



2024:KER:25866

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE M.A.ABDUL HAKHIM

THURSDAY, THE 4TH DAY OF APRIL 2024 / 15TH CHAITHRA, 1946

WP(CRL.) NO. 95 OF 2024

PETITIONER/S:

MAFFIYA M.K
AGED 41 YEARS
W/O. SAJAD SAHIR, MURINGAKANDY HOUSE, ARAKKINAR P.O,
KOZHIKODE, KERALA STATE, PIN - 673028
BY ADVS.
JOHN VARGHESE
SONU AUGUSTINE

RESPONDENT/S:

- 1 UNION OF INDIA
REPRESENTED BY THE SECRETARY, GOVERNMENT OF INDIA,
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, 6TH FLOOR,
B-WING, JANPAT BHAVAN, JANPAT, NEW DELHI, PIN - 110001
- 2 THE DIRECTOR GENERAL
CENTRAL ECONOMIC INTELLIGENCE BUREAU, DEPARTMENT OF
REVENUE, MINISTRY OF FINANCE, 6TH FLOOR, B-WING, JANPAT
BHAVAN, JANPAT, NEW DELHI, PIN - 110001
- 3 JOINT SECRETARY TO GOVERNMENT OF INDIA
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, CENTRAL
ECONOMIC INTELLIGENCE BUREAU, 6TH FLOOR, B-WING, JANPAT
BHAVAN, JANPAT, NEW DELHI, PIN - 110001
- 4 THE DEPUTY DIRECTOR
DIRECTORATE OF REVENUE INTELLIGENCE, KANNUR REGIONAL
UNIT, KC XXIII/788, VASANT NIVAS, NEAR MAIDAN,
PATHIRIPARAMBA ROAD, CHOVA P.O, KANNUR, PIN - 670006
- 5 THE SUPERINTENDENT
POOJAPPURA CENTRAL PRISON, THIRUVANANTHAPURAM, PIN -
695012
BY ADVS.
SUVIN R MENON, CGC
ADVOCATE GENERAL OFFICE KERALA
ADDL.DIRECTOR GENERAL OF PROSECUTION(AG-11)



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ADDL. STATE PUBLIC PROSECUTOR(AG-28)
K.A.ANAS, PP

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR
ADMISSION ON 04.04.2024, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

**JUDGMENT****A.MUHAMED MUSTAQUE, J**

This writ of Habeas Corpus was filed by the wife of detenu challenging the detention order under the COFEPOSA Act, 1974. Though several grounds have been raised in this matter. We need not considered the challenge on those grounds. We find that challenge based on non consideration of the representation within three months is sufficient to release the detenu. The following date of events are relevant :-

Date of detention order	- 20.05.2019
Date of execution	- 17.10.2023
Representation submitted before the jail Superintendent by the detenu	- 30.10.2023
Jail Superintendent forwarded in the e-mail address of the Deputy Secretary	- 31.10.2023
Consideration of representation	- 07.02.2024



2. The date is reckoned for the date of forwarding the representation, admittedly 99 days lapsed. However, the stand of respondents 1 to 3 was that representation was received only on 07.02.2024. Whether this is correct or not is the issue in this matter.

3. It is appropriate to refer the statement filed by the respondents 1 to 3 in this matter. Paragraph 17 of the statement reads as follows :-

“17. As regards the allegation that the representation of the detenu addressed to the Joint Secretary (COFEPOSA), it is respectfully submitted that the records were checked and observed that the detaining authority did not receive any representation of the detenu. However, while preparing the present counter affidavit-in-reply, the Central Jail, Poojappura, Thiruvananthapuram was contacted telephonically on 07.02.2024 to ascertain as to whether the detenu has made any representation to the detaining authority. The Central Jail, Poojappura after checking their records informed by return call that they had forwarded a representation of the detenu addressed to the detaining authority on the email id of the ex- Joint Secretary (COFEPOSA) on 31.10.2023. Thereafter, email accounts of all the concerned officers were searched to check as to whether the said representation was received from the ex-Joint Secretary (COFEPOSA) and found that no email, in this regard, was received from him. However, the said mail was finally found in the junk/spam



box of Deputy Secretary (COFEPOSA). In this regard, it is pertinent to mention that the Jail Authorities had not forwarded any hard copy of the said representation addressed to the Joint Secretary (COFEPOSA).”

4. The statement itself would show that Superintendent was forwarded representation on 31.10.2023. It was received in the spam mail of the Deputy Secretary. The case of respondents 1 to 3 is that they never received the representation. It was only verified on 07.02.2024, when they contacted the Jail Superintendent, they found the representation in the spam mail. Therefore, they would submit that they received representation only on 07.02.2024. This according to us is unacceptable. It is true that there are no guidelines in this matter how a representation should be forwarded from the Jail Superintendent to Joint Secretary, who is the Detention Authority as well as to the Central Government. This has resulted in lapses in this matter. However, when we are looking into this matter in terms of Constitutionally protected right of a detenu, whatever the excuse one may have that cannot infringe a constitutionally protected right of a detenu.



Therefore, we are of the view that detenu is entitled to the constitutional protection as it was not considered within three months. In such circumstances, we are of the view that the continuation of detention will have to be interfered and the detenu has to be released as he has not been accorded with the constitutional protection as envisaged under Article 22(5). Accordingly, we order release of the detenu forthwith. In the meanwhile issue guidelines in regard to forwarding representations, we direct hereafter, the representation shall be forwarded by all Jail Superintendent in following manner :-

- (i) They shall forward e-mail copies both in the e-mail address of the Detention Authority as well as Central Government. The Sponsoring Authority immediate on detention order shall forward the relevant e-mail IDs of the concerned to the Jail Superintendent. Immediately on forwarding the e-mail copies physical copies also shall be forwarded all the authorities concerned.
- (ii) We direct necessary instructions shall be issued by the DGP of the Prison to all Jail Superintendent in the Jail. DGP shall direct that if any laches on the part of the Jail Superintendent in following the guidelines in the directions as above will entail in disciplinary actions against such officers.
- (iii) Registry of this Court shall forward a copy of this order today



itself to the Jail Superintendent, Poojapura Central Prison for necessary action to release of the detenu today itself.

This writ petition is disposed of .

Sd/-

A.MUHAMED MUSTAQUE

JUDGE

Sd/-

M.A.ABDUL HAKHIM

JUDGE

SMA



APPENDIX OF WP(CRL.) 95/2024

PETITIONER EXHIBITS :-

- Exhibit P-1** TRUE COPY OF THE DEATH CERTIFICATE OF THE MOTHER OF THE DETENUE DATED 14-11-2020
- Exhibit P-2** TRUE COPY OF THE ORDER F. NO. PD-12001/13/2019-COFEPOSA DATED 20-05-2019, ISSUED BY THE 3RD RESPONDENT
- Exhibit P-3** TRUE COPY OF THE GROUNDS OF DETENTION DATED 20-05-2019
- Exhibit P-4** TRUE COPY OF THE REPRESENTATION DATED 30-10-2023 SUBMITTED TO THE 3RD RESPONDENT THROUGH THE 5TH RESPONDENT
- Exhibit P-5** TRUE COPY OF THE LETTER DATED 09-11-2023 ISSUED BY THE DEPUTY SECRETARY TO THE 1ST RESPONDENT
- Exhibit P-6** TRUE COPY OF THE LETTER DATED 14-11-2023 ISSUED BY THE DEPUTY SECRETARY TO THE 1ST RESPONDENT TO THE HON'BLE JUDGES OF THE ADVISORY BOARD
- Exhibit P-7** TRUE COPY OF THE REQUEST DATED 07-12-2023 MADE BEFORE THE ADVISORY BOARD ON BEHALF OF THE DETENUE BY HIS COUNSEL
- Exhibit P-8** TRUE COPY OF THE MEDICAL REPORT OF THE DETENUE DATED 15-12-2023
- Exhibit P-9** TRUE COPY OF THE COMMUNICATION ISSUED BY THE UNDER SECRETARY TO THE 1ST RESPONDENT DATED 11-12-2023
- Exhibit P-10** TRUE COPY OF THE ORDER DATED 02-01-2024 ISSUED BY THE UNDER SECRETARY TO THE 1ST RESPONDENT



Exhibit P-11 True copy of the memorandum dated 07-02-2024 issued to the detenu by the Deputy Secretary to the Government of India

RESPONDENT EXHIBITS :-

EXHIBIT R5 (a) TRUE COPY OF DETENTION ORDER NO.F.No.PD-12001/13/2019-COFEPOSA DATED 20.5.2019

EXHIBIT R5 (b) TRUE COPY OF NOTICE No.C.P.11(3)151/COFEPOSA/D.1764/2022 DATED 18.10.2023

EXHIBIT R5(c) TRUE COPY OF THE LETTER No.C.P.11(3)-4247/2023/CP Tvm dated 18.10.2023 SENT TO THE JOINT SECRETARY MINISTRY OF FINANCE

EXHIBIT R5 (d) TRUE COPY OF THE LETTER No.C.P.11(3)-4247/2023/CPTvm dated 18.10.2023 SENT TO THE ACS HOME(SSA) DEPARTMENT

EXHIBIT R5 (e) TRUE COPY OF THE LETTER No.C.P.11(3)-4247/2023/CPTvm dated 18.10.2023 SENT TO THE ADDITIONAL DIRECTOR GENERAL , DRI , COCHIN ZONAL UNIT

EXHIBIT R5(f) TRUE COPY OF THE LETTER No.C.P.11(3)-4247/2023/CPTvm dated 18.10.2023 SENT TO THE DIRECTOR GENERAL OF PRISONS AND CORRECTIONAL SERVICES, PRISONS HEAD QUARTERS TVM

EXHIBIT R5 (g) TRUE COPY OF LETTER .O.R No.DRI/CoZU/KRU/01/ENQ-1/01/2019 DATED 19.10.2023 FROM THE DIRECTORATE OF REVENUE INTELLIGENCE , KANNUR REGIONAL UNIT

EXHIBIT R5(h) TRUE COPY OF LETTER O.R.No.DRI/CZU/KRU/01/ENQ-1/2019 DATED 19.10.2023 FROM THE DIRECTORATE OF REVENUE INTELLIGENCE , KANNUR REGIONAL



UNIT

- EXHIBIT R5 (i) TRUE COPY OF LETTER No.CP-11(3)-D.1764/2023/CPTvm DATED 31.10.2023 SENT TO THE JOINT SECRETARY (COFEPOSA) MINISTRY OF FINANCE NEW DELHI
- EXHIBIT R5(j) TRUE COPY OF LETTER No.CP-11(3)-D.1764/2023/CPTvm DATED 31.10.2023 SENT TO THE DIRECTOR GENERAL, CENTRAL ECONOMIC INTELLIGENCE BUREAU MINISTRY OF FINANCE NEW DELHI
- EXHIBIT R5 (k) TRUE COPY OF LETTER No.CP-11(3)-D.1764/2023/CPTvm DATED 31.10.2023 SENT TO THE CHAIRMAN , COFEPOSA ADVISORY BOARD HIGH COURT OF KERALA
- EXHIBIT R5(l) TRUE COPY OF THE ACKNOWLEDGEMENT DATED 9.11.2023
- EXHIBIT R5 (m) TRUE COPY OF THE LETTER No.PD-13001/01/2023-COFEPOSA DATED 14.11.2023
- EXHIBIT R5(n) TRUE COPY OF LETTER No.CP-11(3)-4247/2023/CPTvm DATED 23.11.2023 FROM SUPERINTENDENT, CENTRAL PRISON AND CORRECTIONAL HOME TVM
- EXHIBIT R5 (o) TRUE COPY OF LETTER No.CP-11(3)-4247/2023/CPTvm DATED 12.12.2023 AND 14.12.2023 FROM THE SUPERINTENDENT, CENTRAL PRISON AND CORRECTIONAL HOME TVM
- EXHIBIT R5 (p) TRUE COPY OF LETTER No.F.No.DRI/CoZU/KRU/01/Enq-01/2019 DATED 12.12.2023 OF THE ASSISTANT DIRECTOR, DIRECTORATE OF REVENUE INTELLIGENCE, KANNUR REGIONAL UNIT
- EXHIBIT R5(q) TRUE COPY OF THE MEDICAL CERTIFICATE No.CP8(3)-5044/2023/CPTvm DATED



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15.12.2023 ISSUED BY THE PRISON MEDICAL
OFFICER CENTRAL PRISON AND CORRECTIONAL
HOME TVM

EXHIBIT R5 (r)

TRUE COPY OF LETTER No.CP-11(3)-
4247/2023/CPTvm DATED 3.1.2024 AND
5.1.2024 FROM CENTRAL PRISON AND
CORRECTIONAL HOME TVM