 07.01.2023. According to us, the time consumed by the detaining authority for seeking additional particulars in the case on hand cannot be said to be reasonable, justifying the delay. In the light of the discussion aforesaid, the impugned order is liable to be set aside and we do so.

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9. Accordingly, the Writ Petition (Criminal) is allowed and the order of detention is quashed. There will be a direction that Ajeesh, the son of the petitioner shall forthwith be released from the Central Prison, Vijayur, if his detention is not otherwise required.

Registry will communicate the above order to the concerned Prison Authorities forthwith.

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

Sd/-
C.S.SUDHA, JUDGE.

ds 27.06.2023

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APPENDIX OF WP (CRL.) 544/2023

PETITIONER EXHIBITS

Exhibit-P1 **A TRUE COPY OF ORDER NO. S13-
464293/2022 DATED 07.01.2023 OF THE
2ND RESPONDENT WITH ITS ENCLOSED
RECORDS**

Exhibit-P2 **THE TRUE COPY OF THE ORDER DATED
03.03.2023**