



2023/KER/71184

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

THURSDAY, THE 16TH DAY OF NOVEMBER 2023 / 25TH KARTHIKA,

1945

WP(CRL.) NO. 1081 OF 2023

PETITIONER:

SUKUMARAN, AGED 80 YEARS,

BY ADVS.
AJITH MURALI
MOHANAN M.K.
SWAPNA VIJAYAN

RESPONDENTS:

- 1 STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT SECRETARIAT, THIRUVANATHAPURAM., PIN - 695 001
- 2 THE ADDITIONAL CHIEF SECRETARY, HOME DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANATHAPURAM., PIN - 695 001
- 3 THE DISTRICT COLLRCTOR, PATHANAMTHITTA DISTRICT., PIN - 689 645
- 4 THE STATE POLICE CHIEF, POLICE HEAD QUARTERS, THIRUVANANTHAPURAM., PIN - 695 001
- 5 THE DISTRICT POLICE CHIEF, PATHANAMTHITTA., PIN - 689 645
- 6 THE DEPUTY SUPERINTENDENT OF POLICE,



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THIRUVALLA, PATHANAMTHITTA., PIN - 689 101

7 THE STATION HOUSE OFFICER THIRUVALLA ,
PATHANAMTHITTA DISTRICT., PIN - 689 101

8 THE SUPERINTENDENT CENTRAL PRISON, VIYOOR ,
THRISSUR DISTRICT., PIN - 680 010

BY ADVS.

ADVOCATE GENERAL OFFICE KERALA

ADDL.DIRECTOR GENERAL OF PROSECUTION (AG-11)

ADDL. STATE PUBLIC PROSECUTOR (AG-28)

ADV. K.A ANAD P.P

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR
ADMISSION ON 16.11.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



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J U D G M E N T

A. Muhamed Mustaque, J.

This writ of Habeas is filed by the father of the detenu. The detenu is involved in eight crimes and all the cases are registered by the Thiruvalla Police Station.

2. This is a typical case where the Court finds that there is no application of mind by the authority as to the exercise of power for ordering detention. The narratives in the impugned order would go to show that the authority had not examined the activities of the detenu vis-a-vis public order in respect of each offences referred in the impugned order. Detention order is a serious matter depriving liberty of the citizens. That means, except on valid grounds a person cannot be deprived of his liberty. The detention order, therefore, must reflect how public order would be vitiated if the person concerned is not detained invoking the provisions under the Kerala Anti-Social Activities (Prevention) Act, 2007(for short "KAAPA Act"). That means, the offence in which he is involved in the past will have to be analysed to arrive at a conclusion that he will be a threat to the



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society when he is enlarged without detention. The impact of each crime committed by him on the Public Order will have to be mentioned with reference to the nature of the crime committed by him rather than in a general manner that he would be a threat to the society and public.

3. We also note that there are certain offences committed by him in the nature of crime concerning individuals, and on compromise he was acquitted. If any individual is involved in offences which had only an impact on the private individuals, though he might have involved in one of similar kind of offences that itself will not be a ground to detain him under the KAAPA Act unless such activity would have a ramification on the public order.

4. The authority while passing the order will have to keep in mind that the power given to detain an individual is to secure public order nor as a punitive measure to punish him. It is to secure the larger interest of the public and society that such individual is detained and not by way of a punishment for the offences committed by him. Thus, the authority must explicitly state the reasons how the past conduct, with reference to the offences, would result in detention to



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secure public order. The detenu must know the reasons for such detention. The detention order without reasons is illegal and legally unsustainable.

Absolutely, there is no application of mind in this case. If that be the case, the impugned order has to be set aside. The petitioner is ordered to be released forthwith.

Sd/-

A.MUHAMED MUSTAQUE
JUDGE

Sd/-

SHOBA ANNAMMA EAPEN
JUDGE

PR



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APPENDIX OF WP(CRL.) 1081/2023

PETITIONER EXHIBITS

- Exhibit-P1 THE TRUE COPY OF THE DETENTION ORDER
NO.DCPTA /3429/2023-B3 DATED
22.07.2023 ISSUED BY THE 3RD
RESPONDENT AGAINST THE DETENUE.
- Exhibit-P2 THE TRUE COPY OF THE ORDER OF
CONFIRMATION WIDE G.O. (RT)
NO.2844/2023/HOME DATED 06.10.2023
ISSUED BY THE 2ND RESPONDENT.
- Exhibit-P3 THE TRUE COPY OF THE AFFIDAVIT DATED
24.08.2023 SIGNED BY THE DE-FACTO
COMPLAINANT IN CRIME NO. 2103/2019 OF
THIRUVALLA POLICE STATION.
- Exhibit-P4 THE TRUE COPY OF THE ORDER IN C.C
NO.438/2020 DATED 25.9.2023 PASSED BY
THE JUDICIAL FIRST CLASS MAGISTRATE
COURT, THIRUVALLA.
- Exhibit-P5 THE TRUE COPY OF THE JUDGMENT IN
CRL.A.NO.953/2022 DATED 28.9.2022 OF
THIS HONORABLE COURT.
- Exhibit-P6 THE TRUE COPY OF THE ORDER IN
B.A.NO.6559/2023 DATED 09.8.2023 OF
THIS HONORABLE COURT.