

# Moideen Munnakkaparambil Bavu vs State Of Kerala on 24 September, 2009

**Author: S.R. Bannurmath**

**Bench: S.R.Bannurmath, Kurian Joseph**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(Crl.).No. 61 of 2009(S)

1. MOIDEEN MUNNAKKAPARAMBIL BAVU,  
... Petitioner

Vs

1. STATE OF KERALA, REP. BY THE SECRETARY TO  
... Respondent

2. THE UNION OF INDIA, REP. BY THE SECRETARY

3. THE SUPERINTENDENT, CENTRAL PRISON,

For Petitioner : SRI.M.RAMESH CHANDER

For Respondent : SRI.P.PARAMESWARAN NAIR, ASST.SOLICITOR

The Hon'ble the Chief Justice MR.S.R.BANNURMATH

The Hon'ble MR. Justice KURIAN JOSEPH

Dated : 24/09/2009

O R D E R

S.R. Bannurmath, C.J. & Kurian Joseph, J.

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W.P.(Crl) Nos.61/2009-S, 50/2009-S, 52/2009-S & 67/2009-S  
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Dated, this the 24th day of September, 2009

JUDGMENT

S.R. Bannurmath, C.J.

Since all these habeas corpus writ petitions arise from the same set of facts and as the grounds of detention against all the detenus is same, for the purpose of consideration of common questions of law and facts argued, with the consent of learned counsels on both sides all these writ petitions are taken up for consideration together and being disposed of by the common judgment.

2. The facts are common. However, individual acts and the arguments in respect of individual detenu, wherever necessary, are dealt with separately in this judgment itself.

3. One Muhammed Alshab is the detenu in W.P. (Crl.) No.61 of 2009 and alleged to be the main culprit. The WP(Crl).No.61/2009 & connected cases - 2 -

writ petition is filed by his father, challenging the detention order.

4. The allegations against the said detenu Muhammed Alshab are as follows.- On a specific intelligence report, the Senior Intelligence Officer, Directorate of Revenue Intelligence, Calicut with his team checked the passengers arriving at Karipur International Airport, Calicut at about 0540 hours on 16.08.2008, especially of Flight RAK Airways Flight RT 0601T. As the Senior Intelligence Officer and his team were checking the travel documents of the passengers, the detenu Muhammed Alshab, who was one of the passengers arrived by the said Flight, was intercepted with a dark blue coloured strolley bag, one cardboard carton and one zipper bag while he was getting out of the exit gate. On enquiry, he disclosed his name and stated that he had no undisclosed items with him.

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He produced his Passport, Electronic Air Ticket, Economy Class Boarding Pass, Baggage tags and Customs Gate Pass. On search of the cardboard cartons, it was found that they contained fake Indian currencies for a total face value of Rs.72,50,000/- (Rupees seventy two lakhs and fifty thousand only). On further enquiry, the detenu said to have disclosed that he had visited Dubai on the basis of Visiting Visa sponsored by a man from Kerala, India, named Abdul Malik (on whose behalf W.P.(Crl.)No.50 of 2009 has been filed), who had provided him a job and accommodation. It is further stated that one or two days earlier to 16.08.2008, the said Malik had contacted the detenu on his mobile phone and asked him to go to Calicut urgently and directed him to take some money with him. He was further instructed that one Majeed and another person by name Rafi would meet him at the place where the detenu was residing at Dubai.

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They accordingly handed over to him one cardboard carton and a strolley bag and directed him to hand over those bags to one Sajin and Babu, who would be waiting outside the Airport at Calicut and to hand over the money to them. According to the case of the Detaining Authority, the said Sajin and one Abdul Malik were caught outside the Airport, who were said to have been waiting for the arrival of the present detenu, and recorded their statements also under Section 108 of the Customs Act. The currencies were scrutinized by the officers of the Reserve Bank of India, Thiruvananthapuram and found to be fake or counterfeit currencies. Search at the residences of these detenus were carried out. After their arrest, the detenus filed Bail Applications and the same were rejected. Thereafter, the proceedings under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 WP(Crl).No.61/2009 & connected cases - 5 -

("COFEPOSA Act" for short) were initiated and detention order came to be passed on 4.10.2008 and the same was confirmed by the Advisory Board also. It is this detention order which is the subject matter of the present writ petitions.

5. Taking us through the detention order, the grounds therein and various documents accompanying the same, Shri. Kumar, learned Senior Advocate, vehemently contended that the impugned order of detention is illegal and arbitrary and vitiated by the contravention of the provisions of the Act and the Constitution of India. It is mainly contended that there is no reference as to the retraction of the alleged confessional statements recorded. It is submitted that as per Exhibits P6 to P9, the Bail Applications filed before the jurisdictional Magistrate, the detenu has specifically denied of having made the WP(Crl).No.61/2009 & connected cases - 6 -

confessional statements before the authorities and without reference to the same or even reference to the contents of the Bail Application, the impugned detention order has been passed, which is illegal and unsustainable. It is submitted that, failure to consider the retraction of the confessional statement is illegal and the same has vitiated the detention order. In this regard, the learned Senior Counsel has relied upon the unreported judgment of the Honourable Supreme Court in the case of Mohd.Towfeek v. The Additional Secretary to Government of Tamil Nadu [W.P.(Crl).No.602 of 1989 decided on 23.2.1990], Arun Kumar Soni v. Union of India (1992 L.W.(Crl.) 170) and K.T.M.S.Mohd. v. Union of India (AIR 1992 SC 1831).

6. Nextly it is contended that failure on the part of the Detaining Authority to state as to whether prosecution and adjudicatory proceedings (criminal proceedings under WP(Crl).No.61/2009 & connected cases - 7 -

the Indian Penal Code and Customs Act) would be sufficient to deal with the detenu and the Detaining Authority is unnecessarily resorting to the drastic measure of invoking the provisions of the COFEPOSA Act. It is submitted that as criminal cases against the detenu and others have been

registered under Section 489A to 489C of Indian Penal Code, it was necessary for the Detaining Authority to apply its mind and state in the detention order as to whether this prosecution and adjudication proceedings under other penal provisions would be sufficient to deal with the detenu and as to the necessity of resorting to drastic measure of invoking the preventive detention law.

7. So far as the other detenus are concerned, apart from the grounds of non-consideration of alleged retracted confession in the bail application and the non-satisfaction of the Detaining Authority as to the WP(Crl).No.61/2009 & connected cases - 8 -

imminent necessity of invoking preventive detention law in spite of there being prosecution and adjudication in respect of the fake currency, it is commonly contended that as the bail applications of the detenus had been rejected by the jurisdictional Magistrate, the Detaining Authority ought to have satisfied itself by application of mind to find out whether there is any possibility of the detenus coming out of jail and continuing the commission of the offence. It is also contended that precise grounds of detention were not mentioned or given to these detenus as to their individual role and the alleged detention order is very vague and omnibus as to the individual roles of all these detenus. As such, the detention order is passed without application of mind and as the same being vague, is liable to be set aside.

8. It is also contended that there are no grounds to show the nature of alleged abetment of the detenus -

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Abdul Malik, Abdul Kareem and Sajin with the main detenu Muhammed Alshab. The absence of the same in the detention order indicates clear non-application of mind and passing of the detention order in a mechanical way.

9. On these among other grounds, it is contended that as the detention orders are illegal and vitiated - (i) due to non-application of mind (ii) not taking into account the relevant matters and consideration of materials which are extraneous, (iii) the detention order is thus illegal and stands vitiated. It is also contended that the detention order was passed solely on the basis of the statement of Muhammed Alshab recorded under Section 108 of the Customs Act and applying the facts stated therein the detention in respect of other detenus also is illegal and liable to be set aside.

10. On the other hand, learned counsel for the WP(Crl).No.61/2009 & connected cases - 10 -

respondents argued in support of the detention order with reference to various pronouncements of the Honourable Supreme Court.

11. We have heard learned counsel at length and perused all the records and the citations in depth.

12. At the outset, it is to be noted that - (a) time and again the Honourable Supreme Court and this Court have stated that the purpose of detention under the COFEPOSA Act is not punitive, but preventive and (b) that the Detaining Authority, in the grounds of detention, should show the awareness of the facts, as the detenu being in jail as a result of rejection of bail application.

13. So far as non-consideration of the alleged retracted statement in the bail application, as held by the Honourable Supreme Court in the case of State of Gujarat v. Sunil Fulchand Shah (AIR 1988 SC 723), in the grounds of WP(Crl).No.61/2009 & connected cases - 11 -

detention, it is not necessary for the Detaining Authority to set out the reaction to every piece of evidence. In the present case, in the grounds of detention, there is an express reference to the bail application of the detenu. The bail applications are annexed to the grounds of detention. It cannot, therefore, be said that the Detaining Authority was unaware of the retraction by the detenu of his statement before the Customs Authority. As observed by the apex Court in the case of B.Subaida v. State of Kerala [1993(1) KLJ 489], reference to the remand to judicial custody and reference to bail application are indication of application of mind by the Detaining Authority, not only to the order of rejection of bail, but also to the contents of the bail application. In our view, keeping in view the object of bail application, it was not necessary to mention the alleged retraction of their statements under Section 108 of the WP(Crl).No.61/2009 & connected cases - 12 -

Customs Act. Admittedly, no separate applications or statements have been filed by the detenus retracting their earlier version either before the Detaining Authority or the Customs Authority. Therefore, in our view, it cannot be said that the Detaining Authority has not applied its mind to the retraction. As noted by the apex Court, the Detaining Authority is not required to state in the grounds of detention its reaction to every piece of evidence which is relied upon by it. If all material factors have been considered by the Detaining Authority before passing the order of detention, the detention order can be held valid and hence we see no reason to accept the contention of the petitioner in this regard as the same is devoid of merits.

14. So far as the argument that the Detaining Authority failed to state whether the prosecution and adjudicatory proceedings would be sufficient to deal with the WP(Crl).No.61/2009 & connected cases - 13 -

detenu instead of resorting to drastic measure of preventive detention action, at the outset it is to be noticed that the detention order is passed on 4.10.2008 whereas the criminal proceedings for the offences under Sections 489A to 489C have been registered against the detenus only on 12.3.2009. As such, as there were no cases registered against the detenus, this ground is otherwise without merit even on facts.

15. So far as the argument that the Detaining Authority had solely relied upon the confessional statement of the main detenu Muhammed Alshab as to the alleged abetment of the other detenus is concerned, it is to be noted that the case against the other detenus is not built upon the statement of Muhammed Alshab alone. The said Muhammed Alshab was caught red handed while carrying fake currency to the tune of Rs.72,50,000/- and he was WP(Crl).No.61/2009 & connected cases - 14 -

caught immediately after alighting from the aeroplane, that the other detenus, viz., Sajin and Abdul Malik, were not only waiting for him in the Airport, who were also caught, but also the fact that they were in touch with the said Muhammed Alshab through the mobile phones carried by them and supported by the fact that their mobile numbers were in the mobile phone of Muhammed Alshab which would clearly indicate their role in the act of bringing fake currencies to India.

16. After careful examination of the entire materials placed before us, we may restate that the liberty of a citizen is undoubtedly very important. As such, it is our duty to ensure that there is strict compliance with the provisions of law. But the Court cannot lose sight of the fact that those who commit economic offences do harm the national interest and economy. As reported in recent past, WP(Crl).No.61/2009 & connected cases - 15 -

the growing incidents of bringing and circulating fake Indian currencies all over India and thereby destabilizing the Indian economy is to be seriously viewed. It is also to be noted that the exercise of jurisdiction under preventive detention law is not punitive, but only to prevent such repeated acts by the alleged culprits.

17. On careful consideration of the entire material, in our view, the Detaining Authority has taken in cumulative view of the situation and has rightly held that the detenus have violated the provisions of the law and their activities are detrimental to the national interest. In such circumstances, the Courts also should be slow to interfere with such orders.

18. Considering the entire materials afresh, we find absolutely no illegality or arbitrariness in the detention order passed. The Detaining Authority has applied its mind WP(Crl).No.61/2009 & connected cases - 16 -

to all the materials placed before it to come to the right and just conclusion that the detention of these detenus under the COFEPOSA Act is essential.

We find absolutely no merit in the contentions raised by the detenus and hence the writ petitions are dismissed, upholding the detention orders.

S.R.Bannurmath, Chief Justice.

Kurian Joseph, Judge.

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