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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

TUESDAY, THE 25TH DAY OF FEBRUARY 2025 / 6TH PHALGUNA, 1946

WP(CRL.) NO. 38 OF 2025

PETITIONER:

JAYANTHI
AGED 53 YEARS
W/O BABU POOJARI, CHENNIKKARA VEEDU,
NULLIPADY, KASARGODE P.O.,
KASARGODE, PIN - 671121

BY ADVS.
M.H.HANIS
T.N.LEKSHMI SHANKAR
NANCY MOL P.
ANANDHU P.C.
NEETHU.G.NADH
RIA ELIZABETH T.J.
SINISHA JOSHY
SAHAD M. HANIS

RESPONDENTS:

1 STATE OF KERALA
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO
GOVERNMENT, HOME AND VIGILANCE DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM,
PIN - 695001



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- 2 THE DISTRICT COLLECTOR & DISTRICT MAGISTRATE,
KASARGOD DISTRICT, PIN - 671123
- 3 THE DISTRICT POLICE CHIEF
CIVIL STATION, KASARGOD,
PIN - 671123
- 4 THE CHAIRMAN
ADVISORY BOARD, KAAPA, SREENIVAS, PADAM ROAD,
VIVEKANANDA NAGAR, ELAMAKKARA,
ERNAKULAM DIST, PIN - 682026
- 5 THE SUPERINTENDENT OF JAIL,
CENTRAL JAIL, VIYYUR, THRISSUR DIST,
PIN - 670004

BY ADV. SRI. K.A. ANAS, GOVERNMENT PLEADER

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY
HEARD ON 24.02.2025, THE COURT ON 25.02.2025 DELIVERED THE
FOLLOWING:



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JUDGMENT

Jobin Sebastian, J.

This writ petition has been directed against an order of detention dated 12.12.2024 passed against one Babu Poojari, under Section 3(1) of the Kerala Anti-Social Activities (Prevention) Act, 2007 ('KAA(P) Act' for brevity). The petitioner herein is the wife of the detenu. After considering the opinion of the Advisory Board, the detention order stands confirmed by the Government vide order dated 11.02.2025 and the detenu was ordered to be detained for a period of six months from the date of execution of the detention order.

2. The records available before us disclose that a proposal was submitted by the District Police Chief, Kasaragode on 19.10.2024, seeking initiation of proceedings against the detenu under Section 3(1) of the KAA(P) Act before the jurisdictional authority. For the purpose of initiation of the said proceedings, the detenu was classified as a 'known goonda' as



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defined under Section 2(o)(ii) of the KAA(P) Act, and for passing the order of detention the authority reckoned 8 cases in which the detenu got involved.

3. The last case registered against the detenu is crime No.671/2024 of Kasaragode Police Station, alleging offence punishable under Section 58 of Abkari Act. The last prejudicial activity was on 11.09.2024.

4. We heard Sri. M.H. Hanis, the learned counsel appearing for the petitioner and Sri. K.A. Anas, the learned Government Pleader.

5. The learned counsel for the petitioner would submit that the impugned order is vitiated, as the same is passed without proper application of mind and disregarding the procedural safeguards envisaged under the KAA(P) Act. The main contention taken by learned counsel for the petitioner is that, though the detenu was released on bail in crime No.671/2024 of Kasaragode Police Station, the case registered with respect to the last prejudicial activity, the jurisdictional authority passed the detention order without considering whether the conditions imposed



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on the detenu while granting bail to him are sufficient to restrain him from repeating criminal activities. According to the learned counsel, the non-consideration of the sufficiency of the bail conditions imposed on the detenu by the court which granted bail itself is a ground to set aside the impugned order.

6. In response, Sri. K.A. Anas, the learned Government Pleader, asserted that, the impugned order was passed after proper application of mind and arriving at the requisite objective as well as subjective satisfaction. According to him, all the procedural formalities necessary to be complied with in passing an order of detention under KAA(P) Act are scrupulously complied with in this case and there is no reason to interfere with the impugned order. It is pointed out that, in the impugned order, the bail granted to the petitioner in the last prejudicial activity is adverted to and hence no interference is warranted.

7. We have carefully considered the submissions advanced and have perused the records.

8. The records show that the detenu was classified as a "known



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goonda”, considering his recurrent involvement in 8 criminal cases. All the cases registered against the detenu were registered alleging the commission of offences punishable under Abkari Act. The case with respect to the last prejudicial activity is crime No.671/2024 of Kasaragode Police Station alleging offence punishable under Section 58 of the Abkari Act. Though the said case was detected on 11.09.2024, the detenu was arrested in the said case only on 03.10.2024. He was released on bail in the said case on 23.11.2024. It was on 19.10.2024, while he was under judicial custody in connection with the last prejudicial activity, the District Police Chief, Kasaragode mooted a proposal for initiation of proceedings under Section 3(1) of KAA(P) Act against the detenu.

9. It was mainly harping on the report of the sponsoring authority Ext.P1 order of detention was passed. In the detention order, the fact that the detenu was released on bail in connection with the last prejudicial activity is seen specifically mentioned. However, the order is silent as to what necessitated the authority to pass the impugned order when stringent conditions were clamped in the order granting bail to the



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detenu in the last prejudicial activity. We are not oblivious that there is no legal impediment in passing a detention order under KAA(P) Act even when the detenu is on bail in connection with the last prejudicial activity. However, when the detenu is already on bail, the jurisdictional authority shall consider whether the conditions imposed by the court while granting bail to him are sufficient to prevent him from repeating criminal activities.

10. In the case at hand, as already stated, the jurisdictional authority specifically mentioned the fact that the detenu was already on bail in the impugned order. Though the jurisdictional authority was cognizant of the said fact, in the order it is not mentioned whether the bail conditions imposed by the court at the time of granting bail to the detenu are sufficient to restrain him from repeating criminal activities. Therefore, it can be seen that the sufficiency of bail conditions imposed in the bail order was not considered by the authority while passing the detention order. Hence non-application of mind on the part of the jurisdictional authority while passing the impugned order is apparent in this case.

11. In the result, this Writ Petition is allowed and Ext.P1 order of



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detention is set aside. The Superintendent of Central Prison, Viyyur, Thrissur is directed to release the detenu, Sri. Babu Poojari, forthwith, if his detention is not required in connection with any other case.

The Registry is directed to communicate the order to the Superintendent of Central Prison, Viyyur, Thrissur forthwith.

Sd/-

**P.B. SURESH KUMAR
JUDGE**

Sd/-

**JOBIN SEBASTIAN
JUDGE**

ncd



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APPENDIX OF WP (CRL.) 38/2025

PETITIONER EXHIBITS

- Exhibit P1 A TRUE COPY OF THE ORDER
NO.DCKSGD/9491/2024-D1(1) DATED 12.12.2024 OF
THE 2ND RESPONDENT
- Exhibit P2 A TRUE COPY OF THE REPRESENTATION DATED
24.12.2024 SUBMITTED BY THE PETITIONER BEFORE
THE 1ST RESPONDENT
- Exhibit P3 A TRUE COPY OF THE POSTAL RECEIPT EVIDENCING
THE ISSUANCE OF EXT P2
- Exhibit P4 A TRUE COPY OF THE REPRESENTATION DATED
24.12.2024 SUBMITTED BY THE PETITIONER BEFORE
THE 4TH RESPONDENT
- Exhibit P5 A TRUE COPY OF THE POSTAL RECEIPT EVIDENCING
THE ISSUANCE OF EXT P4