

Kuttiyali P vs State Of Kerala on 30 September, 2026

Author: [Anil K. Narendran](#)

Bench: [Anil K. Narendran](#)

CNR: KLHC010586602026

W.P.(CRL.)No.1202 of 2026

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2026:KER:74656

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

&

THE HONOURABLE MR. JUSTICE MURALEE KRISHNA S.

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2026 / 8TH ASWINA, 1948

WP(CRL.) NO. 1202 OF 2026

CRIME NO.997/2025 OF Medical College Police Station, Kozhikode

PETITIONER:

KUTTIYALI P.
AGED 69 YEARS
S/O HUSSAIN, VADAKKUNGARA(HO) PULIKKAL(PO),
MALAPPURAM DISTRICT, PIN – 673637

BY ADVS.
SRI.M.DEVESH
SRI.M.ANUR00P

SMT.JYOTHIS MARY
SMT.S.K.SREELAKSHMY
SHRI.MURSHID ALI M.

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM, PIN – 682031
- 2 THE ADDITIONAL CHIEF SECRETARY
HOME DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, PIN – 695001
- 3 THE DISTRICT POLICE CHIEF
DISTRICT POLICE OFFICE, DPO ROAD,
MALAPPURAM DISTRICT, PIN – 676505
- 4 THE SUPERINTENDENT
CENTRAL PRISON, POOJAPPURA,
THIRUVANANTHAPURAM, PIN – 695012

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ADDL.R5 UNION OF INDIA
REPRESENTED BY THE SECRETARY (REVENUE),
DEPARTMENT OF REVENUE, MINISTRY OF FINANCE,
KARTAVYA BHAVAN-I, NEW DELHI – 110001
(ADDL.R5 IMPEADED VIDE ORDER DATED 10/08/2026 IN IA
1/26)

BY ADVS.
SMT.GAYATHRI KRISHNAN, CGC
SMT. REEHA KHADER SR. GP

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON
16.09.2026, THE COURT ON 30.09.2026 DELIVERED THE FOLLOWING:

CNR: KLHC010586602026

JUDGMENT

Muralee Krishna S., J.

This W.P.(Criminal) is filed by the father of the detainee, namely, Mr. Shihabudheen P., challenging Ext.P2 order dated 28.03.2026 issued under [Section 3\(1\)](#) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 ('[PIT NDPS Act](#)' for short) by the 2nd respondent Additional Chief Secretary and Ext.P6 order dated 25.07.2026 issued by the 1st respondent State on Ext.P5 representation dated 14.07.2026 submitted by the petitioner. Apart from a writ of certiorari to quash these orders, the petitioner has also sought a writ of habeas corpus commanding the respondents to produce the detainee and set him at liberty forthwith, contending that his detention in the Central Prison, Poojapura, is illegal.

2. The pleadings and materials would show that this is the second writ petition filed by the petitioner challenging Ext.P2 detention order dated 28.03.2026. In the earlier round of litigation, in W.P.(Crl.)No.795 of 2026, the petitioner contended that Ext.P2 detention order was not communicated to the detainee and the petitioner was unaware of the fate of the proceedings pending before the Advisory Board. By Ext.P4 CNR: KLHC010586602026 W.P. (CRL.)No.1202 of 2026 4 2026:KER:74656 judgment dated 07.07.2026, a Division Bench of this Court headed by the Honourable the Chief Justice disposed of that writ petition, directing the Government to reconsider the order of detention, after giving a reasonable opportunity of hearing to the petitioner/detenu and the detainee was permitted to be represented by a lawyer during the hearing. Paragraphs 12, 13 and the last paragraph of that judgment read thus:

"12. However, having regard to the order passed on 01.04.2026, we direct the Government to reconsider the order of detention after giving a reasonable opportunity of hearing to the petitioner/detenu. The detenu will be permitted to be represented by a lawyer.

13. The Government shall decide whether having regard to the order passed on 01.04.2026, there is a requirement to continue with preventive detention within a period of two weeks from the date of representation by a reasoned order to be communicated to the petitioner and the detenu within a week thereafter. Otherwise we are satisfied with the grounds for preventive detention having regard to past antecedents of the petitioner and the materials available being considered by the Sponsoring Authority, the Detaining Authority, and the Advisory Board.

The Writ Petition is disposed of. The sealed cover along with the original documents produced by the learned Public Prosecutor is returned forthwith."

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3. In the present writ petition, the petitioner contends that after Ext.P4 judgment, though the petitioner submitted Ext.P5 representation dated 14.07.2026 and the Government passed Ext.P6 order dated 25.07.2026, the reason to continue the detention as directed in Ext.P4 judgment is not considered by the Government and reflected in Ext.P6 order. According to the petitioner, Ext.P6 is a mechanical order passed by the Government and, therefore, the detention order is liable to be set aside.

4. On behalf of the 2nd respondent, a counter affidavit dated 10.09.2026 is filed in the writ petition opposing the reliefs sought for and detailing the steps taken for issuing the detention order. The learned counsel for the additional 5th respondent filed a statement dated 12.09.2026 stating that no representation addressed to the Central Government has ever been received by the PITNDPS division till date.

5. Heard the learned counsel for the petitioner, the learned Senior Government Pleader and also the learned Central Government Counsel.

6. When the learned counsel for the petitioner CNR: KLHC010586602026 W.P. (CRL.)No.1202 of 2026 6 2026:KER:74656 vehemently submitted that the Government did not properly consider the direction in Ext.P4 judgment, and the reason to continue the detention order is not reflected in Ext.P6 order, the learned Senior Government Pleader stuck on to the point that the contentions raised by the learned counsel for the detainee who appeared on behalf of the detainee at the time of hearing before the Government were considered in detail and a subjective satisfaction to continue the detention was arrived at by the Government after a detailed examination of those contentions. According to the learned Senior Government Pleader, there is no necessity to interfere with the detention order. The learned Central Government Counsel submitted that, since the Central Government has not received any representation from the detainee, it has no role in the present case.

7. We have carefully perused the materials on record and appreciated the rival submissions made at the Bar. In the present case, Ext.P1 proposal dated 04.02.2026 was submitted by the 3rd respondent for initiating action against the detainee under [Section 3\(1\)](#) of the PITNDPS Act before the 2nd CNR: KLHC010586602026 W.P.(CRL.)No.1202 of 2026 7 2026:KER:74656 respondent. Altogether, three cases of drug peddling were taken into consideration by the 2nd respondent to order preventive detention of the detainee under [Section 3\(1\)](#) of the PITNDPS Act. From the counter affidavit filed on behalf of the 2nd respondent, we notice that Ext.P2 order was confirmed by the Government on 23.05.2026. By the order dated 01.04.2026 in Bail Application No.1898 of 2026, the bail application filed by the detainee in Crime No.1131 of 2025 of Kondotty Police Station, which was one of the cases considered by the Detaining Authority, was dismissed by the learned Single Judge.

8. In Ext.P4 judgment, as extracted above, this Court already held that this Court is satisfied with the grounds for preventive detention having regard to the past antecedents of the detainee and the materials available being considered by the Sponsoring Authority, Detaining

Authority and the Advisory Board. Therefore, the only point to be considered at present is whether the direction in Ext.P4 judgment was complied with by the Government while issuing Ext.P6 order.

9. Ext.P5 is the representation dated 14.07.2026 submitted by the petitioner, after Ext.P4 judgment, before the CNR: KLHC010586602026 W.P.(CRL.)No.1202 of 2026 8 2026:KER:74656 Government. Though the petitioner contends that the Government did not consider the necessity of continuing the detention order in Ext.P6 order, we notice from Ext.P6 order that the Government has considered the contentions raised by the learned counsel for the detenu before the Government at the time of hearing on 22.07.2026 at 10.30 a.m. After detailed examination, the Government arrived at certain conclusions which are stated in paragraph 8 of that order as extracted below:

"8. In the above circumstances, Government have examined the matter in detail and arrived at the following conclusions: i. The detenu is an active synthetic drug peddler who has committed three crimes under the [NDPS Act](#), including two involving commercial quantities.

ii. The 9th paragraph of the detention order clearly mentions that the detenu is continuing in judicial custody in Crime No. 1131 of 2025 of Kondotty Police Station. Therefore, the live link to the last crime remains unbroken. Since the detenu was already in judicial custody, there was no delay in issuing the detention order.

iii. The detenu committed his 2nd & 3rd crime while on bail in Crime No. 1495 of 2023 by violating bail conditions imposed by the Hon'ble Court. iv. Considering his criminal antecedents, it is evident that if he is released on bail, he is likely to violate the CNR: KLHC010586602026 W.P.(CRL.)No.1202 of 2026 9 2026:KER:74656 conditions and continue indulging in drug peddling. v. The Hon'ble High Court in B.A. No.1898 of 2026 dated 01.04.2026 dismissed the bail application submitted by the detenu in Crime No.1131 of 2025 of Kondotty Police Station citing the fact that the detenu involved in another crime under [section 22\(c\)](#) of the NDPS Act, i.e. Crime No.1495 of 2023 of Kondotty Police Station."

10. On appreciating Ext.P6 order, we find no substance in the contentions raised by the petitioner that the Government did not give any reason to continue the detention order while rejecting Ext.P5 representation submitted by the petitioner. The subjective satisfaction arrived at by the Government is reflected in Ext.P6 order.

11. It is also relevant to note at this juncture that this Court, while exercising jurisdiction under [Article 226](#) of the Constitution of India, does not sit in appeal over the decision taken by the detaining authority based on the materials placed before the said authority as to whether preventive detention is necessary or warranted. If there are materials, it is not open to this Court to sit in appeal over the subjective satisfaction arrived at by the detaining authority. (See: [George v. State of Kerala](#) [2010 (4) KLT 416] and [Aaliya Ashraf v. State of Kerala](#) [2025 (1) KLT SN 15]). True that such interference is possible CNR: KLHC010586602026 W.P.(CRL.)No.1202 of 2026 10 2026:KER:74656 if no materials at all are there for arriving at such subjective satisfaction by the detaining authority, or if the order

of the detaining authority is vitiated by mala fides, or if it was issued by reference to and placing reliance on materials which cannot legally be taken note of. In the present case, from the pleadings and materials on record, it is not made out that the subjective satisfaction arrived at by the authorities concerned is vitiated by any of the aforesaid circumstances.

12. Having considered the pleadings and materials on record and the submissions made at the Bar, we find no sufficient reason to hold that the impugned Exts.P2 and P6 orders are suffering from any illegality, which warrants interference by this Court by exercising extraordinary jurisdiction of this Court under [Article 226](#) of the Constitution of India. In the result, this writ petition stands dismissed.

Sd/-

ANIL K. NARENDRAN, JUDGE Sd/-

MURALEE KRISHNA S., JUDGE nak CNR: KLHC010586602026 W.P.(CRL.)No.1202 of 2026 11 2026:KER:74656 APPENDIX OF WP(CRL.) NO. 1202 OF 2026 PETITIONER EXHIBITS Exhibit P1 THE TRUE COPY OF THE PROPOSAL DATED 04.02.2026 SUBMITTED BY RESPONDENT NO.3 FOR INITIATING ACTION AGAINST THE DETENU UNDER SECTION 3(1) OF THE PITNDPS ACT, 1988 BEFORE RESPONDENT NO.2 Exhibit P2 THE TRUE COPY OF THE DETENTION ORDER (NO.

SSC3/58/2026-HOME) DATED 28.03.2026 PASSED BY THE RESPONDENT NO.2 Exhibit P3 THE TRUE COPY OF BAIL ORDER IN BA NO. 1898 OF 2026 DATED 01.04.2026 Exhibit P4 THE TRUE COPY OF JUDGMENT IN WP(CRL) NO.

795/2026 DATED 07.07.2026 Exhibit P5 THE TRUE COPY OF REPRESENTATION SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT DATED 14.07.2026 Exhibit P6 THE TRUE COPY OF THE ORDER DATED 25.07.2026 ISSUED BY THE 2ND RESPONDENT