

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

TUESDAY, THE 27TH DAY OF JUNE 2023 / 6TH ASHADHA, 1945

WP(CRL.) NO. 134 OF 2023

PETITIONER:

HARIKRISHNAN,
AGED 26 YEARS
S/O. PRATHAPAN, KARAPARAMBU HOUSE, KOTHAKULAM
DESOM, VALAPPAD VILLAGE, THRISSUR DISTRICT, PIN
- 680567

BY ADV VISHNUPRASAD NAIR

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY GOVERNMENT PLEADER, HIGH COURT OF
KERALA, ERNAKULAM, PIN - 682031
- 2 THE DEPUTY INSPECTOR GENERAL OF POLICE
THRISSUR RANGE, THRISSUR., PIN - 680001
- 3 SUPERINTENDENT OF POLICE
THRISSUR RURAL, THRISSUR DISTRICT, PIN - 680001
- 4 THE DEPUTY SUPERINTENDENT OF POLICE
KODUNGALLUR SUB DIVISION, THRISSUR DISTRICT, PIN
- 680664
- 5 THE INSPECTOR OF POLICE (SHO),
VALAPPAD POLICE STATION, THRISSUR DISTRICT, PIN
- 680507
BY ADV.
K.A.ANAS, GOVERNMENT PLEADER

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR
ADMISSION ON 27.06.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

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

W.P.(Crl) No.134 of 2023

Dated this the 27th day of June, 2023

J U D G M E N T

P.B.Suresh Kumar, J.

This writ petition is instituted challenging Ext.P4 order issued under Section 15(1)(a) Kerala Anti-Social Activities (Prevention) Act, 2007 (the Act), restraining the petitioner from entering the limits of Thrissur Revenue District for a period of one year.

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

3. Ext.P4 order refers to various prejudicial activities committed by the petitioner. The last prejudicial activity referred to in Ext.P4 order is the involvement of the petitioner in Crime No.98 of 2022 of Valappad Police Station. The said crime was reported on 03.02.2022. The petitioner

secured anticipatory bail in the case on 02.03.2022 and pursuant to the condition imposed in the order granting anticipatory bail, the petitioner appeared before the police on 06.03.2022. The final report in the case was filed on 30.03.2022. It is thereafter on 09.07.2022, the concerned Station House Officer recommended to the sponsoring authority under the Act for initiation of proceedings against the petitioner under Section 15 of the Act. An additional report was also filed by the Station House Officer to the sponsoring authority in this regard on 11.07.2022. Pursuant to the reports aforesaid, on 20.07.2022, the sponsoring authority recommended to the competent authority for initiation of proceedings against the petitioner under Section 15 of the Act in order to prevent him from entering the limits of Thrissur Revenue District. Acting upon the recommendation, after giving to the petitioner an opportunity of hearing, the impugned order was passed on 01.09.2022 and the same was served on the petitioner on 06.09.2022.

4. The learned counsel for the petitioner contended that inasmuch as the last prejudicial activity

referred to in the order being one that took place on 02.02.2022, there is inordinate delay in initiating proceedings, and in the absence of any satisfactory explanation for the delay, it can be presumed that there is no application of mind on the aspect of the live link required to be maintained between the prejudicial activity and the initiation of proceedings. According to the learned counsel, the impugned order is liable to be set aside on that sole ground.

5. Per contra, the learned Government Pleader contended that there is satisfactory explanation for the delay in the order and it cannot, therefore, be contended that there was no application of mind on the aspect of the live link required to be maintained between the prejudicial activity and the initiation of proceedings. The learned Government Pleader has brought to our notice the relevant portions of the impugned order and also the relevant paragraph in the counter affidavit filed by the competent authority dealing with the aspect of delay. The learned Government Pleader also submitted that the petitioner got himself involved in another prejudicial activity on 14.12.2022, viz, Crime No.903 of 2022 of Valappad Police

Station after the impugned order was served on him. According to the learned Government Pleader, the involvement of the petitioner in a prejudicial activity even after receipt of the impugned order fortifies the subjective satisfaction rendered by the competent authority as to the live link between the prejudicial activity and initiation of proceedings as also the need to pass the impugned order so as to prevent the petitioner from indulging in further anti-social activities.

6. In reply to the submissions made by the learned Government Pleader, the learned counsel for the petitioner submitted that the involvement of the petitioner in a prejudicial activity after the impugned order has been passed, cannot be a reason to justify the said order. According to the learned counsel, the legality or otherwise of the order needs to be examined with reference to the facts and circumstances existing as on the date of the order, for, if the order is an illegal one, merely for the reason that the petitioner got himself involved in a prejudicial activity after the order, it cannot be treated as legal.

7. We have examined the arguments advanced

by the learned counsel for the parties on either side.

8. No doubt, there has to be a live link between the prejudicial activities and the decision of the competent authority to initiate proceedings under Section 15 of the Act. If there is a long delay between the last prejudicial activity and the initiation of the proceedings, in the absence of a satisfactory explanation for the delay, it can be presumed that the live link between the prejudicial activity and initiation of proceedings is snapped.

9. As noted, the last prejudicial activity of the petitioner referred to in the impugned order is the involvement of the petitioner in Crime No.98 of 2022 of Valappad Police Station. The occurrence, which is the subject matter of the said case took place on 02.02.2022. The sponsoring authority recommended for initiation of proceedings against the petitioner under Section 15 of the Act only on 20.07.2022. In other words, there is a delay of 5 months and 18 days in initiating the proceedings from the date of the last prejudicial activity. As noted, the argument advanced by the learned Government Pleader in this regard is that the impugned order

would indicate beyond doubt that there was due application of mind on the part of the competent authority as regards the need to pass an order against the petitioner under Section 15 of the Act to prevent the petitioner from indulging in further prejudicial activities and as regards the live link between the last prejudicial activity and initiation of proceedings, to justify the initiation of proceedings. Paragraphs 11 and 13 of the impugned order, which were brought to our notice by the learned Government Pleader in support of the said argument read thus:

“11.ഹരികൃഷ്ണൻ@ഹരി അവസാനമായി ഉൾപ്പെട്ട വലപ്പാട് പോലീസ് സ്റ്റേഷൻ ക്രൈം 98/2022 U/s 341, 323,324, 427, 308, r/w 34 IPC കേസിന്റെ കുറ്റകൃത്യം സംഭവിച്ചത് 02-02-2022 തിയതിയിലും റിപ്പോർട്ടായത് 03-02-2022 തീയതിയിലുമാണ്. ഈ കേസിൽ അന്വേഷണം പൂർത്തിയാക്കി ഹരികൃഷ്ണൻ@ഹരിയെ മൂന്നാം പ്രതി ചേർത്ത് കൊടുങ്ങല്ലൂർ JFCM കോടതി മുമ്പാകെ 30-03-2022 തിയതി കുറ്റപത്രം സമർപ്പിച്ചിരുന്നതും ആയത് CP 40/2022 ആയി കോടതിയുടെ പരിഗണയിലുമാണ്. ഈ കേസിലേക്ക് വേണ്ടി ഹരികൃഷ്ണൻ@ഹരിക്ക് ബഹു.തൃശ്ശൂർ ജില്ലാ സെഷൻസ് കോടതിയിൽ നിന്ന് CrIMC 242/2022 dtd 02/03/2022 നമ്പരായി ലഭിച്ച മുൻകൂർ ജാമ്യ ഉത്തരവിന്റെ അടിസ്ഥാനത്തിൽ 06.03.2022 തിയതി സ്റ്റേഷനിൽ ഹാജരായ ഹരികൃഷ്ണൻ@ഹരിയെ അറസ്റ്റ് ചെയ്തിരുന്നതും തുടർന്ന് നിയമാനുസരണം ജാമ്യത്തിൽ വിട്ടയച്ചിട്ടുള്ളതുമാണ്. ഇപ്രകാരം ഹരികൃഷ്ണൻ@ഹരി സാമൂഹ്യവിരുദ്ധ പ്രവർത്തികളിൽ ഏർപ്പെട്ട് സ്ഥലത്തെ പൊതുസമാധാനത്തിന് ഭീഷണിയാവുന്ന സാഹചര്യത്തിലും തുടർച്ചയായ പൊതുജനസമാധാന ലംഘനപ്രവർത്തികളിൽ ഹരികൃഷ്ണൻ@ഹരി ഉൾപ്പെട്ടതിനെ തുടർന്ന് ആയതുകളിൽ നിന്ന് ഹരികൃഷ്ണൻ@ഹരിയെ പിന്തിരിപ്പിക്കാൻ ഹരികൃഷ്ണൻ@ഹരിക്കെതിരെ 107 CrPC പ്രകാരം നടപടി സ്വീകരിച്ചു.

ഹരികൃഷ്ണൻ@ഹരിയുടെ ഇത്തരം പ്രവർത്തികൾ നിരീക്ഷിക്കുന്നതിന് റൗഡി ഹിസ്റ്ററി ഷീറ്റ് ആരംഭിച്ചും നടപടികൾ സ്വീകരിച്ചുവെങ്കിലും ഹരികൃഷ്ണൻ@ഹരി വീണ്ടും പൊതുജന സമാധാനലംഘന പ്രവർത്തികളിൽ ഏർപ്പെട്ട് വരുന്നതായും ഹരികൃഷ്ണൻ@ഹരിയെ സ്വതന്ത്രമായി തൃശ്ശൂർ ജില്ലയിൽ സഞ്ചരിക്കാൻ അനുവദിച്ചാൽ ഹരികൃഷ്ണൻ@ഹരിയുമായി ഒത്തുചേർന്ന് കുറ്റകൃത്യങ്ങളിൽ ഏർപ്പെട്ട് വരുന്നവരുമായി സഹവസിച്ചു തുടർന്നും പൊതുസമാധാനത്തിന് ഭീഷണിയാകുന്ന സാമൂഹ്യ വിരുദ്ധ പ്രവർത്തികൾ ഹരികൃഷ്ണൻ@ഹരി തുടരമെന്നും എനിക്ക് ബോധ്യപ്പെട്ടിട്ടുള്ളതിനാൽ ഹരികൃഷ്ണൻ@ഹരിയെ പൊതുസമാധാന ലംഘനപ്രവർത്തികളിൽ നിന്നും പിന്തിരിപ്പിക്കുന്നതിന് കേരള സാമൂഹ്യവിരുദ്ധ പ്രവർത്തനങ്ങൾ (തടയൽ) നിയമം 2007 വകുപ്പ് 15(1)(a) പ്രകാരം നടപടി സ്വീകരിക്കേണ്ടത് അനിവാര്യമാണെന്ന് വെളിവാകുന്നുണ്ട്.

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13. ഹരികൃഷ്ണൻ@ഹരിയെക്കെതിരെ കേരള സാമൂഹ്യ വിരുദ്ധ പ്രവർത്തനങ്ങൾ (തടയൽ) നിയമത്തിലെ വകുപ്പ് 15(1)(a) പ്രകാരം നടപടി സ്വീകരിക്കുന്നതിനായി ഹരികൃഷ്ണൻ@ഹരി ഉൾപ്പെട്ട കേസുകളുടെ വിവരങ്ങളും രേഖകളും ശേഖരിച്ച് പ്രാഥമിക റിപ്പോർട്ട് തയ്യാറാക്കി സമർപ്പിക്കുന്നതിൽ തൃശ്ശൂർ റൂറൽ പോലീസ് ജില്ലാ മേധാവിയുടെ ഭാഗത്തുനിന്നും നീതീകരിക്കാനാവാത്ത കാലതാമസം ഉണ്ടായിട്ടില്ലെന്ന് ബോധ്യപ്പെട്ടിട്ടുള്ളതാണ്.”

As evident from the recitals in the extracted paragraphs, what is stated by the competent authority is that the delay has occasioned on account of the time taken for collecting the documents pertaining to the prejudicial activities committed by the petitioner and other relevant documents. The question whether the order reflects due application of mind on the part of the competent authority as regards the live link, is a question of fact to be ascertained having regard to the facts

and circumstances of the case.

10. Before delving into the question aforesaid, we find it appropriate to refer to the decision in **Stalin C.V. v. State of Kerala and Others**, 2011 (1) KHC 852, wherein a Division Bench of this court had occasion to consider the delay on the part of the competent authority in initiating proceedings under Section 15 of the Act and its impact on the live link required for the purpose of initiating action, in comparison with the delay in initiating proceedings for detention under Section 3 of the Act. Paragraph 12, and the relevant portion of paragraph 13 of the judgment read thus:

“12. The next question which we must consider is the effect of the last crime which was considered by the Officer being allegedly committed on 23/03/2010, but the order of restriction under S.15 being passed on 25/09/2010. We must, first of all, remind ourselves that we are not dealing with an order of detention. An order of detention under S.3 is a grave deprivation of the personal liberty of the person detained. An order under S.15 also visits the person concerned with an incursion into his personal liberty within the meaning of Art.21. This is for the reason that every citizen has a right to travel in any part of India, subject to any law which may provide otherwise. In fact, as held in *Smt. Maneka Gandhi v. Union of India and Another*, 1978 KHC 477 : AIR 1978 SC 597 : 1978 (1) SCC 248 : 1978 (2) SCR 621, the right to travel

abroad itself was treated as part of Art.21 of the Constitution. Proceeding on the basis, therefore, that the order under S.15 of the Act also visits the person with the lesser deprivation of liberty in comparison with S.3, we must consider whether the principle of delay in passing an order of detention in relation to the last crime allegedly committed results in snapping of the link is as such applicable in the case of an order of restriction under S.15 and also whether, in the facts, much store can be laid by the petitioner based on the said principle.

13. xxxxxxxx Therefore, the proceedings was commenced in June, 2010 itself. Unlike an order of detention under Section 3, in the case of an order of restriction under Section 15, it is mandatory that the principles of natural justice be observed. In other words, it is necessary that the Officer must issue a show cause notice and afford an opportunity of being heard. Necessarily, this consumes time. Therefore, the nature of the proceedings under Section 3 and Section 15 are inherently different. Still further more, we must also remind ourselves that in Section 15, as pointed out by the learned Senior Government Pleader, the Authority can act in a matter where the known goonda or known rowdy is indulging or about to indulge or is likely to indulge in anti-social activities and it is to prevent the concerned person from so acting in any place within his jurisdiction that an order could be passed. This language is to be contrasted with the phraseology in Section 3 where it is provided as follows:

“3. Power to make orders for detaining Known Goondas and Known Rowdies.- (1) The Government or an Officer authorised under sub-section (2), may, if satisfied on information received from a Police Officer not below the rank of a Superintendent of Police with regard to the activities of any Known Goonda or

Known Rowdy, that with a view to prevent such person from committing any anti-social activity within the State of Kerala in any manner, it is necessary so to do, make an order directing that such person be detained.”

Thus, in the case of Section 3(1) of the Act, there is an indication that the legislature intended a sense of immediacy and, therefore, a proximate nexus between the act or acts and the order of detention is inevitable. We must reiterate that Section 15, apart from allowing the Officer to delve into the past, it permits him to hypothesise about what the known goonda or known rowdy, is likely to do in the immediate future, having regard to the use of the words “about to indulge”. What is more, it also permits the Officer to glean out the likelihood of such a person indulging in anti-social activities. We must also immediately remind ourselves that certainly in comparison to the order of detention, an order of restriction under Section 15, is lighter in its impact on the personal liberty of the person concerned. In fact, the learned Senior Government Pleader would point out that it is almost like the conditions attached to bail granted by the Courts. We are not, for a moment, saying that if the act/acts which are complained of have completely lost their relevance by the passage of time, giving rise to a total absence of any nexus, still an order of restriction can be passed under Section 15. But, we do not think, in the facts of this case, that it is a case

of the said nature. Accordingly, we repel the said contention.”

As evident from the extracted passages of the judgment, the question considered by this Court in the said case was whether the principle of delay snapping the live link with reference to the involvement of the person concerned in the last prejudicial activity, for passing the order of detention, would apply as such in the case of an order of restriction under Section 15 of the Act. Although this Court observed that an order of restriction cannot be passed under Section 15 of the Act if the act/acts which are complained of have completely lost their relevance by the passage of time, giving rise to a total absence of any nexus, it was held that an order of restriction under Section 15 is lighter in its impact on the personal liberty of the person concerned and that its effect is only in the nature of a condition attached to a bail order. When we examine the facts of the case on hand, in the light of the ratio in **Stalin C.V.**, (*supra*), we find no reason to interfere with the impugned order on the ground of delay, for the passage of time in the case on hand does not give rise to total absence of any nexus. The conduct

on the part of the petitioner in getting himself involved in another prejudicial activity immediately after serving the impugned order fortifies the subjective satisfaction rendered by the competent authority in this regard.

The writ petition(Crl), in the circumstances, is devoid of merits and the same is, accordingly, dismissed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

Sd/-

C.S.SUDHA, JUDGE.

Mn

APPENDIX OF WP(CRL.) 134/2023

PETITIONER EXHIBITS

- Exhibit P1 A TRUE COPY OF THE EXTERNMENT PROPOSAL
DATED 20/7/2022**
- Exhibit P2 A TRUE COPY OF THE SHOW CAUSE NOTICE
DATED 30/7/2022**
- Exhibit P3 THE TRUE COPY OF THE DETAILED
EXPLANATION FURNISHED BY THE PETITIONER
TO EXT. P2 DATED 9/8/2022**
- Exhibit P4 A TRUE COPY OF THE ORDER NO.
B3-12419/TSR/2022 DATED 1/9/2022 ISSUED
BY THE 2ND RESPONDENT**