

Radhika S Vs State Of Kerala

Court: High Court Of Kerala

Date of Decision: Jan. 14, 2025

Acts Referred: Narcotic Drugs and Pshychotropic Substances Act, 1985 â€” Section 8(C), 20(b)(ii)(B), 31
Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 â€” Section 3(1), 3(2)

Hon'ble Judges: P.B.Suresh Kumar, J; Jobin Sebastian, Jj

Bench: Division Bench

Advocate: P.Mohamed Sabah, Libin Stanley, Saipooja, Sadik Ismayil, R.Gayathri, T.I.Safdarshah, M.Mahin Hamza,
Alwin Joseph, Benson Ambrose, K.A.Anas

Final Decision: Dismissed

Judgement

P.B.Suresh Kumar, J.

1. Petitioner is the wife of Sanalkumar, who is detained under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic

Substances Act, 1988 (the Act). Ext.P2 is the order of detention. Ext.P2 order is under challenge in the writ petition.

2. The last prejudicial activity attributed to the detenu is his involvement in Crime No.800 of 2024 of Cantonment Police Station, registered on

30.07.2024 under Section 20(b)(ii)B, 8(C) read with Section 31 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act). It was

while the detenu was in custody pursuant to his arrest in the said case that the proposal was made by the competent authority for his detention under

the Act, on 26.08.2024 in order to prevent him from engaging in illicit traffic in narcotic drugs and psychotropic substances. It was pursuant to the said

proposal that the order of detention was issued on 14.11.2024.

3. The first and foremost contention of the petitioner is that the delay from the date of proposal namely, 26.08.2024 and the date of the order of

detention namely, 14.11.2024 has not been satisfactorily explained and that the said delay snapped the live link between the last prejudicial activity and

the order of detention. The second contention is that inasmuch as the detenu was in custody when the order of detention was issued, it was necessary

that the grounds of detention reflected the awareness of the detaining authority that the detenu is already in detention; that the detaining authority must

be satisfied, on the basis of materials, that the detenu is likely to be released from judicial custody in the near future and that in the nature of the

antecedent activities of the detenu, it is likely that, after his release from such custody, he would still indulge in prejudicial activities and that therefore,

it is necessary and imperative to detain him, for the purpose of preventing him from engaging in such activities. According to the detenu, the order of

detention does not show the said mandatory requirements. The third contention is that the requirement in terms of Section 3(2) of the Act to issue a

communication in respect of the order of detention to the Central Government, not later than fifteen days of the order, has not been complied with by

the respondents.

4. Heard the learned counsel for the petitioner as also the learned Government Pleader.

5. As regards the contention that the delay between the last prejudicial activity and the order of detention has not been satisfactorily explained, it is to

be mentioned that the underlying principle is that, such delay, unless satisfactorily explained, throws a considerable doubt on the genuineness of the

requisite subjective satisfaction of the detaining authority in passing the order of detention and consequently, render the order of detention bad and

invalid for want of live and proximate link between the grounds of detention and the purpose of detention. In the case on hand, it was at a point of time

when the detenu was undergoing custody pursuant to his arrest in Crime No.800 of 2024 of Cantonment Police Station that the proposal was made for

his detention by the competent authority on 26.08.2024 and the order of detention was passed on 14.11.2024. Inasmuch as the detenu was in custody

all throughout, we fail to understand, how the live and proximate link between the grounds of detention and the purpose of detention would be snapped

on account of the delay. Be that as it may, paragraph 19 of the counter-affidavit filed on behalf of respondents 1 and 2 reads thus:

19. The live link has not been snapped as the defendant is continuing in judicial custody since 30/07/2024, in Crime No.800/2024 of Cantonment Police

Station. The proposal for preventive detention under PITNDPS Act was submitted before the Government of Kerala by the Sponsoring Authority as

per letter dated 26.08.2024, and the same was recommended and forwarded to Government by the State Police Chief vide the letter dated 07.09.2024.

Government examined the proposal in detail and placed the same before the Screening Committee constituted in this regard under the chairmanship of

Law Secretary, on 30.09.2024. Later the report of the Screening Committee meeting was sent to the Screening Committee members and Sponsoring

authority concerned for getting their authentication and same received back to Govt. on 23.10.2024. Slight delay happened in issuing the the detention

order was due to the time taken for the completion of above mentioned procedures. Since he has been continuing in judicial custody, the live link is not

snapped. The reason for the slight delay happened in passing the detention order is properly explained in the order itself. The paragraph aforesaid,

according to us, offers a satisfactory explanation for the delay also.

6. Paragraphs 10 and 11 of the order of detention read thus:

10. Moreover in Crime 800/2024 of Cantonment Police Station, the respondent submitted a bail application before the Hon'ble Additional Sessions Judge IV Court,

Thiruvananthapuram and same got rejected by Hon'ble Court on 24.10.2024. Thus there is a chance that the respondent may approach higher courts for getting bail.

From his past criminal activities, it is evident that even if he released on bail with conditions, he may likely to violate those conditions and there is high propensity

that the respondent will indulge in drug peddling activities in future. The conscious involvement of the respondent in illegal trafficking of drugs and psychotropic

substances on repeated occasions is detrimental to the society at large. Therefore, it is absolutely imperative to detain him in order to prevent him from engaging in

such activities in the event of getting bail.

11. On examination of all the above mentioned details along with connected documents, it is found that preventive detention of the defendant under the PITNDPS

Act is essential. As there is objective and subjective satisfaction, a detention order has to be issued against the defendant under the Act for effective prevention of

further involvement in narcotic activities.

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The recitals in paragraphs 10 and 11 of the said order reveal that the detaining authority was aware of the fact that the detenu is in custody and that

the detaining authority was satisfied, on the basis of cogent materials, that the detenu is likely to be released from custody and that in the nature of the

antecedent activities of the detenu, it is likely that, after his release from such judicial custody, he would still indulge in prejudicial activities and that

therefore, it is necessary and imperative to detain him for the purpose of preventing him from engaging in such activities. The contention of the

petitioner that the impugned order is vitiated by non-application of mind as regards the fact that the detenu was in custody also, therefore, fails.

7. In response to the averment made in the writ petition that the mandatory provision contained in Section 3(2) of the Act has not been complied with

by the respondents, it was asserted by respondents 1 and 2 in their counter-affidavit that the order of detention which was issued on 14.11.2024 was

communicated to the Ministry of Home Affairs on 15.11.2024 itself. The assertion aforesaid made by respondents 1 and 2 in the counter-affidavit has

not been refuted by the petitioner. That apart, at the time of hearing, the learned Government Pleader has also made available a copy of the

communication sent on 15.11.2024 by the detaining authority to the Central Government. Needless to say, there is no substance in this contention also.

In the light of the discussions aforesaid, the writ petition fails and is, accordingly, dismissed.