



2024/KER/19819

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

WEDNESDAY, THE 13<sup>TH</sup> DAY OF MARCH 2024 / 23RD PHALGUNA,  
1945

WP (CRL.) NO. 208 OF 2024

PETITIONER/S:

NAVAS P.K.  
AGED 36 YEARS  
S/O MUHAMMED KUNHI, PATTUVATHUKIZHAKKEPURAYIL,  
CHOORAL, MATHIL. P.O, PAYYANUR, KANNUR  
DISTRICT., PIN - 670307

BY ADVS.  
M.ANUROOP  
MURSHID ALI M.  
ABRAHAM RAJU CYRIAC

RESPONDENT/S:

- 1 STATE OF KERALA  
REPRESENTED BY ADDITIONAL CHIEF SECRETARY TO  
GOVERNMENT, HOME DEPARTMENT, GOVERNMENT  
SECRETARIAT, THIRUVANANTHAPURAM., PIN - 695001
- 2 THE DISTRICT COLLECTOR KANNUR  
COLLECTORATE ROAD, THAVAKKARA, KANNUR DISTRICT.,  
PIN - 670002
- 3 THE DISTRICT POLICE CHIEF KANNUR  
COMMISSIONER OF POLICE, TALAP, KANNUR DISTRICT.,  
PIN - 670002



2024/KER/19819

WP(CRL.) NO. 208 OF 2024

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**4 THE STATION HOUSE OFFICER  
PERINGOME POLICE STATION, PERINGOME P.O, KANNUR  
DISTRICT., PIN - 670307**

**BY ADVS.  
SRI.K.A.ANAS - PUBLIC PROSECUTOR  
ADDL.DIRECTOR GENERAL OF PROSECUTION(AG-11)  
ADDL. STATE PUBLIC PROSECUTOR(AG-28)**

**THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR  
ADMISSION ON 13.03.2024, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:**

**“CR”****JUDGMENT****A. MUHAMED MUSTAQUE, J.**

The question in this case is whether any writ of certiorari against look out notice is maintainable without challenging the detention order.

2. The petitioner is absconding. A look out notice is issued under the Kerala Anti-Social Activities Prevention Act, 2007 [for short, “the KAA(P)A”]. The petitioner approached this Court challenging the look out notice without challenging the detention order.
3. A detention order under KAA(P)A will be served at the time of execution of the order. It is appropriate to refer to Section 7(1) of the KAA(P)A, which reads thus;

“7. Grounds of order of detention to be disclosed.-(1) When a person is arrested in pursuance of a detention order, the officer arresting him shall read out the detention order to him and give him a copy of such order.

As seen from the above provision, the detention order will be read out and will be provided to the person at the time of execution of the order. The question is whether a writ petition for *certiorari* is maintainable without there being a challenge to the detention order. The apex court



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**in Additional Secretary to the Government of India &  
Others v. Alka Subash Gadia and another [1992 KHC 969]**

held as follows;

“30. As regards his last contention, viz., that to deny a right to the proposed detenu to challenge the order of detention and the grounds on which it is made before he is taken in custody is to deny him the remedy of judicial review of the impugned order which right is a part of the basic structure of the Constitution, we find that this argument is also not well merited based as it is on absolute assumptions. Firstly, as pointed out by the authorities discussed above, there is a difference between the existence of power and its exercise. Neither the Constitution including the provisions of Article 22 thereof nor the Act in question places any restriction on the powers of the High Court and this Court to review judicially the order of detention. The powers under Articles 226 and 32 are wide, and are untrammelled by any external restrictions, and can reach any executive order resulting in civil or criminal consequences. However, the courts have over the years evolved certain self-restraints for exercising these powers. They have done so in the interests of the administration of justice and for better and more efficient and informed exercise of the said powers. These self-imposed restraints are not confined to the review of the orders passed under detention law only. They extend to the orders passed and decisions made under all laws. It is in pursuance of this self-evolved judicial policy and in conformity with the self-imposed internal restrictions that the courts insist that the aggrieved person first allow the due operation and implementation of the concerned law and exhaust the remedies provided by it before approaching the High Court and this Court to invoke their discretionary extraordinary and equitable jurisdiction under Articles 226 and 32 respectively. That jurisdiction by its very nature is to be used sparingly and in circumstances where no other efficacious remedy is available. We have while discussing the relevant authorities earlier dealt in detail with the circumstances under which these extraordinary powers are used and are declined to be used by the courts. To accept Shri Jain's present contention would mean that the courts should disregard all these time-honoured and well-tested judicial self-restraints and norms and exercise their said powers, in every case before the detention order is executed. Secondly, as has been rightly pointed out by Shri Sibal for the appellants, as far as detention orders are



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concerned if in every case a detenu is permitted to challenge and seek the stay of the operation of the order before it is executed, the very purpose of the order and of the law under which it is made will be frustrated since such orders are in operation only for a limited period. Thirdly, and this is more important, it is not correct to say that the courts have no power to entertain grievances against any detention order prior to its execution. The courts have the necessary power and they have used it in proper cases as has been pointed out above, although such cases have been few and the grounds on which the courts have interfered with them at the pre-execution stage are necessarily very limited in scope and number, viz., where the courts are prima facie satisfied (i) that the impugned order is not passed under the Act under which it is purported to have been passed, (ii) that it is sought to be executed against a wrong person, (iii) that it is passed for a wrong purpose, (iv) that it is passed on vague, extraneous and irrelevant grounds or (v) that the authority which passed it had no authority to do so. The refusal by the courts to use their extraordinary powers of judicial review to interfere with the detention orders prior to their execution on any other ground does not amount to the abandonment of the said power or to their denial to the proposed detenu, but prevents their abuse and the perversion of the law in question.

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32. This still leaves open the question as to whether the detenu is entitled to the order of detention prior to its execution at least to verify whether it can be challenged at its pre-execution stage on the limited grounds available. In view of the discussion aforesaid, the answer to this question has to be firmly in the negative for various reasons.

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35. As has been pointed out at the outset, after this order, the appellants took the plea that although they were willing to produce the order of detention and the grounds of detention for the perusal of the Court, they cannot furnish them to respondent 1, unless, as required by the Act, the detenu first submits to the impugned order. The High Court thereupon issued the contempt notice by its order dated June 30, 1989. For the reasons discussed above, we are of the view that both the orders of the High Court directing the appellants to furnish to the detenu or to respondent 1 or her counsel the order of detention, the grounds of detention



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and the documents supporting them as well as the contempt notice of June 30, 1989 are clearly illegal and unjustified and they are hereby quashed. Both the appeals are accordingly allowed.”

4. We note that a look out notice is a part of consequential proceedings. It cannot be subject to challenge. We are, therefore, of the view that the challenge is unsustainable. The WP(Crl) is, accordingly, dismissed. However, we make it clear that the petitioner is at liberty to challenge the detention order at appropriate time.

**Sd/-**

**A. MUHAMED MUSTAQUE  
JUDGE**

**Sd/-**

**SHOBA ANNAMMA EAPEN  
JUDGE**

bka/-



APPENDIX OF WP(CRL.) 208/2024

PETITIONER EXHIBITS

- Exhibit P1            TRUE COPY OF THE KAAPA PROCEEDINGS  
ORDER NO. DCKNR/11403/2023-SS1 DATED  
28-11-2023
- Exhibit P2            TRUE COPY OF THE FIR IN CRIME NO.  
413/2017 PERINGOME POLICE STATION  
DATED 13-10-2017
- Exhibit P3            TRUE COPY OF THE FIR IN CRIME NO.  
432/2019 OF PERINGOME POLICE STATION  
DATED 21-12-2019
- Exhibit P4            TRUE COPY OF THE FIR IN CRIME NO.  
56/2023 OF PERINGOME POLICE STATION  
DATED 21-01-2023