



2024:KER:95760

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

WEDNESDAY, THE 18TH DAY OF DECEMBER 2024 / 27TH

AGRAHAYANA, 1946

WP (CRL.) NO. 1189 OF 2024

PETITIONER:

ALEEMA A, AGED 52 YEARS
P.M. MUHAMMED KUNHI.,
RESIDING AT SAFRINA MANZIL, KURUNTHUR,
PADANNAKAD P.O., HOSDURG VILLAGE,
KASARAGOD DISTRICT, PIN - 671531

BY ADVS.
T.MADHU
C.R.SARADAMANI
RENJISH S. MENON
AISWARYA JAYAPAL
ALEENA JOSE
KARTHIK KRISHNA M.

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
HOME DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001
- 2 THE DISTRICT MAGISTRATE/DISTRICT COLLECTOR
KASARAGOD, CIVIL STATION, VIDYANAGAR P.O.,
KASARAGOD DISTRICT, PIN - 671123
- 3 THE DISTRICT POLICE CHIEF
KASARAGOD, OFFICE OF THE DISTRICT POLICE CHIEF,

-: 2 :-



KASARAGOD, PIN - 671121

BY GOVERNMENT PLEADER SRI.K.A.ANAS

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY
HEARD ON 12.12.2024, THE COURT ON 18.12.2024 DELIVERED
THE FOLLOWING:



C.R.

P.B.SURESH KUMAR & JOBIN SEBASTIAN, JJ.

W.P.(Crl.) No.1189 of 2024

Dated this the 18th day of December, 2024

J U D G M E N T

P.B.Suresh Kumar, J.

This writ petition(Crl) is instituted seeking a writ of habeas corpus directing the respondents to produce the son of the petitioner, Abdul Safwan, who is detained in terms of Ext.P1 order issued under Section 3(1) of the Kerala Anti-Social Activities (Prevention) Act, 2007 (the Act) and to set him at liberty. The petitioner seeks the relief aforesaid on the premise that the detention of the son of the petitioner is otherwise than in accordance with the Act.

2. Ext.P1 order proceeds on the premise that the son of the petitioner is a “drug-offender” as defined under Section 2(i) of the Act and since he is a drug-offender, he is a “goonda” in terms of Section 2(j) of the Act also and inasmuch



as the son of the petitioner is found to have committed the requisite number of acts within the meaning of the term “goonda”, he is liable to be regarded as a “known goonda” as defined under Section 2(o) of the Act and that he needs to be detained under the Act to prevent him from committing anti-social activities.

3. The prejudicial activities attributed to the son of the petitioner are his involvement in seven cases registered under the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act). The following are the cases:

i. Crime No.187 of 2022 of Hosdurg Police Station registered on 28.01.2022 for the offence punishable under Section 27(b) of the NDPS Act.

ii. Crime No.667 of 2022 of Hosdurg Police Station registered on 26.05.2022 for the offence punishable under Section 27(b) of the NDPS Act.

iii. Crime No.987 of 2022 of Hosdurg Police Station registered on 04.08.2022 for the offence punishable under Section 22(b) of the NDPS Act.

iv. Crime No.1292 of 2022 of Hosdurg Police Station registered on 08.10.2022 for the offence punishable under Section 27(b) of the NDPS Act.

v. Crime No.212 of 2023 of Neeleswaram Police Station registered on 19.03.2023 for the offence punishable under Section 22(b) of the NDPS Act.



vi. Crime No.1082 of 2023 of Hosdurg Police Station registered on 18.07.2023 for the offence punishable under Section 27(b) of the NDPS Act.

vii. Crime No.446 of 2024 of Hosdurg Police Station registered on 18.05.2024 for the offence punishable under Section 22(b) of the NDPS Act.

It is seen that four among the cases registered against the son of the petitioner are cases registered with the allegation that the son of the petitioner has consumed ganja under Section 27(b) of the NDPS Act and the remaining are cases registered with the allegation that the son of the petitioner possessed for sale methylenedioxy phenethylamine (MDMA) under Section 22(b) of the NDPS Act. The quantities of the contraband involved in the three cases registered under Section 22(b) of the NDPS Act are less than the commercial quantity, but greater than the small quantity in terms of the provisions of the NDPS Act. Out of the three cases registered under Section 22(b) of the NDPS Act, final reports have already been filed in two cases.

4. According to the learned counsel, consumption of ganja and mere possession of MDMA cannot be regarded as acts which would fall within the scope of the definition of “drug-offender”, and if the son of the petitioner, against whom



the allegations are only that he consumed ganja and possessed MDMA, cannot be regarded as a “drug-offender”, he cannot be regarded as a “goonda” also and if that be so, he cannot be detained under the Act styling him as a “known goonda”. The learned counsel has relied on the decision of the Full Bench of this Court in **Suhana v. State of Kerala**, 2024 (7) KHC 212(FB), in support of this argument. It was also contended by the learned counsel that even if the son of the petitioner satisfies the definition of “drug-offender”, he will not automatically become a “goonda” as defined under the Act for, in order to satisfy the definition of “goonda”, there should be materials to indicate that he has indulged in any activity which is harmful for the maintenance of the public order directly or indirectly. According to the learned counsel, the activity in which the son of the petitioner is allegedly indulged in, cannot be regarded as an activity which is harmful for the maintenance of the public order. In other words, according to the learned counsel, the mere consumption and possession of Narcotic drugs cannot be regarded an activity which is harmful for the maintenance of the public order. The learned counsel



has relied on the decision of the Apex Court in **Ameena Begum v. State of Telangana**, 2023 KHC OnLine 6816, in support of this argument. It was also contended by the learned counsel that the subjective satisfaction of the authorised officer should not rest on the mere fact of registration of the required number of cases and that the authorised officer must be satisfied that the person concerned cannot be prevented from indulging in any anti-social activities except by detaining him under the Act. According to the learned counsel, no such satisfaction has been arrived at by the detaining authority while authorising detention of the son of the petitioner. According to the learned counsel, the detention of the son of the petitioner is liable to be interfered with on that ground also.

5. True, it was held by this Court in **Suhana** (*supra*) that exclusion of the expression “possession” in the definition of “drug-offender” in Section 2(i) of the Act implies that a mere possession of a contraband will not bring a person within the definition of “drug-offender” unless it is accompanied by evidence of a commercial activity in a drug in contravention of the NDPS Act or any other law for the time



being in force. In the light of the said decision, no doubt, four among the seven cases registered against the son of the petitioner under Section 27(b) of the NDPS Act alleging that he has consumed ganja, cannot be taken into account for deciding the question whether the son of the petitioner is a “drug-offender”. But, we do not find any impediment in taking into account the remaining three cases namely, cases registered under Section 22(b) of the NDPS Act for deciding the question whether the son of the petitioner is a “drug-offender”, for, the allegation against the son of the petitioner in one case is that he was found to have been carrying 01.720 gm of MDMA for sale in a public road and in the other case is that he was found to have been carrying 01.710 gm of MDMA for consumption and sale in a public road. The said allegations, according to us, would certainly denote commercial activities in drugs in contravention of the NDPS Act, especially since the contraband carried was not a small quantity. The sustainability or otherwise of the allegation is one to be considered at the time of trial and not at the stage of the proceedings under the Act. Needless to say, the contention of the petitioner that his son



does not satisfy the definition of "drug-offender" is only to be rejected and we do so.

6. Section 2(j) of the Act defines "goonda" as follows:

"'goonda' means a person who indulges in any anti-social activity or promotes or abets any illegal activity which are harmful for the maintenance of the public order directly or indirectly and includes a bootlegger, a counterfeiter, a depredator of environment, a digital data and copy right pirate, a drug offender, a hawala racketeer, an hired ruffian, rowdy, an immoral traffic offender, a loan shark, a money chain offender or a property grabber;"

(Underline supplied)

No doubt, "goonda" is a person who indulges in any anti-social activity or promotes or abets any illegal activity which are harmful for the maintenance of the public order directly or indirectly. But in terms of the definition of "goonda", a "drug offender" is also included in the definition of "goonda". In other words, if a person satisfies the definition of "drug offender", he would automatically become a "goonda". As noted, the argument of the learned counsel for the petitioner is that in order to hold a "drug offender" as a "goonda", there should be materials to indicate that he has indulged in any activity which is harmful for the maintenance of the public order. This



argument is advanced placing reliance on the part of the definition of “goonda” namely “a person who indulges in any anti-social activity or promotes or abets any illegal activity which are harmful for the maintenance of the public order directly or indirectly”. There is absolutely no basis for this argument. In the light of the definition of “goonda”, according to us, the part of the definition dealing with the requirement that “goonda” shall be a person who promotes or abets any illegal activity which are harmful for the maintenance of the public order does not apply to “drug offender” for, the expression “which are harmful for the maintenance of the public order” occurring in the definition of “goonda” of the Act is applicable only to the expression “promotes or abets any illegal activity” and not to the expression “any anti-social activity” which takes within its scope, the activities of the “drug offender” also as defined under the Act. The word “or” occurring in between the expression “anti-social activity” and the expression “promotes or abets any illegal activity” would make it clear that the qualification, namely, “harmful for the maintenance of public order” would apply to only the last



expression, namely, “promotes or abets any illegal activity” and not to the expression “anti-social activity”, which is distinct and separate.

7. No doubt, the subjective satisfaction of the authorised officer as to the desirability to invoke the provisions of the Act to detain a person should not rest on the mere fact of registration of the required number of cases and that the authorised officer is obliged to satisfy that the person concerned cannot be prevented from indulging in any anti-social activity except by detaining him under the Act. Paragraphs IX and X of the order of detention read thus:

“IX. മുകളിൽ പറഞ്ഞിരിക്കുന്നതായ വിവരങ്ങളുടെയും അനുബന്ധ രേഖകളുടെയും പരിശോധനയിൽ നിന്നും മേൽകക്ഷി കുറ്റകൃത്യങ്ങളിൽ അറിഞ്ഞുകൊണ്ട് ഉൾപ്പെട്ടിട്ടുള്ളതാണ് എന്ന് വ്യക്തമാകുന്നതാണ്. മേൽ സാഹചര്യത്തിൽ, ടിയാനെ ബൈരുവിഹാരത്തിന് അനുവദിച്ചാൽ ടിയാൻ വീണ്ടും ഇത്തരം കുറ്റകൃത്യങ്ങളിൽ ഏർപ്പെട്ട് പൊതുജന സമാധാന ലംഘനമുണ്ടാക്കാൻ ഇടയുണ്ട്. മജിസ്ട്രേറ്റ് തലത്തിലുള്ള നടപടികൾ മൂലം ടിയാനെ നിയന്ത്രണവിധേയനാക്കുകയില്ലെന്നും കുറ്റകൃത്യങ്ങളിൽ നിന്നും പിന്തിരിപ്പിക്കാൻ സാധിക്കുകയില്ലെന്നും തന്റെ അധമപ്രവർത്തനങ്ങൾ വഴി എതിർകക്ഷി തെളിയിക്കുകയും ചെയ്തിട്ടുണ്ട്.

X. മേൽ കക്ഷി ഇത്തരം കുറ്റകൃത്യങ്ങളിൽ ഏർപ്പെട്ടുക വഴി പൊതുവ്യവസ്ഥയുടെ പരിപാലനത്തിന് ഹാനികരമാവുന്ന നിയമവിരുദ്ധ പ്രവർത്തനങ്ങളിൽ ഏർപ്പെടുന്നത് തടയേണ്ടതും അതുവഴി ജനങ്ങളുടെ ജീവനും സ്വത്തിനും സുരക്ഷ ഉറപ്പുവരുത്തേണ്ടതും ജനങ്ങളുടെ ബൈരുമായ ജീവിതത്തിന് ഭീഷണി ഇല്ലാതാക്കേണ്ടതും അത്യാവശ്യമാണ്. മേൽകക്ഷിയെ തടങ്കലിൽ വയ്ക്കാത്ത പക്ഷം മേൽ പറഞ്ഞ രീതിയിലുള്ള കുറ്റകൃത്യങ്ങളിൽ മേൽകക്ഷി ഭാവിയിലും ഏർപ്പെടുവാൻ ഇടയുണ്ടെന്നും ആകയാൽ ഭാവിയിൽ അപ്രകാരം



കുറ്റകൃത്യങ്ങളിൽ ഏർപ്പെടുന്നത് തടയണമെന്ന ഉദ്ദേശത്തോടുകൂടി 2007 കേരളാ ആന്റി സോഷ്യൽ ആക്റ്റിവിറ്റിസ് (പ്രിവൻഷൻ) ആക്ട് സെക്ഷൻ (3) പ്രകാരം തടങ്കൽ ഉത്തരവ് പുറപ്പെടുവിക്കേണ്ടത് അനിവാര്യവും ആവശ്യവുമാണെന്നും എനിക്ക് ബോധ്യപ്പെട്ടിട്ടുള്ളതുമാണ്..”

The recitals contained in the extracted paragraphs, according to us, would satisfy the requirement of law as regards the subjective satisfaction of the authorised officer.

The writ petition(Crl), in the circumstances, is devoid of merits and the same is, accordingly, dismissed.

Sd/-
P.B.SURESH KUMAR, JUDGE.

Sd/-
JOBIN SEBASTIAN, JUDGE.

ds 12.12.2024



APPENDIX OF WP(CRL.) 1189/2024

PETITIONER EXHIBITS

Exhibit P1 THE TRUE COPY OF THE ORDER BEARING
NO.DCKSGD/5083/2024/D1(1) DATED
3/7/2024 PASSED BY THE SECOND
RESPONDENT

Exhibit P2 THE TRUE COPY OF THE GOVERNMENT ORDER
BEARING NO. GO(RT) NO.2808/2024/HOME
DATED 26/9/2024 PASSED BY THE FIRST
RESPONDENT