

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 10TH DAY OF JULY 2023 / 19TH ASHADHA, 1945

WP(CRL.) NO. 232 OF 2023

PETITIONER:

K. SURESH KUMAR, AGED 55 YEARS
S/O. KESAVAN NADAR, TC 58/824, VALIAVILAKAM
MELETHIL HOUSE, PUTHENCOTTA,
ATTUKAL, PIN - 695009

BY ADVS.
C.P.UDAYABHANU
NAVANEETH.N.NATH

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY THE PRINCIPAL SECRETARY,
DEPARTMENT OF HOME, THIRUVANANTHAPURAM -695001
- 2 DISTRICT MAGISTRATE
COLLECTORATE, THIRUVANANTHAPURAM, PIN - 695043
- 3 DIRECTOR GENERAL OF POLICE
POLICE HEADQUARTERS,
THIRUVANANTHPURAM., PIN - 695004
- 4 DEPUTY POLICE COMMISSIONER (LAW & ORDER),
THIRUVANANTHAPURAM CITY., PIN - 695001
- 5 STATION HOUSE OFFICER
FORT POLICE STATION,
THIRUVANANTHAPURAM, PIN - 695009

BY PUBLIC PROSECUTOR SRI.K.A.ANAS

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY
HEARD ON 30.06.2023, THE COURT ON 10.07.2023 DELIVERED
THE FOLLOWING:

W.P.(CrI.) No.232 of 2023

-: 2 :-

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

W.P.(CrI.) No.232 of 2023

Dated this the 10th 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 Naveen Suresh, 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 to set him at liberty.

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.841 of 2022 of Vizhinjam Police Station. It is stated that the occurrence which is the subject matter of the said crime took place on 27.07.2022. The detenu was arrested in the case on

W.P.(CrI.) No.232 of 2023

-: 3 :-

05.08.2022 and he was released on bail on 24.09.2022.

3. Although several grounds have been raised in the writ petition to impugn the detention order, the main ground urged by the learned counsel for the petitioner at the time of hearing is that the impugned order was passed without considering the application for bail preferred by the detenu in Crime No.841 of 2022 and the order passed thereon. According to the learned counsel, inasmuch as the the application for bail and the order passed thereon were not considered by the detaining authority in the matter of rendering its subjective satisfaction necessary to detain the detenu under the Act to prevent him from indulging in further anti-social activities, the detention order is vitiated for non-application of mind, for it is incumbent on the part of the detaining authority to consider whether the bail conditions are sufficient to prevent the detenu from continuing to indulge in anti-social activities.

4. The learned Government Pleader did not dispute the fact that the bail application submitted by the detenu in the last crime and the order passed thereon were not placed before the detaining authority. However, he contended that merely for the said reason, it cannot be said that the order

W.P.(CrI.) No.232 of 2023

-: 4 :-

is bad. It was argued by the learned Government Pleader that in the case on hand, the view taken by the sponsoring authority is that the detenu is a person who would indulge in prejudicial activities even violating the bail conditions and therefore non-consideration of the bail conditions may not be of any significance. It was pointed out by the learned Government Pleader that it was accepting the said stand that the detaining authority ordered his detention. The submission of the learned Government Pleader therefore was that non placement of the application for bail and the order passed thereon before the detaining authority, is not of any consequence in a case of this nature.

5. We have examined the arguments advanced by the learned counsel for the parties on either side.

6. It is trite that when an accused in a criminal case, who is enlarged on bail with conditions is sought to be detained in preventive detention, it is incumbent on the part of the detaining authority to consider whether the bail conditions are sufficient to prevent the detenu from continuing to indulge in anti-social activities and despite the conditions, if the detaining authority still considers that the detenu is required to be detained, the detaining authority is at liberty to pass an

W.P.(CrI.) No.232 of 2023

-: 5 :-

order of detention. In other words, the duty of the detaining authority is that he should pointedly consider the order passed by the court granting bail to the detenu and the conditions thereof and after due application of mind, pass orders, either to detain or not to detain the detenu [See **Nalini v. State of Kerala**, 2013 SCC OnLine Ker 20761]. We have perused the impugned detention order and the grounds of detention. Although the detaining authority is seen to have taken note of the fact that the detenu has been enlarged on bail in the last crime in the impugned order, as pointed out by the learned Government Pleader, the order proceeds on the premise as if the detenu is a person who cannot be prevented from indulging in anti-social activities, by means of bail conditions. In other words, it could be seen that the order is one passed without determining the nature of the bail conditions and without considering whether the bail conditions are sufficient to deter the detenu from indulging further in anti-social activities. If that be so, according to us, the impugned order is liable to be set aside for want of due application of mind as to the need to prevent the detenu from indulging in further anti-social activities in terms of the provisions of the Act.

7. Accordingly, the Writ Petition (Criminal) is

W.P.(CrI.) No.232 of 2023

-: 6 :-

allowed and the order of detention is quashed. There will be a direction that Naveen Suresh, the son of the petitioner shall forthwith be released, 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

W.P.(Crl.) No.232 of 2023

-: 7 :-

APPENDIX OF WP (CRL.) 232/2023

PETITIONER EXHIBITS

- Exhibit P1 A TRUE COPY OF THE ORDER DATED
02.12.2022 PASSED BY THE 2ND
RESPONDENT DISTRICT COLLECTOR/DISTRICT
MAGISTRATE, THIRUVANANTHAPURAM U/S.
3(1) OF THE KERALA ANTI- SOCIAL
ACTIVITIES (PREVENTION) ACT, 2007
- Exhibit P2 A TRUE COPY OF THE REPORT NO:
78/KAA(P)A/DCP (L & O)/TC-2022 DATED
29.09.2022 SUBMITTED BY THE 04TH
RESPONDENT BEFORE THE 2ND RESPONDENT
- Exhibit P3 A TRUE COPY OF THE REPORT NO:
78/KAA(P)A/DCP (L & O)/TC-2022 DATED
16.11.2022 SUBMITTED BY THE 04TH
RESPONDENT BEFORE THE 2ND RESPONDENT
- Exhibit P4 A TRUE COPY OF THE NOTICE ISSUED BY
THE 6TH RESPONDENT
- Exhibit P5 A TRUE COPY OF THE ORDER PASSED BY THE
1ST RESPONDENT DATED 10.02.2023
CONFIRMING THE DETENTION
- Exhibit P6 TRUE COPY OF THE MEDICAL REPORT OF THE
DETENU FROM THE MENTAL HEALTH CENTER,
THIRUVANANTHAPURAM DATED 10/01/2023