



2025:KER:31849

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

FRIDAY, THE 11TH DAY OF APRIL 2025 / 21ST CHAITHRA, 1947

WP(CRL.) NO. 162 OF 2025

PETITIONER:

VILASINI RAMACHANDRAN
AGED 61 YEARS
W/O RAMACHANDRAN, KALLIDUMBIL HOUSE,
NEDUNGAPRA P.O, VENGOOR, ERNAKULAM - 683545

BY ADVS.
M.H.HANIS
T.N.LEKSHMI SHANKAR
NANCY MOL P.
ANANDHU P.C.
NEETHU.G.NADH
RIA ELIZABETH T.J.
SINISHA JOSHY
SAHAD M. HANIS

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO
GOVERNMENT, HOME AND VIGILANCE DEPARTMENT, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM- 695001
- 2 THE DISTRICT COLLECTOR & DISTRICT MAGISTRATE
CIVIL STATION, ERNAKULAM - 682030
- 3 THE DISTRICT POLICE CHIEF
REVENUE TOWER, ERNAKULAM - 682035
- 4 THE CHAIRMAN
ADVISORY BOARD, KAAPA, SREENIVAS, PADAM ROAD, VIVEKANANDA
NAGAR, ELAMAKKARA ERNAKULAM - 682026
- 5 THE SUPERINTENDENT OF JAIL
CENTRAL JAIL, VIYYUR, THRISSUR - 670004

W.P.(CrI.) No. 162 of 2025

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BY ADVS.
ADVOCATE GENERAL OFFICE KERALA
ADDL.DIRECTOR GENERAL OF PROSECUTION (AG-11)

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR
ADMISSION ON 10.04.2025, THE COURT ON 11.04.2025 DELIVERED
THE FOLLOWING:



JUDGMENT

Jobin Sebastian, J.

This writ petition has been directed against an order of detention dated 28.12.2024 passed against one Amal, S/o. Ramachandran, under Section 3(1) of the Kerala Anti-Social Activities (Prevention) Act, 2007 ('KAA(P) Act' for brevity). The petitioner herein is the mother of the detenu. Upon considering the opinion of the Advisory Board, the Government vide order dated 17.02.2025 has confirmed the order and the son of the petitioner has been ordered to be detained for a period of one year.

2. The records reveal that a proposal was submitted by the District Police Chief, Ernakulam, seeking initiation of proceedings under Section 3(1) r/w 13(2)(i) of the KAA(P) Act before the jurisdictional authority. For the purpose of initiation of the said proceedings, the detenu was classified as a 'known rowdy' as defined under Section 2(p)(iii) of the KAA(P) Act. For passing the order of detention the authority reckoned eight cases in which the detenu got involved. The case registered with respect to the last prejudicial activity is Crime No.1114/2024 of Kuruppampady Police Station alleging the commission of offences



punishable under Sections 127(2), 351 r/w 3(5) of Bharatiya Nyaya Sanhita (for short "BNS").

3. We heard Sri.M.H.Hanis, the learned counsel appearing for the petitioner and Sri. K.A. Anas, the learned Government Pleader.

4. The learned counsel for the petitioner would submit that the impugned order was passed by the jurisdictional authority without proper application of mind and without arriving at the requisite objective as well as subjective satisfaction. According to the counsel after passing the impugned order of detention, the jurisdictional authority did not forward the order to the Government forthwith and the said lapses itself will vitiate the impugned order. The learned counsel further submitted that the above action of the jurisdictional authority is violative of the provision contained under Section 3(3) of the KAA(P) Act. According to the counsel, the sponsoring authority forwarded the proposal on the basis of a report submitted by the SHO of Kuruppampady Police Station. But, as there were some shortcomings in the said report, in order to undo the same, another report was forwarded by the SHO. However, the copy of the said additional report was not served on the detenu. The learned counsel further submitted that, though on behalf of the detenu, he prepared a representation for being forwarded to the Government and sent to the Jail



Superintendent concerned, the latter in turn sent back the said representation to the counsel for the petitioner himself without sending the same to the Government. According to the counsel, the said malfeasance on the part of the Jail Superintendent will seriously affect the constitutional as well as statutory right of the detenu and the impugned order is liable to be set aside on the said sole ground.

5. In response, the learned Government Pleader would submit that the order of detention impugned by way of this writ petition was passed by the jurisdictional authority after proper application of mind. According to him the contention of the learned counsel for the petitioner that the copy of the impugned order was not forthwith forwarded to the Government is baseless. The learned Government Pleader submitted that the failure to serve the detenu with a copy of the SHO's additional report is of minimal consequence, as the jurisdictional authority did not rely on that report in issuing the impugned order, but instead based its decision on the proposal submitted by the Superintendent of Police. The learned Government Pleader fairly conceded that the representation prepared on behalf of the detenu by his counsel and sent to the Jail Superintendent, which was meant for forwarding to the Government, was sent back to the counsel for the petitioner. But this was done at the detenu's own request.



Moreover, another representation, which is the verbatim reproduction of the representation sent to the Jail Superintendent, was duly forwarded to the Advisory Board by the mother of the detenu who is the petitioner in this writ petition. Hence, as the matter was already seized of by the Advisory Board if at all the representation was forwarded to the Government, the latter could not act upon it and had to wait till the opinion of the Advisory Board was obtained. According to the learned Government Pleader, therefore no prejudice is caused to the detenu due to the non-forwarding of the representation to the Government.

6. The records reveal that the detenu was classified as a "known rowdy", considering his recurrent involvement in eight cases. The last case registered against the detenu is Crime No.1114/2024 of Kuruppampady Police Station, alleging the commission of the offences punishable under Sections 127(2), 351 r/w 3(5) of BNS. The detenu, who is arrayed as the 1st accused in the said case was arrested on 19.10.2024. As all offences alleged in the said case are bailable in nature, he was released on bail on the same day itself. However, when he was arrested in connection with the last prejudicial activity, his arrest was recorded in the last previous crime registered against him as Crime No.1093/2024 and he was enlarged on bail in the said case on 15.11.2024. It was on 04.12.2014, the



Superintendent of Police, Ernakulam forwarded the proposal for initiation of proceedings under the KAA(P) Act against the detenu. Subsequently, the detention order was passed on 28.12.2024 without any unreasonable delay. The sequence of the events clearly demonstrates that there is no delay either in mooted the proposal as well as in passing the impugned order. Therefore, the detenu could not be heard to say that the live link between the last prejudicial activity and the purpose of detention was snapped.

7. While coming to the various contentions pressed into service from the side of the learned counsel for the petitioner, it can be seen that one of the contentions is that, after passing the impugned order, the jurisdictional authority failed to forward the copy of the detention order to the Government undermining the provisions contained under Section 3(3) of the KAA(P) Act. We do agree that it is a statutory obligation of the jurisdictional authority to forward the detention order forthwith to the Government for approval. However, a bare perusal of the order itself reveals that a copy of the impugned order is duly marked to the Government. In the absence of any contra materials, it could not be found that the order was not communicated to the Government forthwith. Therefore, the only conclusion that can be arrived at is that the contention



of the detenu regarding the non-forwarding of the copy of the order forthwith to the Government is baseless.

8. According to the counsel, the sponsoring authority mooted the proposal for the initiation of proceedings under the KAA(P) Act against the detenu on the basis of a report submitted by the SHO of Kuruppampady Police Station. But, as there were some shortcomings in the said report, in order to remedy the same, an additional report was forwarded by the SHO. However, the copy of the said additional report was not served on the detenu. We are cognizant that it is incumbent upon the jurisdictional authority to serve the copy of the detention order as well as the grounds of detention to the detenu along with the documents relied upon by it in passing the order. As evident from the records, it was after obtaining the report of the SHO concerned, that the sponsoring authority i.e. the Superintendent of Police Ernakulam, forwarded the proposal to the jurisdictional authority to initiate proceedings under KAA(P) Act. Moreover, it is gatherable that on verification of the initial report of the SHO, some shortcomings were noted by the Superintendent of Police and accordingly, an additional report was also submitted by the SHO to undo the flaws in the earlier reports. It was after considering the said report, the Superintendent of Police mooted the proposal. Anyhow, it was not on the



basis of the report of the SHO, the jurisdictional authority acted upon. On the other hand, it was on the basis of the proposal submitted by the Superintendent of Police, the jurisdictional authority ventured to pass the impugned order of detention. Even the detenu is not having a case that the copy of the proposal submitted by the Superintendent of Police was not served on him. In short, it is liable to be held that the non-service of the copy of the additional report of SHO is of little significance particularly when the same is not a relied upon document.

9. Another contention taken by the learned counsel for the detenu is that, on behalf of the detenu he prepared a representation for being forwarded to the Government and sent the said representation to the Jail Superintendent concerned for forwarding the same after obtaining the signature of the detenu. However, instead of forwarding the same to the Government, the Jail Superintendent sent back the said representation to the counsel for the detenu. According to the learned counsel, the said malfeasance on the part of the Jail Superintendent will certainly affect the constitutional as well as statutory right of the detenu. We do agree that it is an indefeasible right of a detenu to file representations before the Government as well as the Advisory Board challenging an order of detention passed against him. Therefore, the Jail Superintendent ought to



have forwarded the representation sent to him by the counsel for the detenu to the Government after obtaining the signature of the detenu. The covering letter addressed to the Jail Superintendent and the postal receipts produced by the learned counsel for the detenu reveal that a representation was duly sent to the Jail Superintendent for forwarding the same to the Government. Nevertheless, the said representation was sent back by the Jail Superintendent to the counsel for the detenu after obtaining the detenu's signature, instead of sending the same to the Government. The said fact is evident from the postal cover and the copy of the representation which contains the signature of the detenu pressed into service by the learned counsel for the petitioner. The afore-mentioned postal receipt, covering letter as well as the representation bearing the signature of the accused, which is handed over by the counsel for the petitioner at the time of hearing of this petition and the genuineness of which is not disputed by the Government Pleader shall form part of the record of this case.

10. Now the crucial question to be considered is whether the said lapses will infringe the constitutional right of the detenu. While considering the said question, it is to be noted that, a representation which is the verbatim reproduction of the representation prepared by the



counsel for the accused for being forwarded to the Government, was sent to the Advisory Board directly by the mother of the detenu who is the petitioner in this writ petition. After considering the said representation the Advisory Board formed an opinion. The said opinion was forwarded to the Government with the representation addressed to the Advisory Board. The Government in the matter of approving the detention considered the representation forwarded by the Advisory Board as if it is one addressed to the Government. Thereafter, the Government independently considered the representation and the fate of the representation was communicated to the detenu. Hence it cannot be said that the constitutional right of the detenu is infringed in any manner. More pertinently, even if the representation was received by the Government, the Government could not have considered it, as the matter was already seized by the Advisory Board. Therefore, we are of the considered view that the detenu was in no way prejudiced by the malfeasance on the part of the jail Superintendent in sending back the representation to the counsel for the detenu instead of forwarding the same to the Government.

11. From a perusal of the records, we are satisfied that all the necessary procedural requirements before passing an order under Section 3(1) of the KAA(P) Act have been scrupulously complied with in this case.



We are further satisfied that the competent authority passed the detention order after thoroughly verifying all the materials placed by the sponsoring authority and after arriving at the requisite objective and subjective satisfaction. Therefore, it cannot be said that the order passed under Section 3(1) of the KAA(P) Act is vitiated in any manner.

In view of the discussion above, we hold that the petitioner has not made out any case for interference. Hence, the writ petition stands dismissed.

**Sd/-
P.B. SURESH KUMAR
JUDGE**

**Sd/-
JOBIN SEBASTIAN
JUDGE**



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APPENDIX OF WP(CRL.) 162/2025

PETITIONER EXHIBITS

- Exhibit P1 A TRUE COPY OF THE ORDER NO.DCEKM/12936/2024/M7 DATED
28.12.2024 F THE 2ND RESPONDENT
- Exhibit P2 A TRUE COPY OF THE REPRESENTATION DATED 04.02.2025
SUBMITTED BY THE DETENU BEFORE THE 1ST RESPONDENT
- Exhibit P3 A TRUE COPY OF THE REPRESENTATION DATED 04.02.2025
SUBMITTED BY THE PETITIONER BEFORE THE 4TH
RESPONDENT
- Exhibit P4 A TRUE COPY OF THE POSTAL RECEIPT EVIDENCING THE
ISSUANCE OF EXT P3