

Lalitha vs State of Kerala Represented by Additional Chief Secretary, (Home & Vigilance)

Lalitha vs State of Kerala Represented by Additional Chief Secretary, (Home & Vigilance)

SooperKanoon Citation : sooperkanoon.com/1377140

Court : Kerala

Decided On : Aug-25-2023

Judge : Honourable Mr. Justice a.Muhamed Mustaque,Honourable Mrs. Justice Sophy Thomas

Appeal No. : WP(Crl.)/728/2023

Appellant : Lalitha

Respondent : State of Kerala Represented by Additional Chief Secretary, (Home & Vigilance)

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE & THE HONOURABLE MRS. JUSTICE SOPHY THOMAS
FRIDAY, THE 25TH DAY OF AUGUST 2023 / 3RD BHADRA, 1945
WP(CRL.) NO. 728 OF 2023 PETITIONER/S: LALITHA AGED 70
YEARS W/O.SASI, THOTTUVARAMBIL HOUSE, TC BY ADVS. SUMAN
CHAKRAVARTHY SHAJIN S.HAMEED RESPONDENT/S:

1 STATE OF KERALA REPRESENTED BY ADDITIONAL CHIEF SECRETARY, (HOME & VIGILANCE) GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001 2 THE DISTRICT MAGISTRATE COLLECTORATE, KUDAPPANAKKUNNU, THIRUVANANTHAPURAM, PIN - 695043 3 THE DISTRICT POLICE CHIEF OFFICE OF THE DISTRICT POLICE CHIEF THIRUVANANTHAPURAM, PIN - 695033 4 THE DEPUTY COMMISSIONER OF POLICE (L&O) THIRUVANANTHAPURAM CITY, VAZHUTHACAUD THIRUVANANTHAPURAM, PIN - 695014 5 THE STATION HOUSE OFFICER MEDICAL COLLEGE POLICE STATION, THIRUVANANTHAPURAM, PIN - 695011 6 THE SUPERINTENDENT CENTRAL PRISON, VIYYUR, THRISSUR, PIN - BY ADV. K.A. ANAS, GP/PP

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON 18.08.2023, THE COURT ON 25/8/2023 DELIVERED THE FOLLOWING: A. MUHAMED MUSTAQUE & SOPHY THOMAS, JJ.

----- Dated this
the 25th day of August, 2023

J U D G M E N T

A. Muhamed Mustaque, J.

This writ petition (criminal) was filed challenging detention

order by mother of the detinue. Detinue already had undergone

three detentions and the fourth detention order was revoked as per

the order of the Advisory Board. The

anticipatory bail on 10/2/2023 with the following conditions as per Ext.P1: i. The petitioners shall surrender before the Investigating Officer within ten days

from today and on such surrender, the Investigating Officer can question the petitioners and recover the knife. In the event of their arrest, the Investigating Officer shall produce the petitioners before the jurisdictional court on the date of surrender itself. ii. On such production, the jurisdictional court shall release the petitioners on bail, on executing bond for Rs.30,000/- (Rupees thirty thousand only) each by themselves and by two solvent sureties, each for the like sum to the satisfaction of the jurisdictional court. iii. The petitioners shall co-operate with investigation and shall be made available for interrogation and for the purpose of investigation, as and when the Investigating Officer directs so. -:2:-

iv. The petitioners, shall not, intimidate the witnesses or interfere with the investigation in any manner. v. The petitioners shall not commit any offence during currency of this bail and any such involvement is a reason to cancel the bail hereby granted.

2. The previous crime committed by him prior to the last prejudicial activity was in the year 2018. The argument raised at the bar by the learned counsel for the petitioner is that the detention order was passed to scuttle the anticipatory bail granted to the detinue. According to the learned counsel for the petitioner, the conditions imposed in the bail order has not been adverted by the authority while passing the detention order.

Learned counsel for the petitioner placed reliance on the judgment

of the Apex Court in OPTO Circuit India Limited v. Axis Bank and Others [(2021) 6 SCC 707]; and the judgments of the Division Bench of this Court in Devika K.D. v. State of Kerala [2022 KHC 871] and W.P.(CrI).No.232/2023, dated 10/7/2023

3. The learned Government Pleader submitted that the detinue was involved in a large number of cases and on each occasion when he

was bailed out, he committed crime a

of this Court in Aliyarkunju v. State of Kerala and Others [2016 KHC 2064]. -:3:-

4. The learned counsel for the petitioner on the other hand submitted that an order of granting anticipatory bail has no force after filing of the final report in the case.

5. It is settled law that livelink must survive for the last prejudicial activity till detention order is passed. The last prejudicial activity in this case was on 10/1/2023. Detenue was granted anticipatory bail on 10/2/2023. That means, his custodial

intervention was not necessary in that case. The detention order

in this case was passed only on 9/5/2023. There was almost 4 months delay in passing the detention order. The detaining

authority also did not examine the conditions imposed in the order

granting anticipatory bail. Delay in this matter also not seen properly explained. The detention order states that the report

became accessible to the office on March 14, 2023, and the subsequent delay in issuing the order was due to normal processing time. Furthermore, it was mentioned that there was a total of 12 public holidays in the month of April alone, during which the consideration of the detention report took place. These factors alone do not provide adequate justification for the extended time taken to issue the detention order.

6. The conditions imposed while granting anticipatory bail, cannot be said to be insufficient to prevent the crime. It is true that the past antecedents of the petitioner clearly indicate -:4:- problematic nature of the detenue engaging in criminal offences

vitiating public order. It is to be noted that the previous crime committed before the last prejudicial activity was before 2018. Delay as well as non-advertence to the bail conditions in this

matter are fatal. We are, therefore, of the

forthwith. The writ petition (criminal) is disposed of. Sd/- A.MUHAMED MUSTAQUE JUDGE Sd/- SOPHY THOMAS JUDGE ms -:5:- APPENDIX OF WP(CRL.) 728/2023 PETITIONER EXHIBITS Exhibit-P 1 A TRUE COPY OF THE ORDER DATED 10.02.2023 IN B.A NO.574/2023 BY THIS HON'BLE COURT

Exhibit -P2 A TRUE COPY OF THE DETENTION ORDER

NO.DCTVM/3467/2023 DATED 09.05.2023 ISSUED BY THE 2ND RESPONDENT Exhibit-P3 A TRUE COPY OF THE REPORT OF THE 4TH RESPONDENT NO.14/KAAPA/DCP (L&O)/TC/2023 DATED 09.03.2023 Exhibit - P4 A TRUE COPY OF THE FIR AND FIS IN CRIME NO.37/2023 OF MEDICAL COLLEGE POLICE STATION THIRUVANANTHAPURAM Exhibit-P5 A TRUE COPY OF THE ORDER DATED 19.05.2023 NO.HOME-SSA5/180/2023-HOME Exhibit-P6 A TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE DETENUE DATED 24.05.2023 BEFORE THE KAA(P)A ADVISORY BOARD Exhibit-P7 A TRUE COPY OF THE G.O(RT) NO.1810/2023/HOME DATED 06.07.2023 Exhibit-P 8 A TRUE COPY OF THE ORDER OF REVOCATION NO.17812/SSAS/2017/HOME DATED 29.04.2017 Exhibit-P9 A TRUE COPY OF THE JUDGMENT DATED 10.07.2013 IN WP (CRL) NO.232/2023

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com