

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.T.SANKARAN
&
THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

WP(Crl.).No. 192 of 2015 (S)

PETITIONER(S):

SUSHA, AGED 21 YEARS
W/O.SREEJITH @ UNNI, PUTHUVAL PUTHENVEEDU
THURUTHUMoola, ADUPPUKOOTANPARA, PEROORKADA
THIRUVANANTHAPURAM.

BY ADVS.SRI.C.RAJENDRAN
SRI.K.R.RANJITH

RESPONDENT(S):

1. STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY
TO GOVERNMENT OF KERALA
(HOME DEPARTMENT), GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695 001.
2. THE DISTRICT MAGISTRATE
THIRUVANANTHAPURAM-695 001.
3. THE DISTRICT POLICE CHIEF
THIRUVANANTHAPURAM-695 001.
4. THE SUB INSPECTOR OF POLICE
PEROORKADA POLICE STATION
THIRUVANANTHAPURAM DISTRICT-695 005.
5. THE SUPERINTENDENT
CENTRAL PRISON, VIYYUR, THRISSUR-680 010.

R1 BY ADV. GOVERNMENT PLEADER SMT.KOCHUMOL KADAVATH
R3 BY ADV. DIRECTOR GENERAL OF PROSECUTION SRI.ASAF ALI

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON
19-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1. TRUE PHOTOCOPY OF THE DETENTION ORDER DATED 25/1/2015.

EXT.P2. TRUE PHOTOCOPY OF THE GROUNDS FOR PASSING THE EXT.P1
ORDER

EXT.P3. TRUE PHOTOCOPY OF THE REPORT DATED 1/1/2015.

EXT.P4. TRUE PHOTOCOPY OF THE JUDGMENT IN WPCR. NO.505/2011 DATED
7/2/2012.

EXT.P5. TRUE PHOTOCOPY OF THE 1ST DETENTION ORDER ON 5/9/2011.

EXT.P6. TRUE PHOTOCOPY OF THE 2ND DETENTION ORDER DATED 4/2/2013.

EXT.P7. TRUE PHOTOCOPY OF THE FIR, FIS AND DRAFT FINAL REPORT IN
CRIME NO.1431/2014 OF PEROORKADA POLICE STATION.

EXT.P8. TRUE PHOTOCOPY OF THE FIR, FIS AND DRAFT FINAL REPORT IN
CRIME NO.1432/2014 OF PEROORKADA POLICE STATION.

EXT.P9. TRUE PHOTOCOPY OF THE REPRESENTATION SENT TO THE ADDL.
CHIEF SECRETARY, HOME DEPARTMENT DATED 23/4/2015.

EXT.P10. A TRUE PHOTOCOPY OF THE ORDER REJECTING THE
REPRESENTATION OF THE DETENU DATED 2.5.2015.

EXT.P11: A TRUE PHOTOCOPY OF THE CONFIRMATION ORDER DATED
24.3.2015.

EXT.P12: A TRUE COPY OF THE KERALA ANTI-SOCIAL ACTIVITIES
(PREVENTION) AMENDMENT ACT, 2014.

EXT.P13: A TRUE COPY OF THE PREVENTIVE DETENTION ACT, 1950

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A. TO JUDGE

K.T.SANKARAN & B.SUDHEENDRA KUMAR, JJ.

W.P.(Crl.) No.192 of 2015

Dated this the 19th day of August, 2015

JUDGMENT

K.T.Sankaran, J.

Sreejith @ Unni, the husband of the petitioner, was detained under Section 3(1) of the Kerala Anti-Social Activities (Prevention) Act (hereinafter referred to as 'the KAAPA') as per Exhibit P1 detention order dated 25.1.2015. The order of detention was executed on 30.1.2015. Based on the report of the Advisory Board, the order of detention was confirmed by the Government on 24.3.2015 as per Exhibit P11 order and ordered the detention of the detenu for a period of one year with effect from the date of detention.

2. The detenu was detained on earlier occasions also

under the KAAPA. The first order of detention dated 5.9.2011 was set aside as per the judgment in W.P.(CrI.) No.505 of 2011 and the detenu was released from jail. Thereafter, as per Exhibit P6 order of detention dated 4.2.2013, the detenu was detained under Section 3(1) of the KAAPA. That order of detention was confirmed and the detenu was ordered to be detained for a period of six months. The detenu was released after the expiry of the period of six months. The detenu was involved in two crimes registered in the year 2014 and based on the subsequent events, the third detention order was passed on 25.1.2015 which is under challenge in this Writ Petition.

3. Though several grounds are raised in the Writ Petition, we do not find it expedient to refer to all the grounds except the following : The learned counsel for the petitioner submitted that the KAAPA was amended by the Kerala Anti-Social Activities (Prevention) Amendment Act, 2014, Act 41 of

2014, which came into force on 31.12.2014. Section 12, which provided that the maximum period for which any person may be detained in pursuance of any detention order made under the Act, which has been confirmed under Section 10, shall not exceed six months from the date of detention, was substituted by the Amendment Act. The substituted Section 12 reads as follows :

“12. Maximum period of detention. In pursuance of the first detention order made against any person under this Act and confirmed under Section 10, he may be detained for a period which may extend up to six months from the date of the detention and in pursuance of such subsequent detention order made against such person, he may be detained for a period which may extend up to a maximum of one year.”

4. The learned counsel for the petitioner submitted that the last prejudicial activity referred to in the order of detention was dated 25.11.2014 and at that time, the Amendment Act had

not come into force. Exhibit P1 order of detention was passed on the basis of the subjective satisfaction arrived at by the detaining authority based on the prejudicial activities in which the detenu was involved. Therefore, it is submitted that the amended Section 12 would not apply to the present case and the maximum period for which the detenu can be detained would be only six months. The learned counsel submitted that the amended Section 12 could not be applied to the present case as it would be contrary to Article 20(1) of the Constitution of India.

5. The Article 20(1) of the Constitution of India provides that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of commission of the offence.

Going by Article 20(1) what is prohibited is the conviction of a person in respect of an offence except for violation of law in force at the time when the offence was committed. Such an accused shall not be subjected to a penalty greater than the penalty which could be inflicted under the law in force at the time of the commission of the offence. Article 20(1) speaks of conviction for an offence and the penalty to be imposed under the law in force. Preventive detention is not punitive. In the matter of preventive detention, no offence as such is involved for which the detenu is found guilty and detained. On the other hand, a person would be detained under the KAAPA on the ground that he is involved in cases which would satisfy the definition of known goonda or known rowdy and he involves in any anti-social activity as defined under the KAAPA. In other words, the detention is not for having committed the offence mentioned in the detention order, but for preventing him from

involving in similar activities in future. The period of detention is not a term of imprisonment on a conviction for an offence nor a penalty imposed on the detenu. Therefore, we are of the view that Article 20(1) of the Constitution of India does not apply in the case on hand as contended by the learned counsel for the petitioner. We are fortified in arriving at this conclusion by the decision of the Bombay High Court in **Pralhad Krishna Kurane v. The State of Bombay : AIR 1952 Bombay (1)** and **Rameshchandra v. The State : AIR 1955 Bombay 346**.

6. The next contention raised by the learned counsel for the petitioner is that had not the amended provision been applied, the detenu could have been detained only for a maximum period of six months. Under the amended Section 12, the maximum period for which a person could be detained in pursuance of an order of subsequent detention is up to a

period of one year. In the present case, the petitioner is under detention since 30.1.2015 and the period of six months is over. The authority confirming the order of detention has not shown any reason in Exhibit P11 as to why the maximum period of one year is imposed. That power was exercised in view of the amended Section 12 which came into force after the last prejudicial activity on the basis of which the detention order was passed. It is true that the amended provision would apply in respect of an order of detention passed after the amendment. The number of cases in this category of cases, namely, passing an order of detention after coming into force of the amendment Act, in respect of an incident which took place before the amendment, are few and limited. Therefore, though as a matter of principle, it cannot be said that in every order of confirmation, the period should be fixed after stating reasons, in these category of cases, we are of the view that confirming

authority should have applied their mind and decided whether the amended provision should be invoked.

For the aforesaid reasons, we allow the Writ Petition holding that the continued detention of the detenu is illegal and setting him at liberty forthwith, unless his detention is required in connection with any other case. The Registry will communicate the gist of the order to the Superintendent of the prison concerned for complying with the direction.

**K.T.SANKARAN
JUDGE**

**B.SUDHEENDRA KUMAR
JUDGE**

csI

Gist of the Judgment

The detenu Sreejith @ Unni, who has been detained in Central Prison, Viyyur, as per order No.C.C.11/S.13.8548 Camp/15 dated 25.1.2015 issued by the District Magistrate, Thiruvananthapuram, shall be released forthwith unless his continued detention is required in connection with any other case.