



2023/KER/73705

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

FRIDAY, THE 24TH DAY OF NOVEMBER 2023 / 3RD AGRAHAYANA,

1945

WP(CRL.) NO. 889 OF 2023

PETITIONER:

KRISHNAPRIYA K P, [REDACTED]

BY ADV AJEESH M UMMER

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY TO
GOVERNMENT, HOME DEPARTMENT, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695 001
- 2 THE DISTRICT COLLECTOR & DISTRICT MAGISTRATE,
CIVIL STATION, COLLECTRATE ROAD, KANNUR, PIN -
670 002
- 3 THE STATION HOUSE OFFICER
PANOOR POLICE STATION, PUTHOOR ROAD, PANOOR
KANNUR, PIN - 670 692
- 4 THE DISTRICT POLICE CHIEF
KANNUR CITY, KANNUR, PIN - 670 002
- 5 THE CHAIRMAN, ADVISORY BOARD, KAAPA, SREENIVAS,
PADAM ROAD, VIVEKANANDA NAGAR, ELAMAKKARA, PIN -
682 026
- 6 THE SUPERINTENDENT OF JAIL
CENTRAL JAIL AND CORRECTION HOME, VIYYOOR, PIN -



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BY ADVS.
ADVOCATE GENERAL OFFICE KERALA
ADDL.DIRECTOR GENERAL OF PROSECUTION (AG-11)
ADDL. STATE PUBLIC PROSECUTOR (AG-28)

ADV. K.A ANAS PP

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY
HEARD ON 24.11.2023, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:



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C.R.

J U D G M E N T

A. Muhamed Mustaque, J

The short point that arises in this case is to the legality of execution of the detention order issued, invoking the provisions under the Kerala Anti-Social Activities (Prevention) Act, 2007 (for short "KAAPA Act"). The detention order was passed on 14.11.2022. The detenu appears to be absconding. He appeared before the Panoor Police Station on 13.06.2023 and thereafter, he was detained. The point to be considered is that the delay in execution of the detention order would snap the live-link between the last prejudicial activity and the order of detention.

2. The relevant provisions required to be considered in this matter are Sections 4 and 6 of the KAAPA Act r/w other provisions of the Code of Criminal Procedure.

3. Section of 4 of the KAAPA Act states as follows:

"Execution of detention orders. - A detention order may be executed at any place in the State of Kerala in the manner provided for the



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execution of warrants of arrest under the Code of Criminal Procedure, 1973 (Central Act 2 of 1974)."

4. Section 6 of the KAAPA Act states as follows:

"Powers in relation to absconding persons. - (1) If the Government or an officer authorised mentioned in sub-section (2) of section 3 has reason to believe that a person in respect of whom a detention order has been made has absconded or is concealing himself so that the order cannot be executed, the Government or such officer may,-

(a) make a report in writing of the fact to a Chief Judicial Magistrate or a Judicial Magistrate of the first class having jurisdiction in the place where the said person ordinarily resides;

(b) by order notified in the Official Gazette direct the said person to appear before such officer, at such place and within such period as may be specified in the order.

(2) On making of a report against any person under clause (a) of sub-section(1), the provisions of sections 82, 83, 84, 85, and 86 of the Code of Criminal Procedure, 1973 (2 of 1974), shall apply in respect of such person and his property as if the detention order made against him is a warrant issued by the Magistrate.

(3) If any person fails to comply with an order issued under clause (b) of sub-section (1) he shall, unless he proves that it was not possible for him to comply therewith and that he had, within the period specified in the order, informed the officer mentioned in the order of the reasons which rendered compliance therewith impossible and of his whereabouts, or failed to prove that he could not inform the officer mentioned in the order, be punishable with imprisonment for a term which may extend to two years, or with fine, or with both."

5. Combined reading of the above provisions would show that there are two sets of procedure. The first set of procedure will have to be followed by the Authority passing detention order by filing a report to the Chief Judicial Magistrate or the Judicial Magistrate having



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jurisdiction in regard to the absconding detenu. This has to be followed by the issuance of a notification in the official gazette directing the absconding person to appear before such officer, with place and time specified therein.

6. The second procedure to be followed is invoking provisions of Section 82, 83, 84, 85 and 86 of the Code of Criminal Procedure, the provisions in relation to proclamation and attachment of property of the person absconding.

7. We note that in this case, first set of procedure have been followed by the detention authority. Now the question is regarding the second set of procedure as referable under the Code of Criminal Procedure, relatable to proclamation and attachment. This is significant in this matter as delay will have to be explained with the procedure followed before the Criminal court.

8. We note from Section 6(2) of the KAAPA Act, on making a report of absconding the detention order would operate as a warrant against such person, issued by the Magistrate and the Magistrate will only had to follow the procedure as contemplated for proclamation and



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attachment. That means, the Magistrate will have to treat that detention order as a warrant and will have to proceed at the first instance against the sureties of the absconder to produce the detenu. The Court will have to take steps against the sureties, who stood as surety for granting bail to the absconder. Then all procedure for producing abscondant as contemplated under Sections.82, 83, 84, 85 and 86 of the Code of Criminal Procedure.

9. If procedure as referable under the Code of Criminal Procedure have been initiated by the Magistrate immediately on intimation, any delay involved in the Court proceedings will not entail to the benefit of the absconder and that delay can very well be explained before the Court in any challenge against the KAAPA proceedings.

10. In this case, though it is submitted by the learned Public Prosecutor that the Magistrate has been intimated and proceedings have been initiated. Nothing discernible as to the immediate steps that have been taken by the Magistrate Court for compelling the appearance of absconding detenu.

11. This Court in *Soja Beegum v. Additional Chief Secretary to Government and Others* [2009 (4) KHC 909] had



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considered the same issue and held as follows:

"The file which has been placed before us shows that a letter dated 25/11/2008 was addressed by the second respondent to the learned Chief Judicial Magistrate. The said report is made for the information of the learned Chief Judicial Magistrate. Significantly in that letter dated 25/11/08 it is not reported to the learned Chief Judicial Magistrate that the accused is on bail in the three cases or that the bail must be cancelled or the sureties must be directed to ensure the presence of the accused before the Courts concerned to facilitate arrest and detention of the accused. The mandate of S.6(1) (a) has been mechanically and ritualistically complied by submitting a report, but unfortunately a real intention to take necessary steps to procure the presence of the detenu cannot be deciphered from the letter dated 25/11/2008 submitted under S.6(1)(a) of the KAAPA. S.6(2) stipulates what a Chief Judicial Magistrate or a Magistrate to whom report is made under S.6(1)(a) is to do. He is to take necessary action under S.82 to 86 of the CrPC. Significantly in the letter dated 25/11/2008, no such action is solicited. The learned Chief Judicial Magistrate has not even been informed that the three cases are pending trial before the Courts or that the detenu is on bail in those cases."

12. In such circumstances, we are of the view that non explanation of the delay involved is vital in this case as we held that the last prejudicial activity is the live- link for the purpose of detention order.

13. We order hereafter that the Magistrate Court, in the State of Kerala shall take note of this order when a detenu is ordered to be detained under the KAAPA Act is absconded and when a report is filed under Section 6(a) of the KAAPA Act, the Magistrate Court shall immediately proceed to secure the presence of detenu as though a warrant has been issued under the Code of Criminal



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Procedure and by proceeding in accordance with the proceedings of the Code of Criminal Procedure. All the steps taken by the Magistrate shall be intimated to the detention authority from time to time. Other wise, the non explanation delay would frustrate the very purpose of passing detention order under the KAAPA Act. The Registrar (District Judiciary) shall intimate all the Chief Judicial Magistrates in the State about this order. The Chief Judicial Magistrates also shall inform all the Magistrates concerned about the procedure to be followed in such matter. The detenu shall be released forthwith.

This w.P Cr1. is allowed as above.

Sd/-

A.MUHAMED MUSTAQUE
JUDGE

Sd/-

SHOBA ANNAMMA EAPEN
JUDGE

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APPENDIX OF WP (CRL.) 889/2023

PETITIONER EXHIBITS

Exhibit P1 A TRUE COPY OF THE ORDER NO
DCKNR/11741/2022/SS1 DATED 14.11.2022
ALONG WITH DOCUMENTS RECEIVED AS SUCH