

(2023) 05 KL CK 0187

High Court Of Kerala

Case No: Writ Petition (Crl.) No. 205 Of 2023

Junaida

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision: May 25, 2023

Acts Referred:

- Kerala Antisocial Activities (Prevention) Act, 2007 - Section 3(1), 3(2), 3(3)

Hon'ble Judges: P.B.Suresh Kumar, J; C.S.Sudha, J

Bench: Division Bench

Advocate: Ajith Viswanathan, Shibu Joseph, K.A.Anas

Final Decision: Dismissed

Judgement

P.B.Suresh Kumar, J.

1. This writ petition is instituted seeking a writ of Habeas Corpus directing the respondents to produce the son of the petitioner who is detained in

terms of Ext.P1 order issued under Section 3(1) read with Section 3(2) of the Kerala Antisocial Activities (Prevention) Act, 2007 (the Act). The

petitioner seeks the relief aforesaid on the premise that the detention order is illegal.

2. Ext.P1 order was issued on 23.11.2022 and the same was approved by the Government on 05.12.2022 as provided for under Section 3(3) of the

Act. In the meanwhile, on 25.11.2022, the detention order was executed. Ext.P1 order proceeds on the premise that the son of the petitioner is a

known rowdy and that with a view to prevent him from committing any antisocial activity, it is necessary to detain him.

3. Though several contentions were raised in the writ petition, the only contention pressed by the learned counsel for the petitioner at the time of hearing is that the order of detention is illegal inasmuch as the procedural requirement under Section 3(3) of the Act has not been complied with. The argument advanced by the learned counsel for the petitioner in this regard is that in terms of Section 3(3) of the Act, it is obligatory for the Authorised Officer exercising power under Section 3(2) of the Act to report forthwith the factum of detention to the Government and the Director General of Police, together with a copy of the order and supporting records, which, in his opinion, have a bearing on the matter and that the said procedural requirement has not been complied with by the Authorised Officer. It was asserted by the learned counsel that though the order of detention was passed as early as on 23.11.2022, the same along with the supporting documents have been forwarded to the Government as provided for under Section 3(3) of the Act only on 30.11.2022. According to the learned counsel, the said conduct on the part of the Authorised Officer cannot be accepted as one in compliance with the requirement under Section 3(3) of the Act. The learned counsel has relied on the decision of this Court in *Anupama S.V. v. State of Kerala*, 2022 (5) KHC 281, in support of the said argument.

4. Per contra, the learned Government Pleader, placing reliance on the counter affidavit filed in the matter, contended that the detention order and the supporting documents have been communicated forthwith to the Government by the Authorised Officer by his communication dated 23.11.2022 through Email and there is no delay at all in complying with the requirement under Section 3(3) of the Act. Since it is not stated in the counter affidavit as to the date on which the letter dated 23.11.2022 was forwarded via Email, on a query from the court, the learned Government Pleader submitted that it was sent on the next day namely, 24.11.2022.

5. In reply to the submission made by the learned Government Pleader, it was contended by the learned counsel for the petitioner that a similar stand taken by the Government in an identical matter has not been accepted by this Court in *Anupama* (supra). The learned counsel has relied on paragraph 11 of the judgment in the said case, in support of the said argument.

6. We have considered the arguments advanced by the learned counsel for the parties on either side.

7. At the outset, it is necessary to state that the pleadings of the petitioner in the writ petition are vague and ambiguous. Though a ground is raised in

the writ petition that to the knowledge of the petitioner there is delay in communicating the detention order to the Government, necessary particulars

like the date of dispatch of the communication by the District Magistrate, the date of receipt of communication by the Government etc. are not

disclosed. The ground aforesaid reads thus:

“To the knowledge of the petitioner there is delay in communicating the detention order to the Government. Hence on that account the detention order is bad”

The submission made by the learned counsel for the petitioner at the time of hearing that the order was communicated to the Government only on

30.11.2022 is not a fact that is pleaded in the writ petition. It is in reply to the ground aforesaid, in the counter affidavit filed on behalf of respondents 1

and 2, it was contended that the detention order dated 23.11.2022 and connected documents were forthwith communicated to the Government by the

Authorised Officer through Email vide letter No.DCKLM/12468/2022/M16 dated 23.11.2022. If the detention order has been forwarded to the

Government on 24.11.2022 itself, it cannot be said that there is non compliance of the requirement under Section 3(3) of the Act. True, the

communication dated 23.11.2022 stated to have been sent by Email on 23.11.2022 is not part of the records. We are unable to find fault with the

respondents for not having placed on record the said communication, as the pleading of the petitioner in this regard is vague and ambiguous.

8. There is also no merit in the argument raised by the learned counsel for the petitioner, placing reliance on paragraph 11 of the judgment of this

Court in Anupama (supra). The said paragraph deals with a case where a detention order was communicated by Email to the Government and after

four days, the physical file was also sent. The argument put forward by the learned Government Pleader in the said case, in reply to a similar

contention, was that the files were entrusted for transmission to the Government on the date of the detention order itself and that there is, therefore,

compliance of the requirement under Section 3(3) of the Act. It was held in the said case that mere entrustment for the purpose of transmission would

not be due compliance of the mandate under Section 3(3) of the Act, since it is incumbent upon the Authorised Officer to send forthwith, the order of

detention on its making; which should necessarily find its way to the Government forthwith, failing which there is no due compliance of the

requirement under Section 3(3) of the Act. The said judgment, according to us, cannot have any application to the facts of the present case.

In the light of the discussion aforesaid, we do not find any merit in the writ petition and the same is accordingly, dismissed.