[2025] 7 S.C.R. 354 : 2025 INSC 809

Dhanya M
v.
State of Kerala & Ors.

(Criminal Appeal No. 2897 of 2025)

06 June 2025

[Sanjay Karol* and Manmohan, JJ.]

Issue for Consideration

Whether the preventive detention of the detenu is in accordance with law.

Headnotes†

Kerala Anti-Social Activities (Prevention) Act, 2007 – ss.3, 2(j), (o) – Order of detention u/s.3(1), if sustainable:

Held: No – s.2(j) states that a person who indulges in activities "harmful to maintenance of public order" is covered by the Act – In the present case, the facts and circumstances do not fall under the category of a public order situation – The detention order does not state any reason as to how the actions of the detenu were against the public order of the State – Given the extraordinary nature of the power of preventive detention, no reasons were assigned by the detaining authority, as to why and how the actions of the detenu warranted the exercise of such an exceptional power – State should move for cancellation of bail of the detenu, instead of placing him under the law of preventive detention – Exercise of power u/s.3 was not justified in law – Order of detention and the impugned judgment of the High Court affirming the said order passed by the District Magistrate u/s.3(1), are set aside – Kerala Money Lenders Act, 1958 – Kerala Prohibition of Charging Exorbitant Interest Act, 2012 – Penal Code, 1860 – SC/ST Prevention of Atrocities Act, 1989. [Paras 17, 19, 21-23]

Kerala Anti-Social Activities (Prevention) Act, 2007 – ss.2(j), (o), 3, 7, 12 – Scheme and object of the Act – Discussed. [Paras 12-15]

Constitution of India – Art.22 – Preventive detention – Extraordinary power, exercise of:

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* Author

Held: Preventive detention is an extraordinary power that must be used sparingly – It curtails the liberty of an individual in anticipation of the commission of further offence(s), and therefore, must not be used in the ordinary course of nature – The power of preventive detention is an exception to Art.21 and, therefore, must be applied as an exception to the main rule and only in rare cases. [Para 9]

Case Law Cited

Rekha v. State of Tamil Nadu **[2011] 4 SCR 740 : (2011) 5 SCC 244;** *Mortuza Hussain Choudhary v. State of Nagaland and Ors.,* **2025 SCC Online SC 502;** *Icchhu Devi v. Union of India* **[1981] 1 SCR 640 : (1980) 4 SCC 531;** *Banka Sneha Sheela v. State of Telengana* **[2021] 8 SCR 978 : (2021) 9 SCC 415;** *SK. Nazneen v. State of Telangana* **(2023) 9 SCC 633;** *Nenavath Bujji etc. v. State of Telangana & Ors.,* **2024 SCC OnLine SC 367;** *Ameena Begum v. State of Telengana* **[2023] 11 SCR 958 : (2023) 9 SCC 587 – referred to.**

List of Acts

Kerala Anti-Social Activities (Prevention) Act, 2007; Kerala Money Lenders Act, 1958; Kerala Prohibition of Charging Exorbitant Interest Act, 2012; Penal Code, 1860; SC/ST Prevention of Atrocities Act, 1989; Constitution of India.

List of Keywords

Preventive detention; Detenu; Order of detention; Detention order; "harmful to maintenance of public order"; Public order situation; 'goonda'; 'notorious goonda'; 'known goonda'; District Magistrate; Detaining authority; Cancellation of bail of the detenu; Writ of Habeas Corpus; State of Kerala; Anti-social activities; Illegal detention; Power of preventive detention; Extraordinary power; Detention order set aside.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2897 of 2025

From the Judgment and Order dated 04.09.2024 of the High Court of Kerala at Ernakulam in WPCRL No. 874 of 2024

Appearances for Parties

Advs. for the Appellant:
Ajay Prabhu S, Amit Sangwan, Sibi Kargil, Ms. R. Shase.

Advs. for the Respondents:
Harshad V. Hameed, Dileep Poolakkot, Mrs. Ashly Harshad.

Judgment / Order of the Supreme Court

Judgment

Sanjay Karol, J.

Leave Granted.

2. The present appeal arises from the final judgment and order dated 4th September, 2024 passed by the High Court of Kerala at Ernakulam in WP(CRL)No.874/2024, whereby the order dated 20th June, 2024 passed by the District Magistrate, Palakkad, directing the husband of the appellant, Rajesh[1] to be kept under preventive detention in prison in terms of Section 3 of Kerala Anti-Social Activities (Prevention) Act, 2007[2] was affirmed.

3. The brief facts giving rise to the present appeal are that the detenu is running a registered lending firm in the name of 'Rithika Finance'. On 20th June, 2024, the District Magistrate, Palakkad, issued an order of detention under Section 3(1) of the Act, in furtherance of Recommendation No.54/Camp/2024-P-KAA(P)A dated 29th May, 2024 by the Palakkad District Police Head. It was stated therein that the detenu is a 'notorious goonda' of the district and is a threat to the society at large. The following cases were considered for such declaration:

   i. Crime No.17/2020 under Section 17 of Kerala Money Lenders Act, 1958, and Section 3, 9(1)(a) of Kerala Prohibition of Charging Exorbitant Interest Act, 2012, at the Kasaba Police Station.

   ii. Crime No.220/2022 under Section 3 read with Section 17 of Kerala Money Lenders Act, 1958,

1 Hereinafter "detenue"

2 Hereinafter "the Act"

and Section 9(a)(b) read with Section 3 of Kerala Prohibition of Charging Exorbitant Interest Act, 2012, at the Town South Police Station.

iii. Crime No.221/2022 under Section 294(b), 506 (I) of the Indian Penal Code, 1860, and Section 3 read with Section 17 of Kerala Money Lenders Act, 1958, and Section 9 (a)(b) read with Section 3 of Kerala Prohibition of Charging Exorbitant Interest Act, 2012.

iv. Crime No.401/2024 under Sections 341, 323, 324, 326 of the Indian Penal Code, 1860; Section 17 of Kerala Money Lenders Act, 1958; Section 4 of Kerala Prohibition of Charging Exorbitant Interest Act, 2012, and Section 3(2), (va), 3(1)(r), 3(1)(s) of the SC/ST Prevention of Atrocities Act, 1989.

4. Consequently, the detenu was taken into custody. Aggrieved by the order of detention dated 20th June, 2024, the appellant filed a writ petition before the High Court of Kerala assailing the order of detention and praying for a writ of Habeas Corpus to Respondent No.1 - the State of Kerala, against the illegal detention of her husband, Rajesh.

5. Vide the impugned Judgment and Order, the High Court of Kerala dismissed the challenge laid to the order of detention with the following findings:

a. Whether the cases against the detenu will result in an acquittal, is not an exercise that can be carried out by the detaining authority while passing the order of preventive detention.

b. In writ jurisdiction under Article 226 of the Constitution, the Court does not sit in an appeal against decisions taken by the authorities on the basis of the materials placed before it.

c. Procedural safeguards have been complied with in the impugned action.

6. Aggrieved thereof, the appellant has preferred an appeal before this Court. The significant point of challenge taken by the appellant is that in all cases against the detenu, he is on bail and is complying with the conditions laid down by the Court.

7. We have heard the learned counsel for the parties and perused the written submissions filed. *Vide* order dated 10th December 2024, the detenu was released by this Court, since the maximum period of detention under the Act was completed.

8. The question that arises for consideration before this Court is - whether the preventive detention of the detenu is in accordance with law.

9. It is well settled that the provision for preventive detention is an extraordinary power in the hands of the State that must be used sparingly. It curtails the liberty of an individual in anticipation of the commission of further offence(s), and therefore, must not be used in the ordinary course of nature. The power of preventive detention finds recognition in the Constitution itself, under Article 22(3)(b). However, this Court has emphasized in ***Rekha v. State of Tamil Nadu***[3] that the power of preventive detention is an exception to Article 21 and, therefore, must be applied as such, as an exception to the main rule and only in rare cases.

10. The above position was succinctly summarized by this Court, recently in ***Mortuza Hussain Choudhary v. State of Nagaland and Ors.***[4], as follows :

> "2. Preventive detention is a draconian measure whereby a person who has not been tried and convicted under a penal law can be detained and confined for a determinate period of time so as to curtail that person's anticipated criminal activities. This extreme mechanism is, however, sanctioned by Article 22(3)(b) of the Constitution of India. Significantly, Article 22 also provides stringent norms to be adhered to while effecting preventive detention. Further, Article 22 speaks of the Parliament making law prescribing the conditions and modalities relating to preventive detention. The Act of 1988 is one such law which was promulgated by the Parliament authorizing preventive detention so as to curb illicit trafficking of narcotic drugs and psychotropic substances. Needless to state, as preventive deprives a person of his/her individual liberties by detaining him/her

3 (2011) 5 SCC 244

4 2025 SCC Online SC 502

> for a length of time without being tried and convicted of a criminal offence, the prescribed safeguards must be strictly observed to ensure due compliance with constitutional and statutory norms and requirements."
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> (Emphasis supplied)

11. Furthermore, given the extraordinary nature of the power of preventive detention, this Court in ***Icchhu Devi v. Union of India***[5], placed the burden on the detaining authority to prove that such actions are in conformity with the procedure established by law, in consonance with Article 21. Similarly, in ***Banka Sneha Sheela v. State of Telengana***[6], this Court reiterated that an action of preventive detention has to be checked with Article 21 of the Constitution and the statute in question.

12. At this stage, we must advert to the scheme and object of the Act, under which the impugned detention order has been passed. The object of the Act is to provide for effective prevention of certain anti-social activities in the State of Kerala. Section 2(j) defines 'goonda' as a person who indulges in activities that are harmful to the maintenance of public order, either directly or indirectly. It includes persons who are bootleggers, counterfeiters, drug offenders, and loan sharks, amongst others. Section 2(o) lays down the classification for a 'known goonda', which is a goonda who has been -

    i. Found guilty of an offence which falls under the categories mentioned in Section 2(j); or

    ii. Found in any investigation or competent Court on complaints initiated by persons in two separate instances not forming part of the same transaction, to have committed any act within the meaning of the term 'goonda' as defined in Section 2(j).

13. Under Section 3 of the Act, the District Magistrate so authorized or the Government, may make an order directing detention of a 'known goonda', to prevent commission of anti-social activities within the State of Kerala.

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5 (1980) 4 SCC 531

6 (2021) 9 SCC 415

14. Section 7 mandates disclosure of the grounds of detention to the detenu along with relevant documents within five days of the preventive detention.

15. Section 12 of the Act specifies that the period of detention for any person shall not exceed six months.

16. Coming to the attending facts and circumstances, we are of the considered view that the exercise of power under Section 3 of the Act, was not justified in law.

17. From perusal of Section 2(j), it is evident that a person who indulges in activities "harmful to maintenance of public order" is sought to be covered by the Act. This Court in ***SK. Nazneen v. State of Telangana***[7] had emphasized on the distinction between public order as also law and order situations :

> "**18.** In two recent decisions [*Banka Sneha Sheela* v. *State of Telangana*, (2021) 9 SCC 415 : (2021) 3 SCC (Cri) 446; *Mallada K. Sri Ram* v. *State of Telangana*, (2023) 13 SCC 537 : 2022 SCC OnLine SC 424] , this Court had set aside the detention orders which were passed, under the same Act i.e. the present Telangana Act, primarily relying upon the decision in *Ram Manohar Lohia* [*Ram Manohar Lohia* v. *State of Bihar*, 1965 SCC OnLine SC 9] and holding that the detention orders were not justified as it was dealing with a law and order situation and not a public order situation."
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> (Emphasis supplied)

18. Similarly, in ***Nenavath Bujji etc. v. State of Telangana & Ors.***[8], this Court observed :

> "**32.** The crucial issue is whether the activities of the detenu were prejudicial to public order. While the expression 'law and order' is wider in scope inasmuch as contravention of law always affects order, 'Public order' has a narrower ambit, and could be affected by only such contravention,

7 (2023) 9 SCC 633

8 2024 SCC OnLine SC 367

> which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of 'law and order' and 'public order' is one of degree and extent of the reach, of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of public, it could raise problem of law and order only. In other words, the true distinction between the areas of law and order and public order lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon society. Acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. In one case it might affect specific individuals only, and therefore touches the problem of law and order only, while in another it might affect public order. The act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is, in its impact on society, it may be very different."
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> (Emphasis supplied)

19. In consonance with the above expositions of law, in our view, the attending facts and circumstances do not fall under the category of a public order situation. The observations made in the detention order do not ascribe any reason as to how the actions of the detenu are against the public order of the State. As discussed above, given the extraordinary nature of the power of preventive detention, no reasons are assigned by the detaining authority, as to why and how the actions of the detenu warrant the exercise of such an exceptional power.

20. Moreover, it has been stated therein by the authority that the detenu is violating the conditions of bail imposed upon him in the cases that have been considered for passing the order of detention. However, pertinently, no application has been filed by the respondent-State in any of the four cases, alleging violation of such conditions, if any, and moreover, have not even been spelt out here.

21. This Court in ***SK. Nazneen*** (supra), had observed that the State should move for cancellation of bail of the detenu, instead of placing him under the law of preventive detention, which is not the appropriate remedy. Similarly, in ***Ameena Begum v. State of Telengana***[9], this Court observed :

> "59. … It is pertinent to note that in the three criminal proceedings where the detenu had been released on bail, no applications for cancellation of bail had been moved by the State. In the light of the same, the provisions of the Act, which is an extraordinary statute, should not have been resorted to when ordinary criminal law provided sufficient means to address the apprehensions leading to the impugned detention order. There may have existed sufficient grounds to appeal against the bail orders, but the circumstances did not warrant the circumvention of ordinary criminal procedure to resort to an extraordinary measure of the law of preventive detention."
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> 60. In Vijay Narain Singh v. State of Bihar [Vijay Narain Singh v. State of Bihar, (1984) 3 SCC 14 : 1984 SCC (Cri) 361], Hon'ble E.S. Venkataramiah, J. (as the Chief Justice then was) observed : (SCC pp. 35-36, para 32)
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> > 32. … It is well settled that the law of preventive detention is a hard law and therefore it should be strictly construed. Care should be taken that the liberty of a person is not jeopardised unless his case falls squarely within the four corners of the relevant law. The law of preventive detention should not be used merely to clip the wings of an accused who is involved in a criminal prosecution. It is not intended for the purpose of keeping a man under detention when under ordinary criminal law it may not be possible to resist the issue of orders of bail, unless the material available is such as would satisfy the requirements of the legal provisions authorising such detention. When a person is enlarged on bail by a competent criminal court, great caution should be exercised

9 (2023) 9 SCC 587

> in scrutinising the validity of an order of preventive detention which is based on the very same charge which is to be tried by the criminal court."
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> (Emphasis supplied)

22. Keeping in view the above expositions of law, we have no doubt that the order of detention cannot be sustained. The circumstances pointed out in the order by the detaining authority may be ground enough for the State to approach the competent Courts for cancellation of bail, but it cannot be said that the same warranted his preventive detention. We clarify that if such an application for cancellation of the detenu's bail is made by the respondent-State, the same must be decided uninfluenced by the observations made hereinabove.

23. Therefore, the order of detention dated 20th June, 2024 and the impugned judgment dated 4th September, 2024 passed by the High Court of Kerala at Ernakulam in WP(CRL.) No.874/2024 are hereby set aside. In the attending facts and circumstances of this case, the appeal is allowed.

Pending application(s), if any, shall stand disposed of.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Divya Pandey