

Kerala High Court

A.Mangayarkarasi vs State Of Kerala Represented By The on 20 March, 2009

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(Crl.).No. 20 of 2009(S)

1. A.MANGAYARKARASI, AGED 48 YEARS,  
... Petitioner

Vs

1. STATE OF KERALA REPRESENTED BY THE  
... Respondent

2. THE DISTRICT MAGISTRATE AND DISTRICT

3. THE SUPERINTENDENT OF CENTRAL PRISON,

4. THE DISTRICT SUPERINTENDENT OF POLICE,

For Petitioner :SRI.M.G.KARTHIKEYAN

For Respondent :GOVERNMENT PLEADER

The Hon'ble MR. Justice A.K.BASHEER

The Hon'ble MR. Justice P.BHAVADASAN

Dated :20/03/2009

O R D E R

A.K. BASHEER & P. BHAVADASAN, JJ.

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W.P. (Crl.) No. 20 of 2009  
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Dated this the 20th day of March, 2009.

JUDGMENT

BASHEER, J.

Petitioner is the mother of Sri.Elavarashu, son of Sri.Anparasu hailing from Karur in the State of Tamil Nadu. She impugns Ext.P1 order dated November 10, 2008 issued by the District Magistrate

and District Collector, Palakkad under Section 3(2) of the Kerala Anti-Social Activities (Prevention) Act, 2007.

2. By the impugned order the detaining authority held that Sri.Elavarashu, the detenu, qualifies to be declared a "Known Goonda" and therefore he has to be placed under detention in order to restore "feeling of security among general public and confidence of law among the people living in the affected area," so that he is not able to cause loss to the State of Kerala and pose a threat to the safety and security of the State as well as the people.

3. Ext.P1 order of detention refers to the materials and grounds based on which the detenu was ordered to be detained. They may be briefly noticed.

4. On January 24, 2008, at 14.45 hrs., a truck bearing registration No.KL 11Q 1903 carrying 8540 litres of spirit was intercepted by Excise officers at Walayar check post. It was revealed that illicit spirit was W.P. (Crl.) No. 20 of 2009 :: 2 ::

being transported into Kerala using Green Channel of Malabar Cements Limited. The vehicle and the contraband were seized. Excise authorities registered Crime No.3/2008 under Section 55(a) of the Abkari Act in this connection. Simultaneously, Walayar Police registered Crime No.26/2008 for the offences punishable under Sections 407, 420, 120B read with Section 34 of the Indian Penal Code on the basis of the complaint filed by the Assistant Sales Manager, Malabar Cements Limited, Palakkad.

5. The investigation of Crime No.26/2008 was handed over to Inter State Illicit Spirit Movement Team (ISISMIT). Later Crime No.3/2008 registered by the Excise Department under Section 55(a) of the Abkari Act was also transferred to ISISMIT and a Special Investigation Team was constituted for this purpose under the direct supervision of the Superintendent of Police, Palakkad.

6. In the course of the investigation by the Special Team, under the control of ISISMIT, the driver of the vehicle bearing registration No.KL 11Q 1903 confessed that he was given brass token and spirit filled lorry by Sampath and Joy. Later, one Mahesh, who was alleged to be one of the gang members of the Spirit Mafia, was arrested on March 22, 2008. Mahesh had allegedly taken the investigating officer to the spirit godown at Karur in Tamil Nadu. Huge quantity of spirit, a few W.P. (Crl.) No. 20 of 2009 :: 3 ::

vehicles etc., were seized in the joint raid conducted by the Kerala and Tamil Nadu police teams. According to the investigating team, the godown was owned by the detenu, Sri.Elavarashu. In the confession statement given by Sri.Mahesh he had specifically implicated the detenu. Similarly, Sri.Sampath referred to above was also arrested on April 3, 2008. He confessed that he along with the detenu and a few named others had smuggled spirit into Kerala. According to the investigating team, the detenu was one of the main members of the spirit mafia, which procures spirit from distilleries in Karnataka and smuggles into Kerala.

7. The other specific instance of the alleged involvement of the detenu in illegal transportation of spirit into Kerala is in relation to the interception of a lorry bearing registration No.KL 10 L 6047 on September 19, 2007. At about 4.55 p.m. on that day, Sri. Saji, the Assistant Motor Vehicle Inspector had intercepted the above vehicle. The driver and cleaner of the vehicle abandoned it and fled. 255 cans of spirit (35 litres each) ( $255 \times 35 = 8925$  litres) concealed under 40 bags of cement were recovered. The Motor Vehicle Inspector handed over the lorry and the spirit to the Kayamkulam police after effecting seizure in the presence of witnesses. Kayamkulam police registered Crime No.663/2007 in this connection. Later, on May 23, 2008 this crime was also transferred to ISISMIT as ordered by the Director General of Police, W.P. (Crl.) No. 20 of 2009 :: 4 ::

Kerala. This crime is also being investigated under the supervision of the Special Investigation Team. According to the investigating agency, Sri.Sampath referred to above had, in his confession statement, stated that he along with the detenu and a few named other accomplices had smuggled spirit into Kerala for Mujeeb Rehman, Jojo, Edison etc.

8. It is not in dispute that the detenu was arrested in connection with Crime No.26/2008 of Walayar Police Station on August 9, 2008. He was arrested in connection with Crime No.663/2007 of Walayar Police Station on September 6, 2008. It is also beyond controversy that the detenu was granted bail by the jurisdictional Magistrate in Crime No.26/2008 on October 13, 2008, and in the Kayamkulam crime (Crime No.663/2007) he was granted bail on November 7, 2008. But since the detenu did not execute bail bonds in the two crimes as directed by the court, he was not released. Ext.P1 order of detention was passed on November 10, 2008 while the detenu was in judicial custody. His arrest was recorded pursuant to Ext.P1 order on November 12, 2008.

9. It is not in dispute that the alleged involvement of the detenu in the two crimes is the basis on which Ext.P1 order of preventive detention has been issued against him. It is on record that the Government had approved the order of detention. Thereafter, the Advisory Board has also given its opinion that the detenu is liable to be detained under the W.P. (Crl.) No. 20 of 2009 :: 5 ::

Act as ordered by the detaining authority. Consequently, the Government has issued Ext.P7 order of confirmation on January 9, 2009.

10. It is primarily contended by the learned Senior Counsel appearing for the petitioner that the detenu would not fall within the ambit of Section 2(c) of the Act which defines "Bootlegger". It is further contended by him that the detenu cannot be branded as a "goonda" or known "goonda" as defined under Sections 2(j) and (o) respectively of the Act. Heavy emphasis is laid by learned Senior Counsel on sub clause

(ii) of Section 2(o) of the Act.

11. In this context, learned senior counsel points out that the specific allegation against the detenu in relation to seizure of the contraband is that it was part of the stock of spirit stored at the godown of the detenu within the limits of K.Paramathi Police Station in Tamil Nadu. It is the admitted position that K.Paramathi Police had registered Crime No.116 of 2008 in connection with the alleged seizure

of spirit from the godown in question. The detenu was implicated in the above crime by K.Paramathi Police as one of the accused. It is on record that the Madurai Bench of the Madras High Court had granted anticipatory bail to the detenu in the above crime on certain conditions. A copy of the order passed by the Madras High Court is available on record as Ext.P8.

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12. The specific case of the petitioner is that the detenu was taken into custody by Walayar Police when he had gone to K.Paramathi Police station in obedience to the direction issued by the High Court that he should appear before the police every day until further orders. Anyhow, it is revealed from Ext.P8 order of the High Court that the case of the detenu was that he had let out the godown in question to one Selvaraj on monthly rent for the purpose of using the same as chemical stock yard. It was also noticed by the High Court that one Kulanthai Swami has been found in charge of the godown.

13. It is further pointed out by learned Senior Counsel that the Madurai Bench of the Madras High Court had in fact granted stay of further proceedings in Crime No.116/2008 registered by K.Paramathi Police in Crl.R.C.(MD)No.467/2008 as could be seen from Ext.P9. In this order, the High Court had noticed that the Judicial Magistrate of First Class-II, Karur had passed an order directing that the case in Crime No.116/2008 of K.Paramathi police station be transferred to Walayar police to be investigated along with Crime No.26/2008 of the latter police station. It was the said order of the learned Magistrate which was stayed by the Madurai Bench of the Madras High Court. Thus, it is evident from Ext.P9 order that the Madras High Court is in seizin of the crime registered by K.Paramathi Police in connection with seizure of W.P. (Crl.) No. 20 of 2009 :: 7 ::

spirit from the godown of which the detenu is alleged to be the landlord.

14. Anyhow, we do not propose to deal with that aspect of the matter any further at this stage since in our view, on yet another ground, the question involved in this case can be decided. It is contended by learned Senior Counsel that the sponsoring authority had not placed Exts.P8 and P9 orders of the Madras High Court before the detaining authority and obviously therefore, the detaining authority was not aware of those two orders. This, according to the learned counsel, has totally vitiated the order of detention. A perusal of Ext.P9 order will undoubtedly show that there is close nexus of crime No.116/2008 of K.Paramathi Police station in Tamil Nadu to Crime No.26/2008 of Walayar Police station in the State of Kerala. This position is not disputed by the respondents. Admittedly the detenu was granted anticipatory bail by the Madurai Bench of the Madras High Court in that crime. All further proceedings in Crime No.116/2008 of K.Paramathi Police station had been stayed by the Madras High Court. In ext.P9 order, the High Court had noticed that the Director General of Police, Chennai had ordered transfer of the case and relevant properties in Crime No.116/2008 of K.Pramathi Police to Walayar Police. This clearly indicates that the Tamil Nadu police has also been conducting investigation in a related crime in which the detenu was allegedly W.P. (Crl.) No. 20 of 2009 :: 8 ::

involved. However, he was granted anticipatory bail by the Madras High Court in the above crime which according to the Kerala Police is admittedly connected with the crime registered by them. Therefore, in our view, the sponsoring authority ought to have brought these aspects of the matter to the notice of the detaining authority. Admittedly none of the documents relating to the crime registered by K.Paramathi Police station or the copies of bail application, Memorandum of Crl.R.C.(MD) No.467/2008 filed by the detenu for stay of proceedings etc. had been made available to the detenu by the detaining authority. The respondents could not have pleaded ignorance of these proceedings pending before the Madras High Court since the detenu in fact divulged all these informations in his bail application filed before this Court in B.A.No.6270/2008 while seeking for bail in Crime No.663/2007 of Kayamkulam Police station.

15. In that view of the matter, we have no hesitation to hold that failure of the detaining authority to furnish copies of the above material documents to the detenu will vitiate the order of detention. On that short ground, we are inclined to allow the prayer made by the petitioner for quashing Ext.P1 order. Accordingly, Ext.P1 order is quashed.

16. Having regard to the entire facts and circumstances and for the reasons stated above, we are satisfied that the detenu Sri.Elavarashu, W.P. (Crl.) No. 20 of 2009 :: 9 ::

S/o Late Anparasu, Sreesoliyamman Nagar, Veyyapuri Nagar P.O., Karoor-2, Tamil Nadu is entitled to be released from custody, if his continued detention is not necessary in connection with any other case. Ordered accordingly.

We make it clear that it will be open to the competent authority to pass fresh orders of detention in accordance with law, if the situation so warrants.

A.K. BASHEER, JUDGE P. BHAVADASAN, JUDGE sb.