



IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT  
THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR  
&  
THE HONOURABLE MRS. JUSTICE C.S. SUDHA

TUESDAY, THE 4<sup>TH</sup> DAY OF JULY 2023 / 13<sup>TH</sup> ASHADHA, 1945

WP(CRL.) NO. 426 OF 2023

PETITIONER:

SOMAN T.K  
AGED 60 YEARS  
S/O KUJNAPPAN, THEROTH HOUSE, TOG ROAD, GLASS  
FACTORY COLONY, SOUTH KALAMASSERY, ERNAKULAM, PIN -  
683104  
BY ADVS.S.RAJEEV  
V.VINAY  
M.S.ANEER  
PRERITH PHILIP JOSEPH  
SARATH K.P.  
ANILKUMAR C.R.

RESPONDENTS:

- 1 STATE OF KERALA  
REP. BY THE CHIEF SECRETARY, SECRETARIAT,  
THIRUVANANTHAPURAM, PIN - 695001
- 2 THE ADDITIONAL CHIEF SECRETARY  
HOME DEPARTMENT (SSA), SECRETARIAT,  
THIRUVANANTHAPURAM, PIN - 695001
- 3 DISTRICT POLICE CHIEF  
ERNAKULAM (RURAL), SOUTH KALAMASSERY, ERNAKULAM,  
PIN - 682039
- 4 SECRETARY  
ADVISORY BOARD, THE PREVENTION OF ILLICIT TRAFFIC  
IN NDPS (PITNDPS) ACT, 1988, HIGH COURT BUILDING,  
ERNAKULAM, PIN - 682031
- 5 SUPERINTENDENT OF PRISON  
CENTRAL PRISON, POOJAPPURA, THIRUVANANTHAPURAM,



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**PIN - 695012**

**6 CIRCLE INSPECTOR OF POLICE  
THADIYITTAPARAMBU POLICE STATION, VAZHAKULAM,  
ERNAKULAM, PIN - 683105**

**BY ADV.K.A.ANAS, PUBLIC PROSECUTOR**

**THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR FINAL  
HEARING ON 14/06/2023, THE COURT ON 04.07.2023 DELIVERED THE  
FOLLOWING:**



**HIGH COURT OF KERALA  
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**P.B.SURESH KUMAR & C.S.SUDHA, JJ.**

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**Dated this the 4<sup>th</sup> day of July, 2023**

**J U D G M E N T**

**C.S.Sudha, J.**

This writ petition has been filed seeking quashing of Ext.P3 order of detention passed under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (PITNDPS) Act, 1988, against the brother of the petitioner. Ext.P3 order dated 04/01/2023 has been confirmed by the Government by way of Ext.P4 order dated 04/04/2023. The period of detention ordered is one year.

2. Heard Sri.S.Rajeev, the learned counsel for the petitioner and Sri.K.A.Anas, the learned Government Pleader for the respondents.

3. Ext.P3 is challenged on the following grounds (i) delay (ii) non application of mind by the detaining authority and (iii) failure to supply the grounds of detention as well as the detention order in the language known to the detenu.

4. The last prejudicial activity of the detenu took place on



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25/03/2022. The FIR relating to this crime, namely, FIR 228/2022 of Thadiyittaparambu Police Station for the offence punishable under Section 20(b)(ii) B of the NDPS Act has been registered on 26/03/2022. The detenu was arrested on 29/03/2022. He was granted bail as per Ext.P5 order dated 10/05/2022. On 01/08/2022, the 6<sup>th</sup> respondent submitted Ext.P1 report recommending invocation of PITNDPS Act. The sponsoring authority in turn submitted the report to the detaining authority on 19/09/2022 and finally Ext.P3 order of detention was passed by the detaining authority on 04/01/2023. Therefore, the argument is that there is inordinate delay between the last prejudicial activity and Ext.P3 detention order. The live link between the last crime and the purpose of detention order has been snapped, which alone is sufficient to quash Ext.P3 order, argues the learned defence counsel. In support of this argument, reference was made to the decisions in **Raj Bahadur Verma v. State of U.P., 2004 KHC 2546**, **Sushanta Kumar Banik v. State of Tripura, AIR 2022 SC 4715**, **Shaleer v. District Collector, 2023 KHC 169** and **Asker Ali v. State of Kerala, MANU/KE/3444/2022**.

5. *Per contra* it was submitted by the learned Government Pleader that there is no inordinate delay in passing Ext.P3 order. In the

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counter affidavit filed by the 1<sup>st</sup> and 2<sup>nd</sup> respondents, it is contended that the order of detention under PITNDPS Act, has been issued in the State after a gap of almost 33 years since the year 1990. Therefore, before consideration of the proposal of this sponsoring authority, the detaining authority had to familiarize with the relevant clauses of the Act and other proceedings involved in the matter. It was after due comprehension of the same, and examination of the records, the order of detention has been issued by the detaining authority. A slight delay only has occurred for issuing the order of detention, which according to the respondents cannot be taken as a ground for releasing the detenu from preventive custody.

6. On going through Ext.P3 order, we find that no reasons whatsoever have been stated by the detaining authority relating to the delay in passing Ext.P3 order after the commission of the last prejudicial activity. As noticed earlier, the last crime was committed by the detenu on 25/03/2022. He was released on bail on 10/05/2022. It is nearly three months thereafter, that is, on 01/08/2022 the proposal is seen moved for invoking the provisions of PITNDPS Act and finally Ext.P3 order has been passed on 04/01/2023. There is no explanation whatsoever in the impugned order though some reasons have been attempted to be offered in the counter



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affidavit, which obviously is not sufficient. The impugned order cannot be supplemented or supplanted with averments in a counter affidavit, especially when the authority concerned has to consider the aspect of delay in the order which permits preventive detention and enter satisfaction on the live link with the last alleged prejudicial activity having not been broken. (See **Ponnappan N.N. v. State of Kerala, 2018(5) KHC 210** and **Shaleer v. District Collector, 2023 KHC 169**).

7. The next ground of challenge is, non application of mind by the detaining authority. In support of this argument reference was made to the dictums in **Sushanta Kumar Banik (supra)** and **Sreeja Jayaprakash v. District Collector, 2019 KHC 2814**. Admittedly, the detenu on 10/05/2022 has been granted bail in the last prejudicial activity as per Ext.P5 order. The bail conditions (2), (3) and (4) in Ext.P5 reads:

*“(2) The petitioner shall keep himself away from the Ernakulam District for a period of six months from today. However, there will be exemptions for his medical treatment at Amruta Hospital, Edappilly and the following condition.*

*(3) The petitioner shall appear before the Investigating Officer on every Friday at a time between 3.00 p.m. to 4.00 p.m. The petitioner shall also appear before the*



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*Investigating Officer as and when required by him.*

*(4) Involving himself of any offence under the Abkari Act or the NDPS Act shall have the effect of cancellation of his bail bond.”*

The efficacy of the aforesaid bail conditions is not seen considered in Ext.P3 order. On the other hand, the report on the reasons for ordering preventive detention annexed to Ext.P3 order says the detenu is in judicial custody from 25/03/2022 onwards. Therefore, it is clear that the detaining authority had not applied his mind or considered the sufficiency or efficacy of the bail conditions imposed as per Ext.P5 order. Rather he seems to have proceeded on the assumption that the detenu is still in judicial custody, which is apparently wrong.

8. Finally, coming to the 3<sup>rd</sup> ground of challenge, i.e., serving the copy of the detention order and the grounds of detention to the detenu in English. It is admitted by the respondents that the relevant documents served on the detenu were in English. As per Annexure II to Ext.P1 proposal for detention under the PITNDPS Act, it is stated that Malayalam is the language and script known to the detenu. The learned Government Pleader relying on the dictum in **Kubic Darusz v. Union of India, (1990) 1**



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**SCC 568** submitted that though the documents served to the detenu were in English, the grounds of detention and all the relevant details were explained to the detenu in Malayalam, which he understood also and therefore there has been a proper compliance of the necessary provisions of law. The dictum in **Kubic Darusz** (*Supra*) cannot be applied to the facts of the present case because the detenu in the said case was a Polish national who had working knowledge of English and therefore, it was held that there was no violation of Article 22(5) of the Constitution on the ground of non communication of the grounds of detention in a language understood by the detenu. In the instant case even according to the respondents, the detenu knows only Malayalam. They do not have a case that he has working knowledge of English. Therefore, serving the copies of the order and the grounds of arrest in English in a language not known to him is a clear violation of the provisions of Article 22(5) of the Constitution, as it would have prevented him from giving an effective representation. (**Harikrishnan v. State of Maharashtra, AIR 1962 SC 911**).

In these circumstances, the challenge to Ext.P3 succeeds and hence Exts. P3 order and P4 order confirming the same are quashed. There will be a direction that Prasannan @ Bomb Prasannan, the brother of the petitioner



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shall forthwith be released from the Central Prison, Thiruvananthapuram, if his detention is not otherwise required.

Registry will communicate the above order to the Prison Authorities concerned forthwith.

Interlocutory applications, if any pending, shall stand closed.

Sd/-

**P.B.SURESH KUMAR  
JUDGE**

Sd/-

**C.S.SUDHA  
JUDGE**

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APPENDIX OF WP(CRL.) 426/2023

PETITIONER EXHIBITS

- Exhibit P1 THE TRUE COPY OF THE PROPOSAL AND  
GROUNDS OF DETENTION FRAMED BY THE 5TH  
RESPONDENT DATED 01-08-2022
- Exhibit P2 THE TRUE COPY OF THE LETTER NO.D1-  
1154/2022/LO 28.10.2022 OF THE A.D.G.P  
(LAW & ORDER)
- Exhibit P3 THE TRUE COPY OF THE ORDER DATED  
04.01.2023 PASSED BY THE 2ND RESPONDENT
- Exhibit P4 THE TRUE COPY OF THE GOVT. ORDER, G.O.  
(RT) NO.902/2023/HOME DATED 04-04-2023  
PASSED BY THE 2ND RESPONDENT
- Exhibit P5 THE TRUE COPY OF THE ORDER DATED 10-05-  
2022 IN CR.M.C. NO.1053/2022 OF THE  
SESSIONS COURT, ERNAKULAM
- Exhibit P6 THE TRUE COPY OF THE MEDICAL CERTIFICATE  
DATED 27.12.2022 ISSUED BY THE AMRITA  
INSTITUTE OF MEDICAL SCIENCES, ERNAKULAM

RESPONDENT ANNEXURE

- ANNEXURE R2 (a) PERMISSION GRANTED BY THE HONOURABLE  
JUDICIAL FIRST CLASS MAGISTRATE COURT  
IX, ERNAKULAM IN CMP NO.51/2023 DATED 09-  
01-2023

