



2023/KER/54924

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

FRIDAY, THE 15<sup>TH</sup> DAY OF SEPTEMBER 2023 / 24TH BHADRA, 1945

WP (CRL.) NO. 847 OF 2023

PETITIONER:

K.V.BINOY,

BY ADVS.  
PEEYUS A.KOTTAM  
RAGESH CHAND R.G.  
GENTLE C.D.

RESPONDENTS:

- 1 STATE OF KERALA,  
REPRESENTED BY THE CHIEF SECRETARY, SECRETARIAT,  
THIRUVANANTHAPURAM, PIN - 695001
- 2 THE ADDITIONAL CHIEF SECRETARY,  
HOME DEPARTMENT (SSA), SECRETARIAT,  
THIRUVANANTHAPURAM - 695001
- 3 DISTRICT POLICE CHIEF,  
ERNAKULAM RURAL ALUVA, PIN - 683101
- 4 SECRETARY,  
ADVISORY BOARD, THE PREVENTION OF ILLICIT  
TRAFFIC IN NDPS ( PIT NDPS) ACT 1998,  
HIGH COURT BUILDING, ERNAKULAM, PIN - 682031
- 5 STATION HOUSE OFFICER, KOTHAMANGALAM,  
KOTHAMANGALAM, KOTHAMANGALAM POLICE STATION,  
PIN - 686691
- 6 SUPERINTENDENT OF PRISON,  
CENTRAL PRISON, POOJAPPURA,  
THIRUVANANTHAPURAM, PIN - 695012



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SRI.K.A.ANAS, PUBLIC PROSECUTOR

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR  
ADMISSION ON 15.09.2023, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:



**P.B.SURESH KUMAR & P.G.AJITHKUMAR, JJ.**

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**W.P.(CrI) No.847 of 2023**  
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**Dated this the 15<sup>th</sup> day of September, 2023.**

**J U D G M E N T**

**P.B.Suresh Kumar, J.**

This writ petition (CrI) is instituted seeking a writ of habeas corpus directing the respondents to produce the son of the petitioner, Bennet K Binoy who is detained in terms of Ext.P3 order issued under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (the Act) and set him at liberty. The petitioner seeks the relief aforesaid on the premise that the detention of his son under the said provision is illegal.

2. Heard the learned counsel for the petitioner as also the learned Government Pleader.

3. The prejudicial activity attributed against the detenu is his involvement in Crime No.890 of 2020 of Kallookadu



police station registered under Sections 20(b)(ii)C, 27A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985. It is alleged that the detenu absconded immediately on registering the crime against him and later, obtained anticipatory bail in the case from this Court on 17.02.2021. Ext.P4 is the order passed by this Court in this regard. The State challenged Ext.P4 order before the Apex Court. Though the Apex Court set aside Ext.P4 order and remitted the application for anticipatory bail to this Court for fresh disposal, the detenu did not pursue for anticipatory bail, as in the meanwhile, final report was filed in the case on 14.09.2021 and he could obtain regular bail from the trial court on receiving summons. The detention order was passed thereafter on 25.07.2023. The petitioner challenges the detention of his son under the Act mainly on the ground of delay.

4. The matter came up for admission for the first time on 22.08.2023 and it was adjourned thereafter on several occasions at the instance of the respondents. Till date, the respondents have not chosen to file a counter affidavit in the matter.

5. As noted, the prejudicial activity attributed against the detenu took place on 25.11.2020 and the order of detention is



one issued on 25.07.2023. 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. We have perused the order of detention as also the reasons, on the basis of which the order of detention was issued. We do not find any reason in the order indicating application of mind of the detaining authority as to the proximate link between the prejudicial activity of the detenu and the order of detention intended to prevent the detenu from indulging in further prejudicial activities. There is also no explanation in the grounds of detention for the long delay of almost 2 years and 8 months in issuing the detention order after the prejudicial activity.

6. The learned Government Pleader submitted that



even though the crime was registered as early as on 25.11.2020, the investigation in the case was continuing and most of the accused could not be apprehended. It was pointed out that the investigation in the case was over only during September, 2021 and the final report in the case could be filed consequently, only on 14.09.2021. It was submitted that having regard to the said development, the delay in issuing the detention order cannot be said to be fatal. The learned Government Pleader has also cited the decisions of the Apex Court in **Hemlata Kantilal Shah v. State of Maharashtra**, 1981 KHC 727 and **D.Anuradha v. Joint Secretary**, 2006 KHC 732, in support of the said argument.

7. We do not think that in the context of the rights guaranteed to the detenu under Articles 21 and 22 of the Constitution, the reasons pointed out by the learned Government Pleader can be accepted as valid reasons to justify the delay of 2 years and 8 months, especially when the statute contemplates preventive detention only for a maximum period of one year, and when the State has no case that the detenu has indulged in any other prejudicial activity in between. The challenge to the detention order, in the circumstances, succeeds.



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8. The Writ Petition (Criminal) is accordingly, allowed and Ext.P3 order is quashed. There will be a direction that Bennet K Binoy, the son of the petitioner shall forthwith be released from the Central Prison, Poojappura, Thiruvananthapuram, if his detention is not otherwise required.

Registry will communicate the above order to the prison authorities forthwith.

Sd/-

**P.B.SURESH KUMAR, JUDGE.**

Sd/-

**P.G.AJITHKUMAR, JUDGE.**

YKB

APPENDIX

## PETITIONER EXHIBITS

- Exhibit P1 THE TRUE COPY OF THE PROPOSAL TO INITIATE ACTION UNDER SECTION 3(1) OF THE PREVENTION OF ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCE ACT, 1988 SUBMITTED BY THE INSPECTOR OF POLICE, KOTHAMANGALAM BEFORE THE DISTRICT POLICE CHIEF ERNAKULAM RURAL DISTRICT DATED 25/09/2022
- Exhibit P2 THE TRUE COPY OF THE LETTER NO.D1-1154/2022/LO(3) DATED 07-11-2022 ISSUED BY THE ADDITIONAL DIRECTOR GENERAL OF POLICE (LAW & ORDER) TO THE DGP & STATE POLICE CHIEF REGARDING THE PROPOSAL AGAINST NOTORIOUS DRUG PEDDLER BENNET K BINOY FOR INITIATING ACTION UNDER SECTION 3(1) OF THE PREVENTION OF ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCE ACT 1988 -SUBMITTING-REG
- Exhibit P3 THE TRUE COPY OF THE ORDER NO.HOME-SSA1/65/2023-HOME, THIRUVANANTHPURAM DATED 25-07-2023 BY THE 2ND RESPONDENT AND REPORT ON REASONS FOR ORDERING PREVENTIVE DETENTION AS PER SECTION 3(1) OF THE PIT NDPS ACT 1988 BY THE 3RD RESPONDENT DISTRICT POLICE CHIEF ERNAKULAM RURAL DATED 03/10/2022
- Exhibit P4 TRUE COPY OF THE ORDER IN B.A.NO. 1253/2021 DATED 17.02.2021
- Exhibit P5 THE TRUE COPY OF THE ORDER IN B.A.NO. 1253/2021 DATED 17.03.2022





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Exhibit P6                   THE TRUE COPY OF THE JUDGMENT IN  
JUDGMENT REPORTED IN 2022 LIVE LAW (SC)  
813 (SUSHANTA KUMAR BANIK VS. STATE OF  
TRIPURA AND OTHERS) DATED: 30/09/2022

Exhibit P7                   THE TRUE COPY OF THE JUDGMENT IN W.P  
(CRL.) 426/23 DATED 04.07.2023