



2023/KER/68791

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

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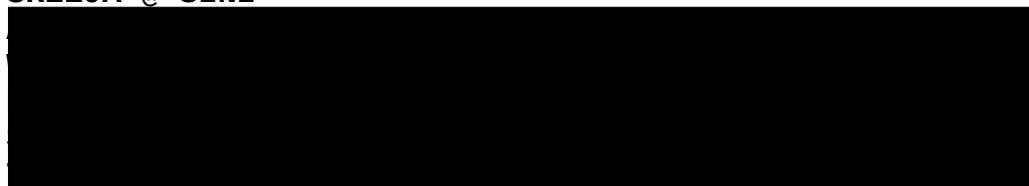
THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

WEDNESDAY, THE 8TH DAY OF NOVEMBER 2023 / 17TH KARTHIKA, 1945

WP(CRL.) NO. 971 OF 2023

PETITIONER/S:

SREEJA @ SINI



BY ADVS.
BIJU ANTONY ALOOR
K.P.PRASANTH
ARCHANA SURESH
SUNITHA K.G.
HARITHA HARIHARAN
HASEEB HASSAN.M

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY ADDL. CHIEF SECRETARY TO GOVERNMENT OF
KERALA (HOME DEPARTMENT), SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001
- 2 THE DISTRICT MAGISTRATE(COLLECTOR)
THRISSUR DISTRICT, CIVIL STATION, THRISSUR,, PIN -
680003
- 3 THE DISTRICT POLICE CHIEF
THRISSUR DISTRICT, KATTUNGACHIRA, IRINJALAKUDA NORTH,
PORATHISSERY, PIN - 680125
- 4 THE STATION HOUSE OFFICER
OLLUR POLICE STATION, THRISSUR -DISTRICT, PIN - 680360
ADDL. STATE PUBLIC PROSECUTOR(AG-28), SRI.K.A.ANAS

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON
08.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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JUDGMENT

Dated this the 8th day of November, 2023

A.MUHAMED MUSTAQUE(J)

The issue that arises in this writ petition after hearing the learned Counsel for the petitioner and the learned Government Pleader is that whether this Court can modify the period of detention of the detinue under the Kerala Anti-Social Activities (Prevention) Act, 2007 (for short “the KAAPA Act”).

2. Having gone through the impugned order, we find no reason to interfere with this order, inasmuch as the same was issued to secure the public order. The petitioner herein is a lady, who is involved in more than 19 cases. All most all the cases of the petitioner are related under Sections 406 and 420 of IPC.

3. When a person indulge in anti-social activity, which has become a pattern, then it becomes an issue related to public order. In that sense, we find no reason to interfere with the impugned order. However, the learned Counsel for the petitioner submitted that, the petitioner

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is a lady and her daughter is in her advanced stage of pregnancy. It is further submitted that an order may be issued to release her to take care of her daughter and child. It is in this context, the question relating to the modification of the detention order arises for consideration before this Court.

4. The learned Government Pleader placing reliance on the judgment of this Court in ***Kumaran v. District Collector reported in 2015(4) KLT 911***, submits that the Court has no jurisdiction to alter the period of detention under Section 3 of the KAAPA. The learned Government Pleader is justified in making such submission as normally the Court cannot interfere with the detention order of the detenu under Section 3(1) of KAAPA Act. However, nothing prevents the constitutional Court from recognising the right under Article 21 under the peculiar circumstances in which an individual is placed. In exceptional circumstances, the recognition invoking Article 21 of the Constitution of India, the Court can order release of such person who is detained in custody. This order is not with reference to invoking statutory provision but with reference to superior right available to such person on a

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justifiable ground under Article 21 of the Constitution to ensure life and liberty of such citizens and others. It is pleaded before us that nobody is there to take care of her daughter and child and on humanitarian grounds, the period of detention be modified.

5. The documents produced before this Court establishes that the daughter is in her advanced stage of pregnancy and she needs care and protection from her mother, who is the detinue. The detinue had already undergone substantial period of detention and further period of detention will expire on 15.12.2023. In such circumstances, we are of the view that the detinue shall be released from the jail on 14.11.2023, without serving further period of detention nearly one month.

The Writ Petition Crminal is disposed of accordingly.

**Sd/-
A.MUHAMED MUSTAQUE, JUDGE**

**Sd/-
SHOBA ANNAMMA EAPEN, JUDGE**



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APPENDIX OF WP(CRL.) 971/2023

PETITIONER EXHIBITS

- Exhibit 1** TRUE COPY OF REPORT DATED 11/05/2023
U/VIDE. NO. 31/KAAPA/SB/RC/2023
- Exhibit P2** TRUE COPY OF THE ORDER OF DETENTION
NO.C1-5317/2023 DATED 15.06.2023 OF THE
2ND RESPONDENT DISTRICT MAGISTRATE
- Exhibit P3** TRUE COPY OF ORDER OF BY THE 1ST
RESPONDENT DT 22/8/23
- Exhibit P4** TRUE COPY OF TRUE COPY OF THE
REPRESENTATION FILED BY THE PETITIONER
BEFORE THE STATE HUMAN RIGHTS
COMMISSION DT NIL"
- Exhibit P5** TRUE COPY OF TRUE COPY OF THE MEDICAL
CERTIFICATE OF THE PETITIONER R DT
10.10.20
- Exhibit P6** TRUE COPY OF TRUE COPY OF THE MEDICAL
CERIFICATE OF THE PETITIONER 'S
DAUGHTER DT12.9.23
- Exhibit P7** TRUE COPY OF THE ORDER OF DETENTION
DATED 15/06/2023