

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN**

**FRIDAY, THE 22<sup>ND</sup> DAY OF OCTOBER 2021 / 30TH ASWINA, 1943**

**WP(C) NO. 18731 OF 2021**

**PETITIONER/S:**

JOHNY ALEXANDER DURAN SOLA  
AGED 38 YEARS  
(CORRECTLY SPELLED AS JHONNY ALEXANDER DURAN SOLA)., AGED 38  
YEARS, S/O. DANIEL DURAN ANAYA, PERMANENTLY RESIDING AT BARRIO  
SAN JACINTO, COLONIA HARRIZON, CALLE LARA, # 106, SAN  
SALVADOR, EL SALVADOR PRESENTLY UNDER CUSTODY AT CENTRAL  
PRISON AND CORRECTION HOME, VIYYUR, THRISSUR - 680010.

BY ADV NIHARIKA HEMA RAJ

**RESPONDENT/S:**

- 1 STATE OF KERALA  
REPRESENTED BY ITS SECRETARY, HOME DEPARTMENT, GOVERNMENT OF  
KERALA, SECRETARIAT, THIRUVANANTHAPURAM - 695001.
- 2 THE UNION OF INDIA  
REPRESENTED BY THE MINISTRY OF HOME AFFAIRS, NORTH BLOCK,  
CENTRAL SECRETARIAT, NEW DELHI - 110001.
- 3 THE FOREIGN REGIONAL REGISTRATION OFFICER  
(FRRO), COCHIN INTERNATIONAL AIRPORT, 2ND FLOOR, AIRLINES  
BUILDING, NEDUMBASSERY- 683111.
- 4 THE SUPERINTENDENT  
CENTRAL PRISON AND CORRECTIONAL HOME, VIYYUR, THRISSUR -  
680010.

BY ADVS.  
SHRI.P.NARAYANAN, SR.GP & ADDL.PUBLIC PROSECUTOR  
SRI.JAISHANKAR V.NAIR, CGC  
SHRI.SAJJU.S., SENIOR GOVERNMENT PLEADER  
DIRECTOR GENERAL OF PROSECUTION

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
22.10.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.V.KUNHIKRISHNAN, J**

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**W.P.(C.) No.18731 of 2021**  
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**Dated this the 22<sup>nd</sup> day of October, 2021**

### **JUDGMENT**

The petitioner is a foreign national who belongs to El Salvador. He was the accused in Sessions Case No. 921/2018 of the Sessions Court, Ernakulam. The offence alleged against the petitioner was under Secs.8(c) r/w 21(c), 23(c), 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The petitioner was arrested in connection with the above case on 8.5.2018 from Cochin International Airport. The trial of the case was over and the petitioner was acquitted as per Ext.P1 judgment. The grievance of the petitioner is that even after the acquittal order passed by the trial court, the petitioner is in prison. Hence, this writ petition is filed with the following prayers :

*"i. Issue a writ of mandamus, or any other appropriate or direction directing the respondents herein to release the accused from being illegally detained in prison in spite of his acquittal; or*

*ii. Issue a writ of mandamus, or any other appropriate writ or direction directing the respondents herein to shift the*

*accused from the prison to a detention centre until the accused can arrange for his travel documents or until such time this hon'ble court deems it fit to do so;*

*iii. Issue such other writ, order or direction as may this Honble Court in the facts and circumstances of this case."*

2. Heard Smt.Niharika Hema Raj, the learned counsel for the petitioner and Sri.P.Narayanan, the learned Senior Government Pleader & Addl. Public Prosecutor.

3. The learned counsel for the petitioner reiterated his contentions. The counsel also submitted that after passing the interim order by this Court on 23.9.2021, the petitioner was denied the benefit of Clause 4.25 of the Model Detention Centre Manual, which says that the persons housed in the detention centres/holding centres/camps should be permitted to meet/ communicate with the family members and no restrictions shall be imposed on this account. The counsel also takes me through Clause 4.35 of the above Manual, which says that the total area required for a Detention Centre/ Holding Centre/Camp is to be decided by the State Government/ UT Administration concerned taking into account the approximate number of foreigners to be accommodated at any given point of time and various amenities to be provided. It is also stated that Clause 4.35 says that apart from the basic facilities to be

provided like living area, toilets & bathrooms, kitchen, dining hall etc., other facilities like covered lobby outside rooms, open area, library, recreational facilities, space for indoor games, space for yoga & meditation and open space for outdoor games etc. is to be provided depending upon availability of space.

4. The learned Government Pleader submitted that as per the direction of this Court, already a temporary detention centre was set up at Thrissur and there are three persons now residing in that temporary detention centre. Now, there is no vacancy in that temporary detention centre. The Government Pleader also takes me through a letter issued by the District Police Chief, Thrissur to the Foreigner's Regional Registration Officer, Bureau of Immigration, Cochin, in which it is stated that the building is a temporarily arranged rented house with limited space and already three foreigners were accommodated in the building and hence, the authorities are not in a position to accommodate any others at the particular building without necessary orders from the concerned. It is also mentioned that the matter has already been informed to

Superintendent, Central Prison, Viyyur, Thrissur.

5. The Government Pleader also takes me through the detention order dated 26.7.2021 issued by the Bureau of Immigration, Government of India, Cochin by which detention and restriction of the movement of the petitioner is ordered till he is deported to his native country, El Salvador. The Central Government Counsel, who appeared for the 3<sup>rd</sup> respondent submitted that Narcotic Control Bureau is taking steps to file an appeal against Ext.P1 judgment and hence, the detention order was issued.

6. I considered the contentions of the petitioner and the respondents. As on today, there is no appeal pending against Ext.P1 judgment. In such circumstances, the petitioner cannot be detained in prison. As per Sec.49(3) of the Kerala Prisons and Correctional Services (Management), Act 2010, the petitioner, who is a foreign national is to be handed over to the Station House Officer and thereafter, as per the existing orders, a temporary detention centre is to be set up. Admittedly, a temporary detention centre is already set up at Thrissur, in which three foreign nationals are staying. But the

contention of the respondents that since there are three foreign nationals residing in the temporary detention centre and hence the petitioner has to continue in the jail, cannot be accepted. The authority concerned should take necessary steps to see that another temporary detention centre is set up immediately. Meanwhile, the petitioner can continue in the jail with the facility of A class prisoner. The counsel for the petitioner submitted that the petitioner is denied the benefit of clause 4.25 and clause 4.35 of the Model Detention Centre Manual. The Government Pleader submitted that the authorities will definitely allow the petitioner to contact his relatives, without any restriction.

In such circumstances, this writ petition can be disposed in the following manner :

- 1) The respondents shall do the needful to see that the petitioner is removed from the jail to a temporary detention centre, till he is deported from India.
- 2) The temporary detention centre should be set up by the 1<sup>st</sup> respondent as expeditiously as possible, at any rate, within one month from the date of receipt

of a copy of this judgment.

- 3) Till such time, the interim order dated 23.9.2021, by which this Court directed the authorities to allot a separate cell and grant him the facility of A class Prisoner, will continue.
- 4) The petitioner is also entitled the benefit of clauses 4.25 and 4.35 of Model Detention Centre Manual, to the extent it is available in the jail. But, I make it clear that the petitioner shall be given facility to contact his relatives, without any restriction.

Sd/-  
**P.V.KUNHIKRISHNAN**  
**JUDGE**

**APPENDIX OF WP(C) 18731/2021**

PETITIONER EXHIBITS

Exhibit P1

TRUE COPY OF THE JUDGMENT DATED 22.07.2021 IN S.C.  
NO.921/2018 OF THE HON'BLE SESSIONS COURT,  
ERNAKULAM.