

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 29<sup>TH</sup> DAY OF MAY 2023 / 8TH JYAISHTA, 1945

WP (CRL.) NO. 277 OF 2023

PETITIONER:

RASIYA P.M,  
AGED 26 YEARS, D/O. RAHEEM, "PUTHUPARAMBIL  
HOUSE", VALERY P.O., MANANTHAVADY,  
WAYANAD - 670645

BY ADVS.  
KRISHNA PRASAD. S  
SINDHU S KAMATH  
SWAPNA S.K.  
ROHINI NAIR  
SURAJ KUMAR D.

RESPONDENTS:

- 1 STATE OF KERALA  
REPRESENTED BY ADDITIONAL CHIEF SECRETARY TO  
GOVERNMENT, HOME DEPARTMENT, SECRETARIAT,  
THIRUVANANTHAPURAM., PIN - 695001
- 2 THE DISTRICT COLLECTOR & DISTRICT MAGISTRATE  
DISTRICT COLLECTORATE, WAYANAD CIVIL  
STATION, NORTH KALPETTA P.O, WAYANAD., PIN -  
673122
- 3 DISTRICT POLICE CHIEF  
OFFICE OF THE DISTRICT POLICE CHIEF,  
OPPOSITE DOORDARSHAN RELAY CENTER, KALPETTA,  
WAYANAD., PIN - 673122
- 4 THE STATION HOUSE OFFICER  
MANANTHAVADY POLICE STATION,  
MANANTHAVADY P.O, WAYANAD., PIN - 670645
- 5 THE SUPERINTENDENT  
CENTRAL JAIL, PALLIKUNNU,  
KANNUR., PIN - 670004

**ADV.K.A.ANAS PUBLIC PROSECUTOR (AG-28)**

**THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR  
ADMISSION ON 29.05.2023, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:**

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

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**W.P.(Crl) No.277 of 2023**  
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**Dated this the 29<sup>th</sup> day of May, 2023**

**JUDGMENT**

**P.B.Suresh Kumar, J.**

This writ petition is instituted seeking a writ of Habeas Corpus directing the respondents to produce the father of the petitioner who is detained in terms of Ext.P1 order issued under Section 3(1) read with Section 3(2) of the Kerala Anti-Social Activities (Prevention) Act, 2007 (the Act) and to set him at liberty. The petitioner seeks the relief aforesaid on the premise that the detention order is illegal.

2. Ext.P1 order was issued on 07.12.2022 and the same was executed on 14.12.2022. On 26.12.2022, the order of detention was approved by the Government as provided for under Section 3(3) of the Act. Ext.P1 order proceeds on the

premise that the father of the petitioner is a known rowdy in terms of the provisions of the Act, and in order to prevent him from committing any antisocial activity, it is necessary to detain him in accordance with the provisions of the Act.

3. Though several contentions were raised in the writ petition, only two contentions were pressed by the learned counsel for the petitioner at the time of hearing. The first among them is that the order of detention is illegal inasmuch as the procedural requirement under Section 3(3) of the Act has not been complied with. The argument advanced by the learned counsel for the petitioner in this regard is that in terms of the said provision, it is obligatory for the Authorised Officer exercising powers under Section 3(2) of the Act to report forthwith the factum of detention to the Government and the Director General of Police, Kerala, together with a copy of the order and supporting records, which, in his opinion, have a bearing on the matter and that the said procedural requirement has not been complied with by the Authorised Officer. It was

contended by the learned counsel that though the order of detention was passed as early as on 07.12.2022, the same along with the supporting documents have been forwarded to the Government as provided for under Section 3(3) of the Act only on 22.12.2022. According to the learned counsel, the said conduct on the part of the Authorised Officer cannot be accepted as one in compliance with the requirement under Section 3(3) of the Act. The learned counsel has relied on the decision of this Court in **Anupama S.V. v. State of Kerala**, 2022 (5) KHC 281, in support of the said argument. The second contention is that the last prejudicial activity alleged in the order of detention is one that took place on 17.06.2022 and the order of detention was issued only on 07.12.2022, after about 5 months and 24 days. It was argued by the learned counsel for the petitioner that since the said delay on the part of the competent authority has not been satisfactorily explained, the order of detention is bad inasmuch as it does not disclose a live link between the prejudicial activities of the detainee and the

order of detention.

4. *Per contra*, the learned Government Pleader, placing reliance on the counter affidavit filed in the matter, contended that the detention order and the supporting documents have been communicated forthwith to the Government by the Authorised Officer by his communication dated 07.12.2022 itself and that there is no delay at all in complying with the requirement under Section 3(3) of the Act. It was also conceded by the learned Government Pleader that the detention order was issued after a delay of 5 months and 24 days from the last prejudicial activity and the said delay has been satisfactorily explained in the detention order. According to the learned Government Pleader, insofar as the said delay has been satisfactorily explained in the detention order, it cannot be contended that the aforesaid delay is fatal to the order of detention.

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

6. No doubt, Section 3(3) of the Act mandates that when an order is made under Section 3(2), the Authorised Officer shall forthwith report the fact to the Government and the Director General of Police, Kerala, together with a copy of the order and supporting records which, in his opinion, have a bearing on the matter. There cannot be any doubt that the question whether there is compliance of the said requirement in a given case, is a question to be decided on the facts and circumstances of of the case. In the case on hand, there is no pleading in the writ petition as to the date on which the Authorised Officer has reported the order of detention to the Government. Instead, the argument aforesaid is advanced based on the statement in the counter affidavit that a proposal has been submitted to the Government on 22.12.2022 after the execution of the order of detention. According to the learned counsel for the petitioner, it is in terms of the said proposal that the detention order was communicated to the Government and that the said communication cannot be treated as one made

forthwith. The said argument is not supported by any pleading, inasmuch as the petitioner has not stated so in the writ petition. It is seen that in the counter affidavit it has been categorically stated that the procedural requirement under Section 3(3) of the Act has been complied with by the competent authority on 07.12.2022 itself. The relevant averment contained in paragraph 9 of the counter affidavit reads thus:

“The District Magistrate, Wayanad as per his letter No.DCWYD/6861/2022-S2(6) dated 07.12.2022, forthwith communicated the Government about the issuance of detention order along with copy of the order as per section 3(3) of the Act.”

The petitioner has not filed any reply to the counter affidavit refuting the said specific averment. On a query from us as to the particulars of the communication stated to have been sent by the Authorised Officer to the Government on 22.12.2022, the learned Government Pleader submitted that it is a communication relating to the execution of the order of detention and it has nothing to do with the requirement under Section 3(3) of the Act. Even though there is no pleading to that

effect in the counter affidavit, in the absence of any reply by the petitioner to the specific averment made by the first respondent in the counter affidavit that the order of detention has been communicated to the Government on the date of the order itself, we do not find any merit in the first contention of the petitioner and the same is accordingly, rejected.

7. It is trite that there has to be a live link between the prejudicial activity and the order of detention and if the said link is snapped, the order of detention would be bad. In other words, an unexplained delay in issuing the order of detention after the last prejudicial activity would certainly vitiate the order of detention, for the delay would snap the live link between the prejudicial activity and the detention order. No doubt, if there is a satisfactory explanation for the delay, the same would not affect the order. For instance, in a given case where the person concerned has been in custody in connection with a case, the delay from the date of last prejudicial activity upto his release from custody may not be of any significance. In

other words, the question whether the delay has been satisfactorily explained, is a question to be examined on the facts of each case. It is necessary also to mention in this context that while examining the said question, it is necessary to keep in mind that the Statute contemplates only detention for a period of six months to achieve its purpose.

8. Reverting to the case on hand, as noted, the occurrence in respect of the last prejudicial activity of the father of the petitioner took place on 17.06.2022. The father of the petitioner was arrested on 23.06.2022 and he was released on bail on the same day itself. There is no dispute to the fact that the order of detention was issued only on 07.12.2022, i.e. after a lapse of 5 months and 24 days. The proposal for detention was submitted by the competent authority only on 09.09.2022, almost three months after the last prejudicial activity. The explanation for the said delay in the order of detention issued on 07.12.2022 reads thus:

“ശ്രീ റഹീം എന്നവർക്കെതിരെ കേരള സാമൂഹ്യവിരുദ്ധ

പ്രവർത്തനങ്ങൾ (തടയൽ) നിയമം 2007, സെക്ഷൻ 3 (1) നടപടികൾ ആരംഭിക്കുന്നതിലെ കാലതാമസം തൃപ്തികരമായി ബന്ധപ്പെട്ട എസ്എച്ച്ഒ വിശദീകരിച്ചിട്ടുണ്ട്. ടിയാൻ അന്ധനായി കുറ്റകൃത്യത്തിലേർപ്പെട്ടത് 17/06/2022 നാണ് എസ്എച്ച്ഒ പ്രപ്പോസൽ സമർപ്പിച്ചിട്ടുള്ളത് 09/09/2022 നുമാണ് ടിയാനുൾപ്പെട്ട കേസുകളുടെ രേഖകൾ ശേഖരിക്കുന്നതിന് വന്ന കാലതാമസമാണ് പ്രൊപ്പോസൽ സമർപ്പിക്കുന്നതിനുണ്ടായിട്ടുള്ളതെന്ന് ബോധിപ്പിച്ചിട്ടുണ്ട്. ശ്രീ റഹീം എന്നവർ അന്ധനകുറ്റകൃത്യത്തിലേർപ്പെട്ടത് മാനന്തവാടി പോലീസ് സ്റ്റേഷൻ ക്രൈം നം.1189/21 നം. കേസിലെ ജമ്യൂ വ്യവസ്ഥകൾ ലംഘിച്ചുകൊണ്ടുണ്ടെന്നതിനാൽ ടി കേസിലെ ടിയാൻറെ ജമ്യൂ റദ്ദ് ചെയ്യുന്നതിന് 20/06/2022 ന് ബന്ധപ്പെട്ട കോടതിയിലേക്ക് റിപ്പോർട്ട് നൽകിയിരുന്നതുകൊണ്ട് പ്രൊപ്പോസൽ പരിശോധിക്കുന്നതിനും കൂടുതൽ വിവരങ്ങൾ ലഭ്യമാക്കുന്നതിനും ബന്ധപ്പെട്ട കാര്യാലയങ്ങളിൽ നിന്നും സ്വാഭാവികമായ സമയം മാത്രമേയെടുത്തിട്ടുള്ളൂവെന്നും കാണുന്നു. ടിയാനെ തടവിലാക്കുന്നതിനുള്ള ഉത്തരവുതീയതിയും, മേൽ കക്ഷി കുറ്റകൃത്യങ്ങൾ ചെയ്ത തീയതിയും തമ്മിലുള്ള ബന്ധവും, കുറ്റകൃത്യവും മേൽ കക്ഷിയുടെ തടങ്കൽ ഉത്തരവിൻറെ ലക്ഷ്യവും ശരിയായവണ്ണം പാലിക്കപ്പെട്ടിട്ടുള്ളതായും എനിക്ക് ബോധ്യപ്പെട്ടിട്ടുള്ളതാണ്”

As evident from the extracted portion of the order of detention, the vague explanation given is that the delay is due to the time taken for collecting the necessary documents relating to the various cases in which the father of the petitioner was involved.

Of course, there is also a statement in the order that the father of the petitioner has not honoured the conditions, subject to which he was granted bail in the case registered in connection with his last prejudicial activity. Having regard to the scheme of the Act, it was obligatory for the authorities to act vigilantly in the matter of invoking their powers under the Act and if not, the very purpose of the Statute will be defeated. It is all the more so since the Statute curtails the rights guaranteed to the detainees under Article 21 of the Constitution of India. The explanation offered for the delay in the order depicts a casual approach. We are unable to accept the stand taken by the competent authority that three months time is required for collecting the particulars of four cases registered against a person in one police station, especially when the proposal was submitted by the Station House Officer of the very same police station. We do not also find any satisfactory explanation for the delay in issuing the order after the proposal. The explanation offered in this regard that the aforesaid time is taken for

examining the proposal and for obtaining additional information is also vague. Needless to say, the order of detention is vitiated.

9. Accordingly, the Writ Petition (Criminal) is allowed and the order of detention is quashed. There will be a direction that Raheem, the father of the petitioner shall forthwith be released from the Central Jail, Kannur, 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.**

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APPENDIX

PETITIONER EXHIBITS

- Exhibit P1 A TRUE COPY OF THE ORDER OF DETENTION NO. DCWYD/6861/2022 -S2 ISSUED BY THE 2ND RESPONDENT DATED 07-12-2022 UNDER SECTION 3(1) OF KERALA ANTI-SOCIAL ACTIVITIES (PREVENTION) ACT 2007.
- Exhibit P2 A TRUE COPY OF THE GROUNDS OF DETENTION DATED 07-12-2022 IN NO. DCWD/6861/2022-S2.
- Exhibit P3 A TRUE COPY OF THE JAIL ADMISSION AUTHORISATION LETTER FOR EXECUTING ORDER NO. DCWD/6861/2022-2022-S2 ISSUED BY THE 2ND RESPONDENT DATED 07-12-2022.
- Exhibit P4 A TRUE COPY OF THE REPORT NO. D1-33857/2022/W SUBMITTED TO THE 2RD RESPONDENT DATED 17-09-2022.
- Exhibit P5 A TRUE COPY OF THE REPORT BY THE 4TH RESPONDENT DATED 09-09-2022 OF THE 4TH RESPONDENT.
- Exhibit P6 A TRUE COPY OF THE RESUBMISSION REPORT DATED 20-10-2022.
- Exhibit P7 A TRUE COPY OF REPLY SENT BY THE ADDITIONAL CHIEF SECRETARY'S OFFICE HOME DEPARTMENT DATED 03-02-2023.
- Exhibit P8 A TRUE COPY OF THE FINAL REPORT ALONG WITH THE DOCUMENTS AS SUPPLIED TO THE DETENU IN CRIME NO. 337/2016 OF MANANTHAVADY POLICE STATION DATED 30-06-2016.
- Exhibit P9 A TRUE COPY OF THE FIR IN CRIME NO.1189/2021 OF MANANTHAVADY POLICE STATION DATED 20-11-2021.
- Exhibit P10 A TRUE COPY OF ORDER IN B.A. NO.4252 OF 2022 ON 10-06-2022.

- Exhibit P11            A TRUE COPY OF THE FIR IN CRIME NO. 1195/2021 DATED 22-11-2021 OF MANANTHAVADY POLICE STATION AS SUPPLIED TO THE DETENU.
- Exhibit P12            A TRUE COPY OF THE CHARGE SHEET ALONG WITH THE DOCUMENTS AS SUPPLIED TO THE DETENU IN CRIME NO. 636/2022 OF MANANTHAVADY POLICE STATION DATED 18-06-2022.
- Exhibit P13            A TRUE COPY OF THE FORM NO.12, BOND TO KEEP PEACE BEFORE SUB DIVISIONAL MAGISTRATE DATED 30-08-2022.
- Exhibit P14            A TRUE COPY OF THE ORDER NO. 158/MSD/22 FOR OPENING ROWDY HISTORY SHEET OF THE DETENU BY THE DEPUTY SUPERINTENDENT OF POLICE, MANANTHAVADY DATED 23-05-2022.
- Exhibit P15            A TRUE COPY OF THE ORDER PASSED BY THE HOME (SSA) DEPARTMENT IN G.O.(RT) NO.423/2023/HOME DATED 20-02-2023.
- Exhibit P16            A COPY OF THE WAYANAD DISTRICT MEDICAL BOARD DISABILITY ASSESSMENT CERTIFICATE DATED 22-01-2019.