

Bushara vs State of Kerala

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Court : Kerala

Decided On : May-31-2024

Judge : Honourable Mr. Justice a.Muhamed Mustaque,Honourable Mr. Justice S.Manu

Appeal No. : WP(Crl.)/454/2024

Appellant : Bushara

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE & THE HONOURABLE MR. JUSTICE S.MANU FRIDAY, THE 31ST DAY OF MAY 2024 / 10TH JYAISHTA, 1946 PETITIONER :- BUSHARA, AGED 39 YEARS W/O MUHAMMED ASHARAF, KUNNAPPALLI, KAYILIAD, CHALAVARA, PALAKKAD, PIN - 679122 BY ADVS. M.H.HANIS P.M.JINIMOL T.N.LEKSHMI SHANKAR NANCY MOL P. ANANDHU P.C. NEETHU.G.NADH CIYA E.J. RESPONDENTS :-

1 STATE OF KERALA REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT, HOME AND VIGILANCE DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM,, PIN - 695001 2 THE DISTRICT COLLECTOR & DISTRICT MAGISTRATE, PALAKKAD DISTRICT, PIN - 678001 3 THE DISTRICT POLICE CHIEF PALAKKAD DISTRICT, PIN - 678001 4 THE CHAIRMAN ADVISORY BOARD, KAAPA, SREENIVAS, PADAM ROAD, VIVEKANANDA NAGAR, ELAMAKKARA, PIN - 682006 5 THE SUPERINTENDENT OF JAIL, CENTRAL JAIL, VIYYUR, PIN - 670004 BY ADVS. ADVOCATE GENERAL OFFICE KERALA ADDL.DIRECTOR GENERAL OF PROSECUTION(AG-11)

ADDL. STATE PUBLIC PROSECUTOR(AG-28) SRI.K.A.ANAS, PP THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON 31.05.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

S MANU, J The petitioner is the wife of Sri.Muhammed Ashraf @ Adakka Asaru. The detenu is 40 years old. He has been detained in Central Prison, Viyyur in execution of Ext.P1 order dated 08.04.2024 issued by the 2nd respondent, invoking powers vested with him under the Kerala Anti-Social Activities (Prevention) Act, 2007.

2. The petitioner has been detained on account of his involvement in three different cases registered by Cherpulassery Police Station and Perinthalmanna Police Station. The details of the cases are as follows :-

1. Crime No.19/2020 of Cherupulassery Police Station U/s.489(B) and 489(C) r/w 34 of IPC.
2. Crime No.9/2022 of Cherupulassery Excise Range U/s.20(b) (ii)(B), 60(3), 32(B)(a) of NDPS Act.

3. Crime No.1000/2023 of Perinthalmanna Police Station U/s.20(b)(ii) C, 29 of NDPS Act.

3. It is to be noted that Crime No.1000/2023 registered on 11.07.2023 is the last prejudicial activity taken into the account by the Detaining Authority. Though the offence was committed in the said crime on 11.07.2023, the detention order has been issued only on 08.04.2024 after long lapse of time.

4. During the course of hearing, the learned Public

Prosecutor pointed out that the delay has been explained in Ext.P1 order. He points out that the Detaining Authority has stated that the detenu is in judicial custody in Crime No.1000/2023 involving the offence under the NDPS Act and therefore, the probability of his release on bail is less. Therefore the detaining authority did not issue the order immediately. The detention order was issued only when it was felt that the detenu may file bail application after two or three remand periods. It is also pointed out that the Detaining Authority has recorded the date of proposal etc and therefore, no delay is involved and there is proper application of mind by the Detaining Authority.

5. We are unable to accept the contention raised by the learned Public Prosecutor. There is a long delay of about 9 months in passing the order of detention. The explanation in the detention

order is insufficient to satisfy the court about the nexus, which is a

mandatory requirement. In view of the long delay involved, we think that the objective of detention is defeated in this case and the live link was snapped long ago. Therefore, we are not in a position to approve the detention. The order of detention is therefore quashed. The detenu shall be released forthwith, if custody is not required in any other proceedings. The order shall be communicated to the Superintendent of Central Prison, Viyyur immediately. This writ petition is disposed of accordingly. Sd/- A.MUHAMED MUSTAQUE JUDGE Sd/- S.MANU JUDGE
SMA APPENDIX OF WP(CRL.) 454/2024 PETITIONER EXHIBITS :- Exhibit -P1 A

TRUE COPY OF ORDER NO. DCPKD/16060/2023- S1 DATED 08.04.2024 OF
THE 2ND RESPONDENT

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