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Sandhya Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/1136914

Court : Kerala

Decided On : Apr-01-2014

Judge : Honourable Mr.Justice Antony Dominic

Appellant : Sandhya

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE ANTONY DOMINIC & THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN TUESDAY, THE1T DAY OF APRIL201411TH CHAITHRA, 1936 WP(Crl.).No. 126 of 2014 (S) ---------- PETITIONER: ---------- SANDHYA, AGED27YEARS, W/O.DINESH LAL, NATTINPURATHU VEEDU ORUMA NAGAR-22, KILIKALLOOR, KOLLAM. BY ADVS.SRI.C.RAJENDRAN SRI.K.R.RANJITH RESPONDENT(S): ---------- 1. STATEOF KERALA, REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT OF KERALA (HOME DEPARTMENT) GOVERNMENT SECRETARIAT,THIRUVANANTHAPURAM-695 001.

2. DISTRICT MAGISTRATE, KOLLAM DISTRICT, KOLLAM-691 001.

3. KOLLAM CITY POLICE COMMISSIONER, OFFICE OF THE CITY POLICE, KOLLAM-691 001.

4. SUB INSPECTOR OF POLICE, KILIKALLOOR POLICE STATION, KOLLAM-691 004.

5. THE SUPERINTENDENT, CENTRAL PRISON, THIRUVANANTHAPURAM-695 001.

6. THE SUPERINTENDENT, CENTRAL PRISON, VIYYUR, THRISSUR-680 001. R3 BY ADV. ADDL.DIRECTOR GENERAL OF PROSECUTION R BY GOVERNMENT PLEADER THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON0104-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(Crl.).No. 126 of 2014 (S) ---------- APPENDIX PETITIONER(S)' EXHIBITS ---------- P1:- A TRUE PHOTOCOPY OF THE DETENTION

ORDER
DTD3112/2013 P2:- A TRUE PHOTOCOPY OF THE GROUNDS FOR DETENTION ISSUED BY THE2D RESPONDENT TO THE DETENUE DTD3112/2013 P3:- A TRUE PHOTOCOPY OF THE REPORT SUBMITTED BY THE3D RESPONDENT DTD1312/2013 P4:- A TRUE PHOTOCOPY OF THE PRELIMINARY REPORT DTD2611/2013 SUBMITTED BY THE4H RESPONDENT P5:- A TRUE PHOTOCOPY OF THE AFFIDAVIT DTD102/2014 P6:- A TRUE PHOTOCOPY OF THE MARRIAGE AGREEMENT EXECUTED BEFORE THE SUB REGISTRY OFFICE,KILIKALLOOR DTD86/2006 P7:- A TRUE PHOTOCOPY OF THE BIRTH CERTIFICATE ISSUED BY THE KOLLAM CORPORATION P8:- A TRUE PHOTOCOPY OF THE SUMMONS ISSUED IN MC NO4042013 DTD318/2013 RESPONDENT(S)' EXHIBITS ---------- EXT.R3(A): COPY OF WOUND CERTIFICATE OF THE DEFACTO COMPLAINANT IN CRIME NO.83/12. EXT.R3(B): COPY OF STATEMENT OF THE COMPLAINANT IN CRIME NO.1215/13. TRUE COPY P.A.TO JUDGE dsn ANTONY DOMINIC & ANIL K.NARENDRAN, JJ.

---------- W.P.(Crl.)No.126 of 2014 ---------- DATED THIS THE1t DAY OF APRIL, 2014

JUDGMENT

ANTONY DOMINIC,J.

This Writ Petition is filed by the wife of one Dinesh Lal @ Vavachi (hereinafter referred to as 'the detenu' for short), challenging Exhibit P1 order of detention issued by the 2nd respondent, detaining the detenu under the provisions of the Kerala Anti Social Activities(Prevention)Act, 2007 (hereinafter referred to as 'the Act' for short).

2. The detenu is an accused in Crime No.176/2009 of the Punalur Police Station and in Crime Nos.1082/10, 1083/10, 83/12, 1215/13 and 1669/13 of the Kilikollur Police Station. The offences alleged against the detenu are those enumerated in Section 2(t) of the Act. In such circumstances, pointing out that though by Crime No.1295/13, proceedings under Section 107 of the Cr.P.C. were already initiated against the detenu, that did not yield the desired result of preventing him from continuing his anti social activities, the 4th respondent submitted Exhibit P4 preliminary report to the 3rd W.P.(Crl.)No.126/14 -2- respondent stating that action has to be initiated under the Act for the preventive detention of the detenu.

3. Based on the above preliminary report, the 3rd respondent submitted Exhibit P3 report under Section 3(1) of the Act to the 2nd respondent-detaining authority. Accordingly, the detaining authority considered the matter and passed Exhibit P1 order dated 31.12.2013 in which taking note of the offences in Crime No.1082/10, 1083/10, 83/12 and 1215/13 of the Kilikollur Police Station, he held the detenu to be a 'known rowdy' and on that basis, ordered that he be detained under Section 3(2) of the Act. Accordingly, the detenu was arrested and detained on 8.1.2014, when Exhibit P2 grounds of detention was also served on him. The detention was approved by the Government of Kerala and thereafter on receipt of the report of the Advisory Board, the same was also confirmed by the Government. It is in these circumstances, the petitioner has filed this Writ Petition challenging Exhibit P1 order of detention, with the prayer to issue a writ of habeas of corpus for setting the detenu at liberty.

4. We heard the learned counsel for the petitioner and the W.P.(Crl.)No.126/14 -3- learned Additional Director General of Prosecution, appearing for the respondents.

5. The learned counsel for the petitioner contended that Exhibit P1 order of detention is illegal and unconstitutional. According to him, neither the sponsoring authority, nor the detaining authority considered the pendency of the proceedings in Crime No.1295/13 under Section 107 of the Code of Criminal Procedure. The learned counsel contended that it was obligatory on the part of the sponsoring authority to have made available records relating to the proceedings in Crime No.1295/13 to the detaining authority and that the detaining authority was duty bound to consider the same and to conclude whether in spite of it, detention of the detenu was necessary to prevent him from continuing the anti social activities. The learned Additional Director General of Prosecution, who made available the files, contended that though, it is not expressly referred to in the report of the sponsoring authority or the order of detaining authority, both were aware of the pendency of such proceedings, because the said proceedings were mentioned in the preliminary report of the Sub W.P.(Crl.)No.126/14 -4- Inspector of Police. He also contended that, the Advisory Board had, taking note of this very contention, concluded in its report that the proceedings in question were ineffective insofar as the detenu is concerned.

6. Law seems to be settled that in spite of the pendency of proceedings under Section 107 of Cr.P.C., a detenu can still be preventively detained under the Act. However, to detain such a person, it is necessary that the sponsoring authority should make available to the detaining authority, the records relating to the proceedings concerned. Thereupon, the detaining authority on his part is duty bound to pointedly consider the question as to whether the proceedings under Section 107 of Cr.P.C. are sufficient to prevent the detenu from continuing the anti social activities and if he is satisfied that such proceedings are insufficient, he is entitled to order detention of the detenu. This position has been clarified by this Court in Susi v. State of Kerala (2011(1)KLT760, Manju v. State of Kerala (2011 (3) KLT150, Rekha Gopakumar v. State of Kerala (2012(4) KLT990 and Abidha Beevi v. State of Kerala (2013(1) KLT286. W.P.(Crl.)No.126/14 -5- 7. Insofar as this case is concerned, Exhibit P4, the preliminary report submitted by the Sub Inspector of Police to the detaining authority shows that he has mentioned about the pendency of Crime No.1295/13 against the detenu. However, in Exhibit P3, the report of the sponsoring authority to the detaining authority made under Section

3(1), there is no mention at all about Crime No.1295/13. In Exhibit P1 order of detention also, there is no mention whatsoever about Crime No.1295/13. Similarly, in Exhibit P2, the grounds of detention also, there is absolutely no mention of the aforesaid proceedings. In other words, there is nothing before this Court to conclude that the sponsoring authority was aware of the proceedings under Section 107 of the Cr.P.C. pending against the detenu vide Crime No.1295/13 or that the sponsoring authority had made available the records relating to such proceedings to the detaining authority. Similarly, we are also in the dark on the question whether the detaining authority had considered the pendency of Crime No.1295/13 or the question whether in spite of such proceedings, it was necessary to detain the detenu under the provisions of the Act. Therefore, the irresistible W.P.(Crl.)No.126/14 -6- conclusion that can be drawn is that there was no application of mind at all both by the sponsoring authority and by the detaining authority on the issue of the 107 proceedings that are pending against the detenu as per Crime No.1295/13. This is fatal to the detention ordered under the Act against the detenu as per Exhibit P1. Therefore, Exhibit P1 order cannot be sustained and has to be quashed and we do so.

8. The Writ Petition is, therefore, allowed and Exhibit P1 order of detention is set aside. We direct that the detenu, Dinesh Lal @ Vavachi, be released forthwith, unless he is required to be detained in some other proceedings. The Registry will communicate the operative portion of this judgment to the 6th respondent for information and compliance. Sd/- ANTONY DOMINIC, JUDGE Sd/- ANIL K.NARENDRAN, dsn JUDGE W.P.(Crl.)No.126/14 -7- ANTONY DOMINIC & ANIL K.NARENDRAN, JJ.

---------- W.P.(Crl.)No.126 of 2014
---------- DATED THIS THE1t DAY OF APRIL, 2014
GIST OF THE

JUDGMENT
ANTONY DOMINIC,J.

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