

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

MONDAY, THE 19TH DAY OF JULY 2021 / 28TH ASHADHA, 1943

W.P(CRL.) NO.9 OF 2021

PETITIONER/S:

VILASINI RAMACHANDRAN, AGED 47 YEARS,
W/O. LATE RAMACHANDRAN,
KALIDUMBIL HOUSE, VENGOOR WEST VILLAGE,
KUNNATHUNADU TALUK, ERNAKULAM-683542.

BY ADVS.

SRI.RENJITH B.MARAR
SMT.LAKSHMI.N.KAIMAL
SHRI.MEERA M.

RESPONDENT/S:

- 1 UNION OF INDIA,
REPRESENTED BY THE SECRETARY,
MINISTRY OF LAW, NEW DELHI-110001.
- 2 STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM-695001.
- 3 THE ADDITIONAL CHIEF SECRETARY,
DEPARTMENT OF HOME AND VIGILANCE, SECRETARIAT,
THIRUVANANTHAPURAM-695001.
- 4 THE DISTRICT MAGISTRATE/DISTRICT COLLECTOR,
COLLECTORATE, KAKKANAD, ERNAKULAM-682030.
- 5 THE DISTRICT POLICE CHIEF,
DISTRICT POLICE OFFICE,
ERNAKULAM RURAL, ALUVA-683101.
- 6 INSPECTOR OF POLICE SHO,
KURUPPAMPADI POLICE STATION,
ERNAKULAM RURAL-683545.

7 THE SUPERINTENDENT,
CENTRAL PRISON, VIYYUR, THRISSUR-680010.

BY ADVS.

R1- SHRI.P.VIJAYAKUMAR, ASG OF INDIA

R2-R7 BY ADDL.DIRECTOR GENERAL OF PROSECUTION

R2-R7 BY SRI.K.A.ANAS, GOVERNMENT PLEADER.

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR
ADMISSION ON 16.07.2021, THE COURT ON 19.07.2021 DELIVERED THE
FOLLOWING:

K.Vinod Chandran & Ziyad Rahman A.A., JJ.

W.P(Crl) No.9 of 2021-S

Dated this the 19th day of July, 2021

JUDGMENT

Vinod Chandran, J.

The mother of the detenu, detained as per Ext.P1 order dated 23.10.2020, is before this Court challenging the detention. He was arrested on 27.10.2020 and the order of approval at Ext.P3 was dated 10.11.2020, within the 12 days as provided under Section 3 of the Kerala Anti-Social Activities (Prevention) Act, 2007 [for brevity "KAA(P)A"], excluding Sundays. The matter was referred to the Advisory Board on 12.11.2020 and the Advisory Board confirmed the order on 24.12.2020. Representations dated 02.01.2021, were filed by the detenu before the Advisory Board and the Government which was received on 11.01.2021 by the Government and rejected on 18.01.2021. We have confirmed the above said dates as available in the records produced by the learned Special Government Pleader Sri.K.A.Anas.

2. Sri.Renjith B. Marar, learned Counsel for the petitioner has raised a challenge against the KAA(P)A that it is in direct conflict with what has been provided

under Section 3 of the National Security Act and, hence, the Act passed by the State Legislature is unconstitutional on the ground of repugnancy, being violative of Article 254 of the Constitution of India. The learned Counsel, on the facts of this case, took us through the provisions of the KAA(P)A and pointed out that the last prejudicial act is not to be taken as 11.10.2020; but, 30.07.2020. The complaint on 11.10.2020 is by a Police Officer and the same has to be excluded under Section 2(p)(iii), being a complaint initiated by a Police Officer. If the last prejudicial act is taken to be 30.07.2020, then the detention order has been passed after three months, which stands vitiated as has been held by this Court in Jimesh Jose v. State of Kerala & Ors. [2013 (1) KHC 49] and Ponnappan N.N. v. State of Kerala & Ors. [2018 (5) KHC 210]. It is then submitted that the representation made by the mother to the Advisory Board has not been considered. It is pointed out that if at all, as discernible from the files, the Advisory Board has confirmed the order on 24.12.2020, which date was not earlier known to the petitioner or the detenu; even then the representation had to be sent to the Government for its consideration. Thankam v. State of Kerala [2018 KHC 818] and Saraswathy v. State of Kerala &

Anr. [2012 (1) KHC 432] are relied on.

3. Sri.K.A.Anas, learned Government Pleader, would, on the other hand, argue that KAP(P)A was enacted under Entry 3 of List III and the National Security Act deals with the security of the Nation while KAA(P)A deals with maintenance of public order. There is no question of repugnancy in the State having legislated KAA(P)A for the maintenance of public order, for which there is no Central legislation as of now. Reliance is also placed on A.K. Roy v. Union of India & Anr. [(1982) 1 SCC 272 = 1982 KHC 395]. It is pointed out on behalf of the State that the detenu had been under preventive detention earlier also, the challenge against which was dismissed by this Court. The detenu, after release, was involved in five crimes, shown at Sl.Nos.6 to 10 in Ext.P1 order. It is pointed out that the latest crime dated 11.10.2020 though initiated by the Police Officers; was initiated in their personal capacity for having threatened them and attacked with lethal weapons as also causing interference to their official duties when they were in the process of arresting one another criminal. Such complaints registered by Police Officers would not be excluded under Section 2(p)(iii) as has been held in Joicy v. State of Kerala [2018 (1) KHC 37 (DB)]. Further, it is pointed out

that on the basis of the crime registered on 12.07.2020 (Sl.No.9), there was a proceeding initiated by the Sponsoring Authority dated 08.09.2020. It was when the said report was under consideration that the subsequent crime was noticed and the Sponsoring Authority again made a report on that basis on 17.10.2020. It is argued that the representation before the Advisory Board was subsequent to its approval. Representations were made to the Advisory Board and the Government on the same day, and the Government had considered the same and rejected it. The cited decisions are with respect to instances where representations were made either to the Government or the Advisory Board and not both. It is urged that there is no ground to interfere with the detention order.

4. We do not find any reason to consider the challenge raised against KAA(P)A since there can be no repugnancy found and the legislation referred to are enacted by the Union Parliament and the State Legislature on two different aspects contained in Entry 3 of List III of the 7th Schedule to the Constitution of India. There is no legislation by the Union Parliament on matters dealt with in KAA(P)A. The broader question of preventive detention interfering with the civil liberties; the ground has been found to be specious in the Constitution

Bench decision in A.K Roy. We reject the said challenge without much ado.

5. The detenu was earlier detained as per order dated 23.07.2017 pursuant to which he was arrested on 27.07.2017. The mother of the detenu, the petitioner herein, had filed a writ petition, numbered W.P(Crl).405 of 2017, which stood rejected by this Court on 19.01.2018. The detenu was released on expiry of the detention period on 26.01.2018. It is later to his release, that five crimes were registered in the Kuruppumpady Police Station, Crime No.1149 of 2018 (25.09.2018), Crime No.1444/2018 (21.12.2018), Crime No.177/2019 (15.02.2019), Crime No.866/2020 (12.07.2020) and Crime No.1050/2020 (11.10.2020). The offences alleged come under those specifically referred to in Section 2(p) of KAA(P)A. The last of such offences alleged arose from an incident when the Sub Inspector and his team attempted to arrest the 2nd accused in Crime No.866 of 2020. The detenu along with five others attacked the police officers with lethal weapons causing threats to their very lives, based on which the crime was registered.

6. In Joicy, the main ground of challenge against the order under KAA(P)A was inclusion of cases where Police Officers were complainants, to bring the

detenu within the sweep of the definition of 'known rowdy'. Therein also the complainants were Assistant Sub Inspectors of Police who sustained injuries in the attack by the detenu. It was held by the Division Bench that Police Officers are also human beings and individuals. If such Law enforcement Officers, who are in a better position than an ordinary citizen to thwart any attempts on their body and limbs, are themselves subjected to attacks, then the threat caused to an ordinary citizen by such anti-socials can only be imagined. It is not an acceptable preposition that when police officers are assaulted any number of times, there could be no proceedings taken under KAA(P)A going by Section 2(p) (iii). The provision is intended to curb the misuse of power by Police Officers and to safeguard the interest of the detenu. As in the cited decision, here too, the detenu is a person who has been habitually indulging in crimes, that too causing threat, fear, nuisance and disturbance to the society at large. The last prejudicial act alleged against the detenu is also one of obstructing the arrest of the accused in a case. Such obstruction was caused in the company of five others with lethal weapons and attacking the police officers raising a threat to their very lives. The circumstances being so, going by

the binding precedent, which we respectfully agree with, we reject the said contention.

7. As to the consideration of the representation, we see from the files that the representation made by the mother was received by the Government on 11.01.2021 and considered and rejected by the Government on 20.01.2021. The above order was also communicated to the petitioner. The representations are seen at Exts.P4 and P5 and raise the very same contentions; verbatim identical. Thankam and Saraswathy were cases in which the representation was addressed only to one authority, which had to be forwarded to the other authority. The binding precedent, as we see, is that if a representation is addressed to the Government alone, before the Advisory Board enters on a finding the same has to be forwarded to the Advisory Board for consideration. Even if the Advisory Board confirms the order after consideration of the representation also; the Government would still be obliged to consider that representation even if the Government agrees with the opinion of the Advisory Board. Likewise if a representation is made to the Advisory Board and the Advisory Board after consideration confirms the order of detention, then the representation has to be forwarded to

the Government for independent consideration. In the present case, representations were made to both the Advisory Board and the Government. Even before the date of representation, the Advisory Board confirmed the order of detention. The Government, however, despite confirming the order of detention, considered the representation and rejected it, without any delay. We cannot draw a parallel to the facts considered by two different Division Benches in the cited decisions.

Our conclusion is that there is no scope for interference with the order of detention as confirmed by the Advisory Board and the Government. We reject the writ petition.

Sd/-
K.Vinod Chandran,
Judge

Sd/-
Ziyad Rahman A.A.,
Judge

vku/-

APPENDIX OF W.P(CRL.) 9/2021

PETITIONER'S EXHIBITS

EXHIBIT P1	TRUE COPY OF THE ORDER DATED 23.10.2020 PASSED BY THE 4TH RESPONDENT.
EXHIBIT P2	TRUE COPY OF THE NOTICE DATED 28.10.2020.
EXHIBIT P3	TRUE COPY OF THE ORDER DATED 10.11.2020 PASSED BY THE 3RD RESPONDENT.
EXHIBIT P4	TRUE COPY OF THE REPRESENTATION DATED 02.01.2021 PREFERRED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.
EXHIBIT P5	TRUE COPY OF THE REPRESENTATION DATED 02.01.2021 PREFERRED BY THE PETITIONER BEFORE THE CHAIRMAN, ADVISORY BOARD, KERALA ANTI-SOCIAL ACTIVITIES (PREVENTION) ACT.