Ayishabi Thcharakkunnummal vs State Of Kerala on 6 February, 2025

Author: P.B.Suresh Kumar

Bench: P.B.Suresh Kumar

2025:KER:9299

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

THURSDAY, THE 6TH DAY OF FEBRUARY 2025 / 17TH MAGHA, 1946

WP(CRL.) NO. 1312 OF 2024

PETITIONER:

AYISHABI THCHARAKKUNNUMMAL
AGED 50 YEARS, W/O SIRAJUDHEEN,
KADUMODIYIL HOUSE, PATTISSERY, NELLAYA,
PALAKKAD PIN - 679335.

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

RESPONDENTS:

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

2 THE DISTRICT COLLECTOR & DISTRICT MAGISTRATE,
CIVIL STATION, PALAKKAD DISTRICT, PIN - 678001

2025:KER:9299

3 THE DISTRICT POLICE CHIEF,
CIVIL STATION, PALAKKAD DISTRICT, PIN - 678001

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

SRI.K.A.ANAS GP

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON 29.01.2025, THE COURT ON 06.02.2025 DELIVERED THE FOLLOWING:

2025:KER:9299

C.R.

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

W.P.(Crl) No.1312 of 2024

Dated this the 6th day of February, 2025

JUDGMENT

P.B.Suresh Kumar, J.

This writ petition is instituted seeking a writ of habeas corpus directing the respondents to produce the son of the petitioner, Muhammed Muneer who is undergoing detention in terms Ext.P1 order issued under Section 3(1) of the Kerala Anti-Social Activities (Prevention) Act, 2007 (the Act) and set him at liberty. Ext.P1 order was issued on 25.10.2024 and it was executed on 26.10.2024. Ext.P1 order is issued on the premise that the detenu is a "known rowdy".

2. There was an earlier order of detention against the detenu under the Act and the same was revoked by the Government on the basis of the report of the Advisory Board constituted under the Act. It was thereafter that the present order of detention has been issued taking into account the

2025:KER:9299 prejudicial activities in which the detenu was indulged in after revocation of the earlier order of detention. Two cases in which the detenu was involved after his release pursuant to the revocation of the earlier order of detention have been considered for the purpose of issuing the present order of detention. They are Crime No.1184 of 2024 of Perinthalmanna Police Station and Crime No.542 of 2024 of Cherpulassery Police Station. Among the said cases, Crime No.542 of 2024 of Cherpulassery Police Station is one registered on 11.08.2024. The detenu is the first accused in the said case. He was arrested in connection with the said case on 22.08.2024 and was enlarged on bail on 15.10.2024. It was while he was undergoing custody in the said case, the proposal was made on 27.09.2024 for his detention and he was detained on 25.10.2024 after his release on bail on 15.10.2024.

3. It was contended by the learned counsel for the petitioner that Ext.P2 representation preferred by the detenu against the order of detention was received by the Government on 06.11.2024 and without considering the same, the case of the detenu has been placed before the Advisory Board. According to the learned counsel, inasmuch as the 2025:KER:9299 representation of the detenu against the detention order has been received by the Government before the case of the detenu was placed before the Advisory Board, it should have been considered by the Government. It was also contended by the learned counsel that there is a long and unexplained delay in submitting the proposal for the detention and that the same snapped the live link between the order of detention and the grounds of detention. It was further contended by the learned counsel that even though the earlier order of detention was revoked by the Government, the reason for revocation of the same has not been mentioned in the order nor has the same been communicated to him. According to the learned counsel, the detention order is bad on account of that reason also. It was further contended by the learned counsel that one among the cases namely, Crime No.1184 of 2024 of Perinthalmanna Police Station is not a crime which could have been taken into account for the purpose of deciding whether the detenu is a "known rowdy" as it is not a crime which involves any anti-social activity. It was further contended by the learned counsel that Crime No.542 of 2024 of Cherpulassery Police Station is a case involving an offence punishable under the Bharatiya Nyaya 2025:KER:9299 Sanhita (BNS) and that the offences under the BNS are not notified for the purpose of the Act.

4. We have examined the contentions raised by the learned counsel for the petitioner. In K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476, it was held by the Apex Court that in cases where the representation of the detenu is received before the case is referred to the Advisory Board, but there is no time to dispose of the representation before referring the case to the Advisory Board, then the representation must also be forwarded to the Advisory Board along with the case of the detenu. The Apex Court has also clarified that in such cases, there is no question of consideration of the representation before the receipt of the report of the Advisory Board. It was also clarified by the Apex Court in the said case that in such a situation, it cannot be contended that the Government has delayed the consideration of the representation, unnecessarily awaiting the report of the Board. Ext.P3 acknowledgement card would indicate that Ext.P2 representation of the petitioner has been received by the Government on 06.11.2024. On a query from the Court, the learned Government Pleader made available the order issued by the Government confirming the 2025:KER:9299 order of detention, and the same would show that the case of the detenu has been placed before the Advisory Board on 06.11.2024 itself. There is no material to infer that the representation of the petitioner has

been received by the Government before the case of the detenu was placed before the Advisory Board. Even assuming that the representation has been received before forwarding the case of the detenu to the Advisory Board, we are of the view that the Government cannot be found fault with for having placed the case of the detenu before the Advisory Board, since the outer limit prescribed under Section 9 the Act for doing so would expire on 16.11.2024, and the Government is not expected to consider the representation before the said outer time limit. In other words, the contention that the Government should have considered the representation submitted by the detenu before his case was placed before the Advisory Board, is unsustainable.

5. As regards the contention that there is a long and unexplained delay in submitting the proposal for the detention, as noted, the last prejudicial activity in which the detenu is involved is one that took place on 11.08.2024 and he 2025:KER:9299 was arrested in connection with that case on 22.08.2024 and enlarged on bail on 15.10.2024. The proposal for the detention of the detenu was submitted by the competent authority while the detenu was in judicial custody on 27.09.2024 itself and the detention order was issued within ten days after his release on bail on 15.10.2024. The consistent view taken by this Court is that even though the principle is that the delay between the last prejudicial activity and the order of detention, unless satisfactorily explained, would throw a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the order of detention and render the same bad and invalid for want of live and proximate link between the grounds of detention and the purpose of detention, if the detenu is in custody during the interregnum, it is not possible to make an inference straight away that the live and proximate link between the grounds of detention and the purpose of detention has been snapped on account of the delay. In the case on hand, if the period during which the detenu was undergoing judicial custody in connection with the last prejudicial activity is excluded from consideration, we do not think that there is any delay at all, on the basis of which it 2025:KER:9299 could be contended legitimately that the live and proximate link between the prejudicial activities and the purpose of detention has been snapped.

6. As regards the contention that even though the earlier order of detention was revoked by the Government and that the reason for the same has not been mentioned in the order nor has been communicated to the detenu, it is seen that an identical contention has been considered and rejected by us in W.P.(Crl) No.1221 of 2024. Paragraph 8 of the said judgment reads thus:

> 8. The next contention of the learned counsel for the petitioner is that he is entitled to be furnished the reasons, on the basis of which two earlier orders of detention issued against the detenu have been revoked, and inasmuch as those reasons were not furnished to him, he is deprived of his right under Article 22(5) of the Constitution to prefer an effective representation against the order of detention. The detenu has been provided with copies of the orders revoking the earlier detention orders. His grievance is only that the reasons, on the basis of which those orders were issued, have not been furnished to him. The detenu does not dispute the fact that it is based on the opinion given by the Advisory Board that the earlier orders of detention are revoked by the Government. In other words, the reasons for revocation of the earlier orders are contained in the opinion of the Advisory Board. In the light of Section

> 10(3) of the Act which provides that the opinion of the Advisory Board shall be confidential, 2025:KER:9299 the detenu is not entitled to be furnished a copy of the opinion given by the Advisory Board. In other words, the detenu cannot be heard to contend that he is entitled to be furnished the reasons for revocation of the earlier orders of detention.

In the light of the decision of this Court in W.P.(Crl) No.1221 of 2024, the contention aforesaid is also liable to be rejected and we do so.

7. The next contention is that one among the cases namely, Crime No.1184 of 2024 of Perinthalmanna Police Station is not a case that could be reckoned for the purpose of considering whether the detenu is a "known rowdy". The argument is that the said crime is not one which involves any anti-social activity. According to the learned counsel, the allegation against the detenu in the said case is only that he failed to return a vehicle that was entrusted to him by one of his friends and that therefore such a case cannot be regarded as a crime involving any anti-social activity. It was argued that in order to make out a case of "anti-social activity", it has to be shown that the case is one that involves public order and that the allegations in the case do not meet the said criterion. The learned counsel relied on the decision of the Apex Court in 2025:KER:9299 Nenavath Bujji v. State of Telangana, 2024 SCC OnLine SC 367, in support of the argument. Section 2(a) of the Act defines "anti-social activity". Section 2(a) reads thus:

> "'anti-social activity' means acting in such manner as to cause or is likely to cause, directly or indirectly, any feeling of insecurity, danger or fear among the general public or any section thereof, or any danger to the safety of individuals, safety of public, public health or the ecological system or any loss or damage to public exchequer or to any public or private property or indulges in any activities referred in clauses (c), (e), (g), (h), (i), (l), (m), (n), (q), (qb) and (s) of this section;"

Going by the definition aforesaid, any activity which causes or likely to cause, directly or indirectly, any loss or damage to any public or private property, would fall within the scope of the definition of "anti-social activity". The relevant portion of the detention order dealing with Crime No.1184 of 2024 reads thus:

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According to us, the allegations in the said case as found prima facie true, would certainly fall within the definition of "anti- social activity" under Section 2(a) of the Act. Be that as it may, 2025:KER:9299 going by the scheme of the Act as discernable from Section 3, 'known rowdies' are detained under the Act in order to prevent them from indulging in anti-social activities. In other words, persons who would satisfy the definition of "rowdy" are presumed to be persons indulging in anti-social activities. The detenu has no case that the offences alleged against him in Crime No.1184 of 2024 are not offences which would fall under Chapter XVII of the Indian Penal Code (IPC) and that he cannot be classified as a "rowdy". If that be so, the detenu cannot be heard to contend that the activities in which he had allegedly indulged in, are not anti-social activities.

8. The next contention is that the offences involved in Crime No.542 of 2024 of Cherpulassery Police Station are offences punishable under BNS and that the said offences cannot be reckoned for the purpose of classifying a person as a "rowdy" in terms of its definition in the Act, and that the classification of the detenu as "known rowdy" is, therefore, bad. The above argument is advanced in the light of the definition of "rowdy" as contained in the Act. The expression "rowdy" is defined in Section 2(t) of the Act as follows:

> 2025:KER:9299 "'rowdy' means and includes a person who either by himself or as a member of a gang commits or attempts to commit, or abets the commission of any offences under sections 153A and 153B of Chapter VIII and Chapters XV, XVI, XVII & XXII of the Indian Penal Code, 1860 (Central Act 45 of 1860), or any offences under the provision of the Arms Act, 1959 (Central Act 54 of 1959), or the Explosives Substances Act, 1908 (Central Act 6 of 1908),--"
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> The argument is advanced since the offences punishable under the BNS are not specifically brought under the definition of "rowdy" contained in Section 2(t) of the Act. Section 8(1) of the General Clauses Act, 1897 reads thus:
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> "Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re- enacted."

Section 3(19) of the General Clauses Act provides an inclusive, rather than restrictive, definition of the expression "enactment". In State of Punjab v. Sukh Dev Sarup Gupta, (1970) 2 SCC 177, the Apex Court held that the word "enactment" contained in Section 8(1) of the General Clauses Act would include any enactment passed by the Union 2025:KER:9299 Parliament or State Legislature. In other words, in the light of Section 8(1) of the General Clauses Act, in the absence of any different intention, the reference to the provisions contained in the repealed enactment namely, IPC in Section 2(t) of the Act shall be construed as reference to the provisions in BNS, the re- enactment. Section 2(t) refers, inter alia, to offences under Chapter XVII of IPC dealing with "Of Offences Against Property". In other words, after the coming into force of the re-enactment namely BNS, Section 2(t) has to be construed as referring to the offences under the relevant chapter in BNS

dealing with offences against property, namely Chapter XVII titled "Of Offences Against Property". Inasmuch as Section 2(t) does not refer to any offence in particular, after the coming into force of the re-enactment namely, BNS, Section 2(t) has to be construed as referring to all the offences in Chapter XVII of BNS including new offences if any, included. The petitioner has no case that the offences included in Crime No.542 of 2024 of Cherpulassery Police Station are not offences against property as categorized in Chapter XVII of BNS. In the circumstances, we do not find any substance in this argument also.

2025:KER:9299 In the light of the discussions aforesaid, the writ petition is devoid of merits and the same is, accordingly, dismissed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

Sd/-

JOBIN SEBASTIAN, JUDGE.

YKB

2025:KER:9299

APPENDIX

PETITIONER EXHIBITS

Exhibit P1	A TRUE COPY OF ORDER NO. DCPKD/12681/2024-S1 DATED 25.10.2024 OF THE 2ND RESPONDENT
Exhibit P2	A TRUE COPY OF REPRESENTATION DATED 04.11.2024 SUBMITTED BEFORE THE 1ST RESPONDENT
Exhibit P3	A TRUE COPY OF POSTAL ACKNOWLEDGMENT CARD EVIDENCING THE RECEIPT OF EXT P2 BY THE 1ST RESPONDENT
Exhibit P4	A TRUE COPY OF REPRESENTATION DATED 12.04.2024 SUBMITTED BEFORE THE 4TH RESPONDENT
Exhibit P5	A TRUE COPY OF POSTAL ACKNOWLEDGMENT CARD EVIDENCING THE RECEIPT OF EXT P4

BY THE 4TH RESPONDENT