



2024:KER:41

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

WEDNESDAY, THE 3<sup>RD</sup> DAY OF JANUARY 2024 / 13TH POUSHA, 1945

WP(CRL.) NO. 852 OF 2023

PETITIONER/S:

PRABHULLA P  
AGED 32 YEARS  
W/O DILEEP KUMAR, VRINDHAVANAM, EDAVANPARAMBU,  
KOTTUKUNNAM P.O, THIRUVANANTHAPURAM, PIN - 695606  
BY ADVS.  
M.H.HANIS  
P.M.JINIMOL  
T.N.LEKSHMI SHANKAR  
ANANDHU P.C.  
NEETHU.G.NADH  
CIYA E.J.

RESPONDENT/S:

- 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  
THIRUVANANTHAPURAM DISTRICT,, PIN - 695043
- 3 THE DISTRICT POLICE CHIEF  
THIRUVANANTHAPURAM RURAL, PIN - 695033
- 4 THE CHAIRMAN  
ADVISORY BOARD, KAAPA, SREENIVAS, PADAM ROAD,  
VIVEKANANDA NAGAR, ELAMAKKARA, PIN - 682026
- 5 THE SUPERINTENDENT OF JAIL,  
CENTRAL JAIL, VIYYUR, PIN - 670004  
PUBLIC PROSECUTOR, ADV. K.A.ANAS

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON  
03.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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## **JUDGMENT**

**Dated this the 3<sup>rd</sup> day of January, 2024**

### **A.MUHAMED MUSTAQUE (J)**

The issue in this writ petition is whether detention order can be passed under Section 12 of the Kerala Anti-Social Activities (Prevention) Act, 2007 (hereinafter referred to as "the KAAPA") detaining a person beyond six months in a case where such a detenu suffered detention prior to the amendment to Section 12.

2. Admittedly, the detenu was detained invoking provision of the KAAPA in the year 2009. Before the amendment, the Section 12 reads thus:

"12. Maximum period of detention .-The maximum period for which any person may be detained in pursuance of any detention order made under this Act, which has been confirmed under Section 10, shall not exceed six months from the date of detention."

3. On 31.12.2014, amendment was brought into Section



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12 of the KAAPA, which reads thus:

[“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 upto 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. Learned Counsel for the petitioner submitted that, based on amendment under Section 13 of the Narcotic Drugs and Psychotropic Substances Act, the detenu cannot be detained by operation of amended provision for a period of one year, in view of the fact that the earlier detention was suffered by him, was based on un-amended provision under Section 12 of the KAAPA. This is a legal contention in this case.

5. The detention order is in the nature of depriving liberty of a person. Statutory provision will have to be construed strictly in that sense. Section 12 of the KAAPA would operate only prospectively in regard to the period



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of detention. In the sense, the first detention order must have been after 31.12.2014, that means earlier detention order prior to 31.12.2014, cannot be taken into account for passing a detention order for a maximum period of one year.

6. Admittedly in this case, earlier detention order was in the year 2009, that cannot be taken into account for imposing maximum one year detention after 31.12.2014. There is no embargo under the law to detain such persons, who was detained prior to 31.12.2014 for a period of six months. In this case, the detenu is under detention since 03.05.2023.

7. The last prejudicial activity was committed by the detenu on 15.11.2022 and he was arrested on the same day. He was released on 01.03.2023. The final report in Crime No.1483/2022 was filed on 20.06.2023. The preliminary report was filed by the Station House Officer on 22.12.2022. The District Police Chief, Thiruvananthapuram Rural submitted the report before the Detaining Authority on 13.01.2023 and the order was issued only on 10.04.2023.



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Absolutely there is no explanation for the considerable delay of five months in passing the detention order.

In such circumstances, we are of the view that the link between the last prejudicial activity and the detention order has been snapped. Accordingly, the impugned order is set aside. The petitioner is ordered to be released forthwith, if it is not otherwise required under law.

The Writ Petition is disposed of accordingly.

**Sd/ -**

**A. MUHAMED MUSTAQUE  
JUDGE**

**Sd/ -**

**SHOBA ANNAMMA EAPEN  
JUDGE**

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APPENDIX OF WP(CRL.) 852/2023

**PETITIONER EXHIBITS**

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|-------------------|---|
| <b>Exhibit P1</b> | <b>THE ORIGINAL COPY OF ORDER NO.<br/>DCTVM/921/2023-S13 DATED 10.04.2023 OF<br/>THE 2ND RESPONDENT</b>   |
| <b>Exhibit P2</b> | <b>A TRUE COPY OF THE ORDER NO.G.O.(RT).<br/>NO. 1723/2023 DATED 30.06.2023 OF THE<br/>1ST RESPONDENT</b> |