Jancy vs State of Kerala

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Court : Kerala

Decided On : Aug-08-2024

Judge : Honourable Mr. Justice Raja Vijayaraghavan V,Honourable Mr. Justice G.Girish

Appeal No. : WP(Crl.)/776/2024

Appellant : JANCY

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V & THE HONOURABLE MR. JUSTICE G.GIRISH THURSDAY, THE 8TH DAY OF AUGUST 2024 / 17TH SRAVANA, 1946 WP(CRL.) NO. 776 OF 2024 PETITIONER: JANCY AGED 45 YEARS W/O DEVAN, PANACHIKKAL HOUSE, VELIMANAM COLONY, VELIMANAM P.O, ARALAM, IRITTY TALUK, KANNUR DISTRICT, PIN - 670704 BY ADVS. P.MOHAMED SABAH LIBIN STANLEY SAIPOOJA SADIK ISMAYIL R.GAYATHRI M.MAHIN HAMZA RAYEES P. ALWIN JOSEPH BENSON AMBROSE AISWARYA K.M. RESPONDENTS:

1 STATE OF KERALA REPRESENTED BY THE CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM, PIN - 682031 2 THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT OF KERALA (HOME DEPARTMENT), SECRETARIAT, THIRUVANANTHAPURAM,, PIN - 695001 3 THE DISTRICT MAGISTRATE KANNUR, COLLECTORATE ROAD, THEVAKKARA, KANNUR, KANNUR DISTRICT,, PIN - 670002 4 THE DISTRICT POLICE CHIEF KANNUR RURAL, NEAR KERALA ARMED POLICE IV BATTALION, DHARMASALA, KANNUR DISTRICT, PIN - 5 THE STATION HOUSE OFFICER ARALAM POLICE STATION, ARALAM, KANNUR DISTRICT, PIN - 670704 6 THE SUPERINTENDENT HIGH SECURITY PRISON, VIYYUR, THRISSUR DISTRICT, PIN - 680010

SRI KA ANAZ, PUBLIC PROSECUTOR; GRASHIOUS KURIAKOSE, ADGP ; C.K.SURESH, SR.P.P. THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON 08.08.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

G.Girish, J.

Aggrieved by Ext.P2 order dated 29.03.2024 of the District Magistrate, Kannur, which was confirmed by the Government vide Ext.P4 order, in respect of the preventive detention of the son of the petitioner, the present petition is filed by her under Article 226 of the Constitution of India for a Writ of Habeas Corpus.

2. Ext.P2 order is the second detention order against the detenu after his release on 15.11.2022 on completion of the earlier preventive

detention for six months. The District Police Chief, Kannur (Rural) reported the commission of two cases of robbery by the detenu after his release from the earlier detention. Thus, altogether six cases, inclusive of four crimes which were reckoned earlier for preventive detention of the detenu, were pointed out in the report dated 20.03.2024 of the District Police Chief, Kannur (Rural) for classifying

the detenu as a known rowdy under the Kerala Anti-Social Activities (Prevention) Act, 2007 [for short KAA(P)A]. The aforesaid four crimes are shown in the table below:

Sl.No Crime No. Offences Present Status .

1 218/2020 of u/s 341, 323, 324, Final report filed

S.C.No.35/2021

2 269/2021 of u/s 341, 323, 325 Final report filed a

C.C.No.262/2022

3 279/2021 of Final report filed a

Court, Mattannur as C.C.No.34/2022 Aralam Police u/s 379 IPC now pending trial before the Station Judicial First Class Magistrate Court, Mattannur as C.C.No.1011/2021

5 65/2024 of under Sections 341, Case pending investig

the report of the District Police Chief, Kannur (Rural) referred above, the Detaining Authority (District Magistrate,Kannur) came to the conclusion that the petitioners son would come under the definition of known rowdy under KAA(P)A and that he is persistently involved in anti-social activities with impunity despite his earlier detention, and hence his further preventive detention is highly necessary for the maintenance of public order. Accordingly, the Detaining Authority passed Ext.P2 order on 29.03.2024. The Advisory Board to which the matter was referred under Section 9 of the

KAA(P)A, upheld the preventive detention of the detenu. Taking into account of the report of the Advisory Board as well as Ext.P2 order of the Detaining Authority, the Government, vide Ext.P4 order, confirmed the preventive detention under Section 10(4) of KAA(P)A and directed the detention of the detenu for a period of one year with effect from the date of detention.

In the present petition, the petitioner challenges Exts.P2 and P4 orders on the following grounds:

> i) The Detaining Authority did not provide an opportunity to the detenu to oppose his detention before passing Ext.P2 order. ii) The live-link between the last prejudicial activity of the detenu and the detention order passed has been snapped. iii) There was non-application of mind by the Detaining Authority while deciding on the question of preventive detention of the detenu. iv) The cases registered against the detenu are in the nature of vitiating law and order, and hence a preventive detention

order cannot be justified.

> v) Ext.P4 confirmation order was passed after a period of five months and 10 days from the date of last prejudicial activity. The Government has not considered the matter afresh after receipt of the recommendation of the Advisory Board. vi) Ext.P2 order lacks the reasoning for the detention of the detenu who was undergoing judicial custody in connection with the last crime registered against him.

4. Heard Adv.Sri.P.Mohamed Sabah, the learned counsel for the petitioner and Sri.K.A.Anas, the learned Senior Government Pleader representing the respondents.

5. As regards the first ground highlighted by the learned counsel

for the petitioner to challenge the legal sanctity of Ext.P2 order, it has to be stated that there is absolutely no statutory or precedential basis to the above argument. Neither KAA(P)A nor any other precedents holding the field make it mandatory for the authorities concerned to hear the detenu before passing detaining order under Section 3(1) of the KAA(P)A. It is true that Section 15(1) of the KAA(P)A envisages the requirement to hear the affected party before passing orders of externment. But Section 3 of the KAA(P)A which deals with the detention of the known goonda or known rowdy, does not contain any such pre-requisite before passing orders of

detention. Likewise, there is no requirement to inform the detenu about the grounds of his detention before passing an order of detention under Section 3 of the

KAA(P)A. Thus, the argument advanced in the above regard by the learned counsel for the petitioner is devoid of merit.

6. As regards the contention of the petitioner about the delay

resulting in the snapping of live-link between the last prejudicial activity and the date of detention order, it has to be stated that the chronological events following the registration of Crime No.64/2024 of the Aralam Police Station against the detenu in connection with his last prejudicial activity, would reveal that the authorities concerned have acted without any laxity in

initiating the proceedings under Section 3(1) of the KAA(P)A. The crime which is taken as the last prejudicial activity of the detenu was committed on 29.01.2024. The detenu was arrested and remanded in the aforesaid case on 03.02.2024. The District Police Chief, Kannur (Rural) had recommended the commencement of proceedings for the preventive detention of the detenu on 20.03.2024, that is, within 46 days from the date of arrest. During the aforesaid period, the detenu continued to be in judicial custody, and hence there was no chance of him indulging in further anti-social activities warranting immediate action. At the same time, the Sponsoring Authority was in need of breathing time for the preparation of report after collecting the case records which included the earlier crimes committed by the detenu which were taken into account for the prior detention from 16.05.2022 to 15.11.2022.

7. After considering the above recommendation of the District

Police Chief, the Detaining Authority had passed Ext.P2 order on 29.03.2024, that is, within 9 days. Thus, the total time lag between the last prejudicial activity and the detention order is only two months. It is not possible to say that the above-said time lag, between the various proceedings, was of such a nature vitiating the sanctity of the preventive detention measures initiated

against the detenu. In Licil Antony v. State of Kerala and Another [(2014) 11 SCC 326], the Apex Court held while dealing with identical challenge in proceedings initiated against the detenu under COFEPOSA Act, that while dealing with the question of delay in making an order of detention, the Court is required to be circumspect and has to take a

pragmatic view. It is further observed thereunder that no hard and fast

formula is possible to be laid or has been laid in this regard. It is also observed by the Apex Court in the aforesaid decision that the question whether the prejudicial activity of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activity and the purpose of detention is snapped, depends on the facts and circumstances of each case. As far as the present case is concerned, it is not possible to say that the delay of two months between the last prejudicial activity and the date of Ext.P2 order is so inordinate to snap the live-link between the said activity and the purpose for

which Ext.P2 detention order is passed. Hence, we are not inclined to accept the argument advanced by the learned counsel for the petitioner in the above regard.

8. As regards the third ground raised by the learned counsel for

the petitioner about the non-application of mind by the Detaining Authority, it has to be stated that Ext.P2 order is self-explanatory as to the compelling circumstances which warrant the further detention of the detenu for the maintenance of public order. The involvement of the detenu in two cases of robbery on 25.01.2024 and 29.01.2024 within the limits of Aralam Police Station within a period of 15 months from his release from the previous preventive detention, is highlighted in Ext.P2 order. As per Section 13(2)(i) of the KAA(P)A, the involvement of the detenu in a single offence of the nature described in Section 2(o) or Section 2(p) of the KAA(P)A after his release from a previous preventive detention, is sufficient for the issuance of

another detention order under Section 3 of the said Act. The Detaining Authority has made clear in Ext.P2 order about invoking the aforesaid provision of law for ordering the further detention of the detenu.

9. The learned counsel for the petitioner would contend that the detenu has been falsely implicated by the investigating agency in the four cases which are pending consideration of the courts concerned. The involvement of the detenu in the aforesaid cases is a matter which is to be

decided by the jurisdictional court dealing with the trial. The question whether the detenu is innocent in those crimes, or he has been falsely implicated in those cases, are matters which come under the exclusive domain of the jurisdictional court empowered to proceed with the trial in the said cases. As far as the Detaining Authority is concerned, going by the tenor of Section 2(p)(iii) of the KAA(P)A, the filing of final report pointing to the involvement of the detenu in the crimes, alone is sufficient to arrive at

the finding that he has committed the said offence. The adjudication whether the detenu is actually involved in such cases or not, could not be done by the Detaining Authority while deciding the question whether the detenu would come under the definition of known rowdy or known goonda as envisaged under Section 2(o) and Section 2(p) of the KAA(P)A. Therefore, the argument advanced by the learned counsel for the petitioner that the Detaining Authority failed to apply its mind on the question whether the detenu was actually involved in the four cases charge-sheeted against him, is devoid of merit.

10. As regards the last two crimes attributed against the detenu, in

which the investigation is in progress, Ext.P2 order contains clear indication that the Detaining Authority, after assessment and evaluation of the said cases, arrived at the finding that the detenu committed the aforesaid crimes without any remorse even after undergoing preventive detention in the earlier proceedings. Thus, there is absolutely no point in arguing that there had been non-application of mind on the part of the Detaining Authority while passing Ext.P2 order.

11. The contention of the petitioner that the crimes alleged to have

been committed by the detenu cannot be termed as those affecting public order, and that it were only related to law and order issues, cannot be accepted since it is seen that the petitioner has been persistently involved in the commission of crimes of different nature causing a threat to the peaceful

living of the public at large. In Pesala Nookaraju v. Government of Andhra Pradesh and Others [(2023) SCC OnLine SC 1003], the Apex Court after referring to the precedents including Dr.Ram Manohar Lohia v. State of Bihar [(1966) 1 SCR 709], Pushkar Mukherjee v. State of West Bengal [(1969) 1 SCC 10], Dipak Bose @ Naripada v. State of West Bengal [(1973) 4 SCC 43], Arun Ghosh v. State of West Bengal [(1970) 1 SCC 98] and Commissioner of Police v. C.Anitha [(2004) 7 SCC 467] held as follows:

> 65. Thus, from the various decisions referred to above, it is evident that there is a very thin line between the question of law and order situation and a public order situation, and some times, the acts of a person relating to law and order situation can turn into a question of public order situation. What is decisive for determining the connection of ground of detention with the maintenance of public order, the object of detention, is not an intrinsic quality of the act but rather its latent potentiality. Therefore, for determining whether the ground of detention is relevant for the purposes of public order or not, merely an objective test based on the intrinsic quality of an act would not be a safe guide. The potentiality of the act has to be examined in the light of the surrounding circumstances, posterior and anterior for the offences under the Prohibition Act.

66. Just because four cases have been registered against the

> appellant detenu under the Prohibition Act, by itself, may not have any bearing on the maintenance of public order. The detenu may be punished for the offences which have been registered against him. To put it in other words, if the detention is on the ground that the detenu is

indulging in manufacture or transport or sale of liquor then that by itself would not become

an activity prejudicial to the maintenance of public order

because the same can be effectively dealt with under the provisions of the Prohibition Act but if the liquor sold by the detenu is dangerous to public health then under the Act, 1986, it becomes an activity prejudicial to the maintenance of public order, therefore, it becomes necessary for the detaining authority to be satisfied on material available to it that the liquor dealt with by the detenu is liquor which is dangerous to public health to attract the provisions of the 1986 Act and if the detaining authority is satisfied that such material exists either in the form of report of the Chemical Examiner or otherwise, copy of such material should also be given to the detenu to afford him an opportunity to make an effective representation. xxxx xxxxx xxxx

73. In the case on hand, the detaining authority has specifically

stated in the grounds of detention that selling liquor by the appellant detenu and the consumption by the people of that locality was harmful to their health. Such statement is an expression of his subjective satisfaction that the activities of the detenu appellant is prejudicial to the maintenance of public order. Not only that, the detaining authority has also recorded his satisfaction that it is necessary to prevent the detenu appellant from indulging further in such activities and this satisfaction has been drawn on the basis of the credible material on record. It is also well settled that whether the material was sufficient or not is not for the Courts to decide by applying the objective basis as it is matter of subjective satisfaction of the detaining authority.

12. Thus, the true distinction between the areas of public order

and law and order lies not in the nature of quality of the act, but in the degree and extent of its reach upon society. The distinction between the concepts of law and order and public order is a fine one, but this does

not mean that there can be no overlapping. Acts similar in nature but committed in different contexts and circumstances might cause different reactions. As far as the present case is concerned, the prejudicial activities of the detenu leading to public disorder as revealed in the grounds of detention, consist of a consistent course of criminal conduct. Although the criminal activities of the detenu pertain to crimes against various individuals, the persistent involvement in such activities have now taken a turn for the worse. There have been a series of criminal activities on the part of the detenu and his associates for the past several years, and the length, magnitude and intensity of the terror wave unleashed by such acts of violence, creating disorder would distinguish it as an act affecting public order, and not a mere law and order issue. When viewed in the above perspective, it is not possible to say that the prejudicial activities attributed to the detenu were mere law and order issues. For the above reason, we are not inclined to accept the argument advanced by the learned counsel for the petitioner upon the above lines.

13. The challenge against Ext.P4 confirmation order for the reason

that it has been promulgated after 5 months and 10 days from the last prejudicial activity attributed to the detenu, is not having any legal basis. It is revealed from the case records that Ext.P4 confirmation order is of the date 11.06.2024, which is within the period of three months from the date of

Ext.P2 order. There is absolutely no provision of law, or authority of precedents prescribing any particular period to be reckoned from the last prejudicial activity within which the order of confirmation of detention has to be passed by the Government. Since the confirmation order of the Government, based on the report of Advisory Board, has been promulgated within the period of three months from the detention order, as required under Article 22(4) of the Constitution of India, the challenge raised by the petitioner pointing to the delay of 5 months and 10 days in passing the above order from the date of last prejudicial activity, is without any legal basis. Likewise, the contention of the petitioner that the 2 nd respondent has

not considered the matter afresh after the receipt of recommendation of the Advisory Board, is devoid of merit.

14. The argument advanced by the learned counsel for the petitioner that Ext.P2 detention order has been passed without taking into

account of the fact that there was no possibility of any breach of public order

on the part of the detenu who was undergoing detention in judicial custody in connection with the last two crimes attributed against him, is also totally unfounded in view of the categoric statements in Ext.P2 order that the detenu might involve in anti-social activities affecting the public order, if he is enlarged on bail in Crime No.64/2024 and Crime No.65/2024 of Aaralam Police Station. The Detaining Authority is seen to have arrived at the above conclusion, after analysing the past conduct of the detenu who showed no contrition despite the initiation of similar proceedings against him earlier. Therefore, we are not inclined to accept the aforesaid challenge raised by the petitioner against Ext.P2 and Ext.P4 orders.

15. As a conclusion to the above discussions, we find no reason to

interfere with Ext.P2 and Ext.P4 orders passed by the Authorities concerned. Resultantly, the petition stands dismissed. Sd/- RAJA VIJAYARAGHAVAN V, JUDGE Sd/- G.GIRISH, JUDGE jsr/vgd APPENDIX OF WP(CRL.) 776/2024 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE REPORT DATED 20.03.2024 SUBMITTED BY THE RESPONDENT NO.4 BEFORE THE RESPONDENT NO.3 Exhibit P2 TRUE COPY OF THE DETENTION ORDER DATED 29.03.2024 PASSED BY THE RESPONDENT NO.3 Exhibit P3 TRUE COPY OF THE REASONS RECORDED FOR PASSING EXHIBIT P2 DETENTION ORDER DATED 29.03.2024 Exhibit P4 TRUE COPY OF THE ORDER PASSED BY THE RESPONDENT NO.2 AS G.O (RT)NO. 1624/2024 HOME DATED 11.06.2024 Exhibit P5 TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME NO. 218/2020 OF ARALAM POLICE STATION Exhibit P6 TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME NO. 269/2021 OF ARALAM POLICE STATION Exhibit P7 TRUE COPY

OF THE FIRST INFORMATION REPORT IN CRIME NO. 279/2021 OF ARALAM POLICE STATION Exhibit P8 TRUE COPY OF THE FINAL REPORT IN CRIME NO. 279/2021 OF ARALAM POLICE STATION Exhibit P9 TRUE COPY OF THE RELEASE MEMO ISSUED BY THE JFCM COURT, MATTANNUR IN CRIME NO. Exhibit P10 TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME NO. 297/2021 OF ARALAM POLICE STATION Exhibit P11 TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME NO. 64/2024 OF ARALAM POLICE STATION Exhibit P12 TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME NO. 65/2024 OF ARALAM POLICE STATION