Shamila Sadiq vs State Of Kerala on 13 November, 2026

Author: Anil K. Narendran

Bench: Anil K. Narendran

CNR : KLHC010683642026

2026:KER:86841

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

&

THE HONOURABLE MR. JUSTICE MURALEE KRISHNA S.

FRIDAY, THE 13TH DAY OF NOVEMBER 2026 / 22ND KARTHIKA, 1948

WP(CRL.) NO. 1388 OF 2026

CRIME NO.311 OF 2026 OF PONNANI POLICE STATION

PETITIONER:

SHAMILA SADIQ
AGED 26 YEARS
W/O SADIQ, KOLATHERI HOUSE, SI PADI VELIYANKODE,
PONNANI, MALAPPURAM, PIN - 679579

BY ADVS.

SHRI.M.H.HANIS
SMT.T.N.LEKSHMI SHANKAR
SMT.NEETHU.G.NADH
SHRI.SAHAD M. HANIS
SMT.AJINRAJ V.T.
SHRI.MUHAMMAD A. P.

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,
MALAPURAM DISTRICT, PIN – 676505

3 THE DISTRICT POLICE CHIEF
MALAPURAM DISTRICT, PIN – 676504

4 THE CHAIRMAN
ADVISORY BOARD, KAAPA, SREENIVAS, PADAM ROAD,
VIVEKANANDA NAGAR, ELAMAKKARA, PIN – 682026

5 THE SUPERINTENDENT OF JAIL,
HIGH SECURITY PRISON, VIYYUR, PIN – 670004

BY ADVS.
SMT.REEHA KHADER.K, SENIOR GOVERNMENT PLEADER
SHRI.M. MUHAMMED SHAFI, ADDL.STATE PUBLIC PROSECUTOR

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON 11.11.2026, THE COURT ON 13.11.2026 PASSED THE FOLLOWING:

JUDGMENT

Muralee Krishna, J.

The petitioner, who is the wife of the detenue, namely Sadiq, aged 32 years, S/o Razak, Kolatheri House, SI Padi, Veliyankode, Ponnani, Malappuram, who has been detained in High Security Prison, Viyyur, filed this writ petition under Article 226 of the Constitution of India, seeking a writ of certiorari to quash Ext.P1 detention order dated 01.07.2026 issued by the 2nd respondent District Collector and District Magistrate under Section 3(1) of the Kerala Anti-Social Activities (Prevention) Act, 2007 ('KAA (P) Act' for short), Ext.P2 order dated 15.07.2026 issued by the Government, approving Ext.P1 order under Section 3(3) of the KAA(P) Act and Ext.P3 order dated 05.09.2026 issued by the Government under Section 10(4) of the KAA (P) Act, confirming the detention for a period of six months with effect from the date of detention. The petitioner has also sought for a writ of Habeas Corpus commanding the respondents to produce the detenue and set him at liberty forthwith, contending that his detention is illegal.

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2. The pleadings and materials on record would show that for ordering preventive detention of the detenue by classifying him as a 'known rowdy', the authorities have taken into consideration 5 criminal cases in which the detenue was involved. The last prejudicial activity in which the detenue was involved, considered by the detaining authority, is Crime No.311 of 2026 of Ponnani Police Station, registered for the offences under Sections 118(1), 110, 324(1) and 324(4) of the Bharatiya Nyaya Sanhita, 2023 ('BNS' for short). The incident of the last prejudicial activity occurred on 22.03.2026. The detenue was arrested in that crime on 02.05.2026 and was granted bail on 04.05.2026. Thereafter, the 3rd respondent District Police Chief, Malappuram, submitted the sponsoring report dated 11.05.2026 to the 2nd respondent, seeking an order under Section 3(1) of the KAA (P) Act. Based on the said report, Ext.P1 detention order was issued by the 2 nd respondent, which was executed on 04.07.2026. Being aggrieved, the petitioner is now before this Court with this writ petition.

3. On behalf of the 1st respondent, a counter affidavit CNR : KLHC010683642026 2026:KER:86841 5 W.P.(Crl.)No.1388 of 2026 dated 03.11.2026 has been filed in the writ petition, opposing the reliefs sought for and producing therewith Exts.R1(a) and R1(b) documents. The steps taken for issuing the detention order are stated in that counter affidavit in detail.

4. Heard Shri. M. H. Hanis, the learned counsel for the petitioner and Smt. Reeha Khader K., the learned Senior Government Pleader.

5. The learned counsel for the petitioner raised the following arguments impugning the detention order;

(1) Sections 7(1) and 7(2) of the KAA (P) Act are not complied with by obtaining the acknowledgement of the detenue, while serving copies of Ext.P1 detention order and the documents referred to in that order.

(2) Section 3(3) of the KAA (P) Act is not complied with by the 2nd respondent.

(3) Though Ext.P1 detention order speaks about an additional report dated 11.06.2026 submitted by the 3 rd respondent, a copy of such report has not been furnished CNR : KLHC010683642026 2026:KER:86841 6 W.P.(Crl.)No.1388 of 2026 to the detenue.

(4) The petitioner submitted Ext.P4 representation dated 09.07.2026 to the Government and the detenue submitted a representation dated 10.07.2026. However, the representation of the petitioner was considered only after Ext.P2 order, and the representation of the detenue was not at all considered by the Government and thus the constitutional safeguard guaranteed to the detenue is violated.

(5) There is unexplained and inordinate delay in issuing the detention order. For submitting the proposal itself, there is unexplained delay from the date of the last prejudicial activity.

(6) The detenue was previously subjected to another order under Section 3(1) of the KAA (P) Act, which was set aside by this Court. However, the reason for setting aside the earlier detention order is not considered in Ext.P1 order, which shows the non-application of mind.

CNR : KLHC010683642026 2026:KER:86841 7 W.P.(Crl.)No.1388 of 2026 (7) Ext.P3 confirmation order issued under Section 10(4) of the KAA (P) Act is not a speaking order.

(8) Though the prosecution has filed an application for cancellation of bail granted to the detenue in the penultimate crime due to his involvement in the last prejudicial activity, the 2nd respondent did not wait for the result of the bail cancellation petition for issuing Ext.P1 order and thus the ordinary criminal law remedy is not exhausted.

6. On the other hand, the learned Senior Government Pleader raised the following arguments refuting the arguments of the learned counsel for the petitioner;

(1) The acknowledgement of the detenue was obtained in all the documents supplied, as contemplated under Section 7(2) of the KAA (P) Act. The copy of the additional report dated 11.06.2026 submitted by the 3rd respondent was also furnished to the detenue. To prove these facts, the learned Senior Government Pleader made available for our perusal CNR : KLHC010683642026 2026:KER:86841 8 W.P.(Crl.)No.1388 of 2026 the acknowledged copies of the documents supplied to the detenue.

(2) The representation submitted by the petitioner was considered by the Government on 18.07.2026, and the order issued on that date was sent to the petitioner, as evident from Ext.R1(a) order dated 18.07.2026 and Ext.R1(b) despatch particulars of the said order produced along with the counter affidavit. The representation dated 10.07.2026 submitted by the detenue was considered in Ext.P3 confirmation order and intimated to the detenue.

(3) Section 3(3) of the KAA (P) Act has been complied with immediately after the issuance of Ext.P1 order, and within the time limit, Ext.P2 order was issued.

(4) By pointing out the explanation in paragraph No.12 of Ext.P1 detention order, the learned Senior Government Pleader argued that there is no unexplained and inordinate delay in issuing the detention order.

(5) The non-mentioning of the reason for setting aside the CNR : KLHC010683642026 2026:KER:86841 9 W.P.(Crl.)No.1388 of 2026 earlier detention order is not material since it is a fresh step taken under Section 3(1) of the KAA (P) Act after the involvement of the detenue in another criminal activity, which is the last prejudicial activity taken into consideration in Ext.P1 order.

(6) Ext.P3 order of confirmation cannot be said as a non-

speaking order since all the relevant materials, including Ext.P1 detention order, are taken into consideration for fixing the period of detention in that order.

(7) The exhaustion of the ordinary criminal law remedy of bail cancellation is not required to be exhausted before issuing the detention order, since the parameters to be taken into consideration for cancellation of bail and to issue an order of preventive detention are entirely different.

7. We have perused the pleadings and materials on record and appreciated the rival submissions made at the Bar. The learned counsel for the petitioner as well as the learned Senior Government Pleader placed reliance on various judgments of the CNR : KLHC010683642026 2026:KER:86841 10 W.P.(Crl.)No.1388 of 2026 Apex Court as well as this Court in support of their arguments. We will deal with the relevant among them in the later part of this judgment.

8. From the acknowledged copies of the documents supplied to the detenue made available by the learned Senior Government Pleader for our perusal, we notice that the additional report dated 11.06.2026 submitted by the 3rd respondent was also furnished to the detenue. In all the pages of those documents supplied to the detenue, he acknowledged the receipt of the same in his handwriting, and all those documents are legible. The right of the detenue to submit representation against Ext.P1 order has been stated in that order itself. Therefore, the arguments of the learned counsel for the petitioner that the detaining authority has not complied with Sections 7(1) and 7(2) of the KAA (P) Act and also that the detenue was not supplied with the additional report dated 11.06.2026 submitted by the 3rd respondent, hold no merit.

9. From Ext.P2 order of approval, we notice that the said order was issued on 15.07.2026, which is within 12 days of Ext.P1 CNR : KLHC010683642026 2026:KER:86841 11 W.P. (Crl.)No.1388 of 2026 order, after excluding the public holidays as provided under Section 3(3) of the KAA (P) Act. There is nothing on record to show that the documents referred to in Ext.P1 detention order were not forwarded to the Government for approval of Ext.P1 order.

Therefore, the aforesaid argument of the learned counsel for the petitioner that Section 3(3) of the KAA (P) Act was not complied by the detaining authority also holds no merit.

10. While coming to the argument of the learned counsel for the petitioner regarding belated consideration of Ext.P4 representation submitted by the petitioner and non-consideration of the representation submitted by the detenue, it can be seen that Ext.P4 representation submitted by the petitioner was considered by the Government on 18.07.2026 and the result of the same was intimated to the petitioner by sending that order through post on the very same day as evident from the pleadings in the counter affidavit and also from Exts.R1(a) and R1(b) documents. At the same time, admittedly, the representation submitted by the detenue on 10.07.2026 was not independently CNR : KLHC010683642026 2026:KER:86841 12 W.P. (Crl.)No.1388 of 2026 considered by the Government, either before or after the approval of the detention order. In Ext.P3 confirmation order issued under Section 10(4) of the KAA (P) Act, the representation submitted by the detenue is referred to as item No.6. But the contentions taken in that representation are not considered in Ext.P3 confirmation order.

11. In Fathimath Thasneem V. K. v. Union of India [2026 KHC OnLine Ker. 801], this Court, while dealing with the challenge raised against the preventive detention of her husband in a writ petition filed by the wife of the detenue therein under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 ('PITNDPS Act' for short) held thus;

> "23. In the instant Case, Ext.P3 representation was submitted by the detenue before the 1st respondent on 18.04.2026. From paragraph 4 of the counter affidavit filed by the 1st respondent, it can be seen that the said representation was considered by the Secretary, Department of Revenue, on behalf of the 1st respondent only on 08.06.2026. The said order was communicated to the detenue only on 18.06.2026. The authority of the 1st CNR : KLHC010683642026 2026:KER:86841 13 W.P. (Crl.)No.1388 of 2026 respondent to consider the representation in the matter of detention under the provisions of the PITNDPS Act, even in the case of ordering of preventive detention by the State Government, is derivable from Article 22(5) of the Constitution of India read with Section 12 and Section 13 of the PITNDPS Act. It is trite that when a representation is submitted by the detenue to the Central Government, its independent consideration is mandated as expeditiously as possible. The delay in consideration of the representation is a denial of a constitutional safeguard guaranteed to the detenue.
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> 24. In K. M. Abdulla Kunhi [(1991) 1 SCC 476] and Ankit Ashok Jalan v. Union of India [(2020) 16 SCC 127], the issue was non - consideration of the representation made to the appropriate Government, which was kept pending for receiving report from the Advisory Board. But, the facts of the present case are different, wherein Ext.P3 representation is made to the Central Government.
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> 25. Moreover, the Apex Court in Pramod Singla v. Union of India [2023 SCC OnLine SC 374], which is an appeal directed against the judgment of the High Court of Delhi at New Delhi, in a writ petition filed by the appellants, whereby the plea to quash the detention order against him on grounds of delay in considering his representation

was denied, considered whether there is any conflict between CNR : KLHC010683642026 2026:KER:86841 14 W.P.(Crl.)No.1388 of 2026 the principles of law laid down in K. M. Abdulla Kunhi & B. L. Abdul Khader v. Union of India [(1991) 1 SCC 476] and Ankit Ashok Jalan v. Union Of India [(2020) 16 SCC 127] both of which are Constitution Bench judgments, which state that the Central Government must wait for the decision of the Advisory Board, with the Constitution Bench judgments of the Apex Court in Pankaj Kumar Chakrabarty v. State of West Bengal [(1969) 3 SCC 400] and the Jayanarayan Sukul v. State of West Bengal [(1970) 1 SCC 219]. After considering the ratio of the law laid down in the judgments, in Pramod Singla [2023 SCC OnLine SC 374], the Apex Court held thus:

"33. If we read the Pankaj Kumar Chakraborty and Ors. v. State of West Bengal [(1969) 3 SCC 400] in light of this distinction between the specially empowered officer and the Government in the COFEPOSA Act, we find that there exists no friction between the Pankaj Kumar Judgment (Supra) and the Abdullah Kunhi Judgement (Supra), since the Pankaj Kumar Judgement, while mandating the central Government to not wait for the decision of the Advisory Board, only does so because the central Government is the detaining officer in the Preventive Detention Act. In simpler terms, this would mean that the mandate to not wait for the decision of the Advisory Board is effectively not for the central Government, but only for the detaining officer.

34. In the COFEPOSA Act, since the detaining authority CNR : KLHC010683642026 2026:KER:86841 15 W.P.(Crl.)No.1388 of 2026 is separate from the Government, both, the Pankaj Kumar Judgment (supra) and the Abdullah Kunhi Judgment (supra) would apply, but in different spheres.

The Pankaj Kumar Judgment (supra), since it was rendered in the context of the Government being the detaining authority, would be applicable only to the detaining authority / specially empowered officer under the COFEPOSA Act. The Abdullah Kunhi Judgment (supra) however, since it was rendered in the context of the COFEPOSA Act, the mandate thereunder would squarely apply only to the Government, and not the detaining authority. In simpler terms, this would mean that the mandate to not wait for the Advisory Board would be applicable only to the detaining authority. The Government, however, as per the Abdullah Kunhi Case (supra), must wait for the decision of the Advisory Board. Since these two judgments exist symbiotically and apply to two separate authorities within the COFEPOSA Act, there exists no friction between the judgments, and hence there is no necessity for this point of law to be referred to a Larger Bench since the same is already settled. This application of both the judgments in two separate spheres within the same act has been clarified in the Ashok Jalan Judgment (supra), the relevant extract from the said judgment is being extracted hereunder:

"We are conscious that the view that we are taking, may lead to some incongruity and there could be clear dichotomy when the representations are made simultaneously to such CNR : KLHC010683642026 2026:KER:86841 16 W.P. (Crl.)No.1388 of 2026 specially empowered officer who had passed the order of detention and to the appropriate Government. If we go by the principle in para 16 in

> K. M. Abdulla Kunhi [K. M. Abdulla Kunhi v. Union of India,[(1991) 1 SCC 476 : 1991 SCC (Cri) 613]. it would be proper for the appropriate Government to wait till the report was received from the Advisory Board, while at the same time the specially empowered officer who had acted as the detaining authority would be obliged to consider the representation with utmost expedition. At times a single representation is prepared with copies to the detaining authority, namely, the specially empowered officer and to the appropriate Government as well as to the Advisory Board. In such situations there will be incongruity as stated above, which may be required to be corrected at some stage. However, such difficulty or inconsistency cannot be the basis for holding that a specially empowered officer while acting as a detaining authority would also be governed by the same principles as laid down in para 16 of K. M. Abdulla Kunhi [K. M. Abdulla Kunhi v. Union of India, [(1991) 1 SCC 476 : 1991 SCC (Cri) 613]."

35. In light of the abovementioned discussions, it can be clearly seen that any apparent conflict, as contended by the appellant, stands resolved, and both sets of judgments operate symbiotically and harmoniously within the said Act, without there existing any tension between them. The mandate to wait for the decision of the Advisory Board, as per the Pankaj Kumar Judgment (Supra), would apply to the central Government, CNR : KLHC010683642026 2026:KER:86841 17 W.P.(Crl.)No.1388 of 2026 however, the detaining authority, being independent of the Government, can pass its decision without the decision of he Advisory Board. Since no conflict exists, the need to refer the point of law to a Larger Bench also ceases, and hence we hold issue No.1 in favour of the Respondents.

ISSUE II - If there exists no friction between the two Constitutional judgments of this Court, can the impugned detention order be quashed on grounds of the 60 - day delay in consideration of the representation made by the appellant?

36. In the present case at hand, the appellant - detenue, availing his rights sent a representation to both, the specially empowered officer and the Government. The detaining authority in the present case decided on the representation expeditiously and without waiting for the decision of the Advisory Board, and hence, did not violate the Pankaj Kumar Judgment (supra).

37. The Government in the present case at hand, did decide to wait for the decision of the Advisory Board. This was also done in accordance with the decision of the Abdullah Kunhi case (supra), since the Government, being a separate authority, is bound to wait for the decision of the Advisory Board.

38. In light of the abovementioned discussions, it can be seen that both, the detaining authority, and the Government, have worked precisely within the procedure established by law, and hence the impugned detention CNR : KLHC010683642026 2026:KER:86841 18 W.P.(Crl.)No.1388 of 2026 order is not liable to be struck down on this ground. We therefore hold Issue II in favour of the respondent."

26. In the instant case, there is no explanation forthcoming from the part of the 1st respondent for the delay in considering Ext.P3 representation submitted by the detenue. Therefore, the delay in considering the representation submitted by the detenue adversely affected the

constitutional safeguard guaranteed to the detenue herein, rendering the detention void, which calls for interference of this Court by exercising extraordinary jurisdiction under Article 226 of the Constitution of India."

(Underline supplied)

12. In the judgment dated 11.08.2026 in W.P.(Crl.)No.715 of 2026 [2026:KER:61852], a Division Bench of this Court headed by the Hon'ble the Chief Justice, while considering a writ petition filed under Article 226 of the Constitution of India, challenging the detention of the detenue under the provisions of the KAA (P) Act, held thus;

> "5. It would appear that the Additional Chief Secretary, while confirming the detention order, has referred to the report of the Advisory Board, which admittedly did not consider the representation although the said representation was filed with the Government prior to the matter being considered by the Advisory Board. Hence it was incumbent upon the CNR : KLHC010683642026 2026:KER:86841 19 W.P. (Crl.)No.1388 of 2026 Government to consider the said representation independently before any order of detention can be passed taking into consideration that such order of detention, if continued, would further deprive the petitioner of personal life and liberty. If we were to construe the order of confirmation as an independent order, there has to be a meaningful consideration of the representation and mere use of the word 'afresh' would not suffice in the absence of any reason furnished, justifying the conclusion. The reason in an order gives clarity to the said order and having regard to the fact that the said order is reviewable it was incumbent upon the authorities concerned to disclose the reasons even briefly so that the mind of the authorities could be read and appreciated at the time of consideration of the order of confirmation.
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> 6. Reasons introduce clarity and minimize arbitrariness; therefore, an order which does not disclose the grounds on which the representation was rejected is vitiated for non- disclosure of reasons and is violative of the principles of natural justice. The importance of the above has been succinctly explained in State of Haryana v. Ram Pal and Others, wherein the Apex Court, while emphasizing the necessity of giving reasons, observed that:
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> "10. Reason is the heartbeat of every conclusion, and without the same it becomes lifeless. (See Raj Kishore Jha v. State of Bihar and Ors. (2003 (7) Supreme 152).
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> 11. Even in respect of administrative orders Lord Denning CNR : KLHC010683642026 2026:KER:86841 20 W.P.(Crl.)No.1388 of 2026 M.R. in Breen v. Amalgamated Engineering Union (1971 (1) All E.R. 1148) observed "The giving of reasons is one of the fundamentals of good administration". In Alexander Machinery (Dudley) Ltd. v. Crabtree (1974 ICR
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> 120)(NIRC) it was observed: "Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision-taker to the controversy in

question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity.

The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before the Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

(Underline supplied)

7. In the additional statement, the respondent authorities have disclosed a letter dated 23rd April, 2026 purportedly a communication made to the alleged detenu with regard to CNR : KLHC010683642026 2026:KER:86841 21 W.P.(Crl.)No.1388 of 2026 the representation. There is nothing on record to show that the said order was ever communicated to the petitioner. In any event, it is doubtful as to whether the representation was at all considered prior to 22nd April, 2024. Moreover, no opportunity of hearing was given to the petitioner before deciding the said representation unlike the procedure adopted by the Advisory Board in considering the representation before its opinion being forwarded to the Government. There has been no consideration of the representation at all. The letter dated 23rd April, 2026 is now disclosed to give an impression that the confirmation order was passed only after consideration of the said representation. There is no mention of the existence of any such order in the confirmation order alleged to have been passed on 22nd April, 2026 in disposing the representation. In any event, the petitioner was not given an opportunity of hearing. The alleged communication dated 23rd April, 2026 does not refer to the date when it was considered. If the matter was considered after 22nd April, 2026 it makes the matter worse for the State. Thus, there is a clear violation of the principles of natural justice."

(Underline supplied)

13. In the instant case, as already stated, though in Ext.P3 confirmation order the representation submitted by the detenue is referred, the contents of that representation are not considered CNR : KLHC010683642026 2026:KER:86841 22 W.P.(Crl.)No.1388 of 2026 anywhere in that order. It is the duty of the Government to independently consider the representation by a separate order or at least by referring to the contentions raised in the representation, while confirming the detention order. Since the same is not done in the present case, the constitutional safeguard guaranteed to the detenue under Article 22(5) of the Constitution of India is violated, rendering the detention void, which warrants interference of this Court by exercising extraordinary jurisdiction under Article 226 of the Constitution of India.

14. As rightly pointed out by the learned counsel for the petitioner, though the last prejudicial activity in the instant case was on 22.03.2026, the sponsoring report was submitted only on

11.05.2026. If the authorities had a genuine apprehension of repetition of offence by the detenue, what prevented them from initiating proceedings under Section 3(1) of the KAA (P) Act immediately after the commission of the last prejudicial activity by the detenue is nowhere mentioned in Ext.P1 order. Admittedly, the previous detention order issued against the detenue was set CNR : KLHC010683642026 2026:KER:86841 23 W.P.(Crl.)No.1388 of 2026 aside by this Court as per the judgment dated 14.08.2025 in W.P.(Crl.)No.975 of 2025, on the ground of delay in submitting the proposal for initiation of proceedings under Section 3(1) of the KAA (P) Act. The very same mistake has been committed in the present detention order also. This unexplained delay in making the proposal snaps the live link between the last prejudicial activity and the detention order.

15. While coming to the argument of the learned counsel for the petitioner regarding absence of reasons in Ext.P3 for ordering six months detention, from Ext.P3 order, it can be seen that the Government has considered all the relevant materials including Ext.P1 detention order. Therefore, it cannot be said that it was without sufficient reason the period of detention was ordered to be undergone for six months.

16. Lastly, as far as the argument of the learned counsel for the petitioner regarding non-exhaustion of the ordinary criminal law remedy of cancellation of bail is concerned, it can be seen that in Sajina C. V. v. Union of India [2026 KHC OnLine CNR : KLHC010683642026 2026:KER:86841 24 W.P.(Crl.)No.1388 of 2026 936] this Court considered a similar argument raised by the petitioner therein against the order of preventive detention issued under Section 3(1) of the PITNDPS Act and held thus;

> "15. In Rekha v. State of Tamil Nadu [(2011) 5 SCC 244], in the case of detention order passed under the provisions of the of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, and Slum Grabbers and Video Pirates Act, 1982 , on the allegation that the detenue therein was selling expired drugs after tampering with the labels and printing fresh labels showing them as non-expired drugs, the Apex Court held thus:
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> "30. Whenever an order under a preventive detention law is challenged one of the questions the court must ask in deciding its legality is : Was the ordinary law of the land sufficient to deal with the situation? If the answer is in the affirmative, the detention order will be illegal. In the present case, the charge against the detenu was of selling expired drugs after changing their labels. Surely the relevant provisions in the Indian Penal Code and the Drugs and Cosmetics Act were sufficient to deal with this situation. Hence, in our opinion, for this reason also the detention order in question was illegal".

(Underline supplied)

16. In Jancy Joseph v. State [2022 KHC Online 5717], CNR : KLHC010683642026 2026:KER:86841 25 W.P.(Crl.)No.1388 of 2026 a Division Bench of this Court, while considering a writ petition filed by the mother of the detenue therein against the detention order issued under Section 3(1) of the KAA(P) Act, held thus;

"26. After hearing both sides, we see that the only case involving non bailable offences is the first case, which has been committed on 14.02.2019. Therein, the detenue has been granted bail, as per Ext.P5 bail order dated 09.04.2019. The second and third cases are both bailable offences. The second case has been committed on 23.12.2019. The third crime, which also involves bailable offences, is said to have been committed on 07.03.2022. Going by the nature of the three cases, more particularly the second and third cases, it can be seen that the aspects regarding consideration of the option of bail cancellation of the first case is certainly relevant, in the facts and circumstances of this case. This is all the more so, since this is the first detention order involved in the detenu's case and only 3 cases are alleged against the detenu, in which the last 2 are bailable offences. Hence, in the light of the facts and circumstances of this case, we are of the view that the detaining authority should have, at least, considered as to the viability and feasibility of the option of bail cancellation, in respect of the bail granted in the first case, and considered as to whether recourse to such ordinary process of criminal law would have been sufficient to meet the scenario in hand, instead CNR : KLHC010683642026 2026:KER:86841 26 W.P.(Crl.)No.1388 of 2026 of proceeding with the extreme measure of preventive detention. We are only saying that, in the facts of this case, the consideration of such an option was highly relevant and crucial, and the detaining authority should have pointedly considered the said option, and if, after due consideration, the detaining authority had come with the same conclusion, as the one now urged before us by the learned Prosecutor, and had held that the said option was not feasible at all to meet with the objective of preventing the detenu from committing further prejudicial acts, then, certainly, the scenario would have been entirely different. Since, consideration of such an option was relevant and crucial, in the facts and circumstances of a case of this nature, for the abovesaid reasons, and as the said aspect has not been considered at all, we are of the view that non consideration of such a crucial and relevant aspect has to be held as fatal to the decision making process, which has led to the impugned Ext.P2 detention order.

27. The scenario would have been entirely different if the detaining authority had considered these aspects of feasibility and viability of the option of bail cancellation, and after such pointed consideration, the detaining authority had come to the present conclusion that, such an option was not feasible and viable to meet with the imperatives of the situation, then the matter would have been, certainly, beyond the province of judicial review interdiction. Such is not the instant case. We are not, for CNR : KLHC010683642026 2026:KER:86841 27 W.P.(Crl.)No.1388 of 2026 a moment, saying that in all cases, such option should necessarily be mechanically pursued. All what we are saying is that, going by the material particulars of the present facts before us, which we have delineated above, consideration of such an option was highly crucial and relevant, and total non consideration of that aspect would disclose a non application of mind in that crucial area, which was, as far as the present case is concerned, fatal and therefore, the decision making process, which led to Ext.P1 detention order, has to be held as being vitiated.

> 28. We have to bear in mind that, at the end of the day, what is involved is the curtailment of the personal liberties and freedoms of the detenu, which are guaranteed in terms of the safeguards contained in Article 21 and Article 22 of the Constitution of India. Hence, in view of the facts and circumstances of the present case and in view of the non consideration of the said aspects, we are of the view that the impugned detention order is liable to be interdicted on that sole ground and hence, the impugned Ext.P 2 detention order is liable for quashment". (Underline supplied)

17. In Dhanya M. v. State of Kerala [2025 (4) KHC 637], the Apex Court, while considering an appeal filed against the judgment of this Court, affirming the preventive detention of the detenue therein issued under Section 3(1) of the KAA(P) Act held thus;

> "21. This Court in Shaik Nazneen v. State of CNR : KLHC010683642026 2026:KER:86841 28 W.P.(Crl.)No.1388 of 2026 Telangana [(2023) 9 SCC 633], 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 [(2023) 9 SCC 587], this Court observed :
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> "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."

60. In Vijay Narain Singh v. State of Bihar (Vijay Narain Singh v. State of Bihar [(1984) 3 SCC 14], Hon'ble E. S. Venkataramiah, J. (as the Chief Justice then was) observed:

> 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 CNR : KLHC010683642026 2026:KER:86841 29 W.P.(Crl.)No.1388 of 2026 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 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.

(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".

(Underline supplied)

18. Later in Sujodh K v. State of Kerala [2025 KHC Online 648], a Division Bench of this Court, while considering a writ petition filed challenging an order of CNR : KLHC010683642026 2026:KER:86841 30 W.P.(Crl.)No.1388 of 2026 preventive detention passed under Section 3 (1) of the KAA(P) Act, held thus;

> "10. We are not oblivious of the fact that detention under the KAA(P) Act or similar detention laws is a drastic measure against a citizen, especially when it heavily impacts their personal as well as fundamental rights. When an effective and alternative remedy exists to prevent a person from repeating criminal activities, resorting to detention under such laws is neither warranted nor permissible. However, merely because there is a provision for cancellation of bail under the ordinary criminal law, it cannot be said that an order of detention under the KAA(P) Act cannot be passed. When there is an imminent danger of repetition of criminal activities by a person who can be classified as 'known goonda' or 'known rowdy', cancellation of bail orders already secured by him would not be sufficient to deter such a person from indulging in criminal activities. The reason being, first of all, the purpose and scope of an application for cancellation of bail are different. That apart, since the procedure prescribed for cancellation of bail, having regard to the ground realities is time consuming, there is no assurance that an order of cancellation of bail could be secured before the person concerned indulges into another criminal activity. Preventive detention laws are enacted to address such exigencies. It is on account of these reasons that it has been held by the courts consistently that the authorities CNR : KLHC010683642026 2026:KER:86841 31 W.P.(Crl.)No.1388 of 2026 under the preventive detention laws need not have to wait till orders are passed on the application for cancellation of bail, for passing an order of detention. If it is held that, if there is an option for cancellation of bail, a detention order cannot be passed, it would render the preventive detention laws ineffective. In other words, it cannot be said as a general proposition of law that if there is an option for cancellation of bail already granted to a person, an order of detention cannot be passed against him, although there could be exceptions to this position.
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> 11. We have meticulously perused the decision of the Honourable Supreme Court in Dhanya M. v. State of Kerala [2025 (4) KHC 637] and it cannot be inferred from the judgment that the Honourable Supreme Court has held in the said case as a proposition of law that an order of detention cannot be passed, if an option is

available for cancellation of bail already granted. A reading of the judgment in Dhanya's case only indicates that the observation in paragraph 20 of the judgment regarding the application for cancellation of bail is one made on the facts of that case.

12. That apart, in Dhanya M. [2025 (4) KHC 637], the preventive detention order was passed based on the detenu's involvement in four cases, and in all the said four cases, the offences alleged was under S.17 of the Kerala Money Lenders Act and S.3 of Kerala Prohibition of Charging Exorbitant Interest Act, 2012. The Hon'ble Supreme Court set aside the order of detention mainly CNR : KLHC010683642026 2026:KER:86841 32 W.P.(Crl.)No.1388 of 2026 on a finding that the offences attributed to the detenu in those cases did not affect the maintenance of public order. Moreover, reiterating the observations in Nenavath Bujji v. State of Telangana and others [2024 SCC OnLine SC 367], the Hon'ble Supreme Court had drawn a clear distinction between the realms of law and order and public order. In paragraphs 19 and 20 of the said judgment, the Hon'ble Supreme Court observed as follows:

"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."

13. Essentially, the Hon'ble Supreme Court set aside the CNR : KLHC010683642026 2026:KER:86841 33 W.P.(Crl.)No.1388 of 2026 detention order in Dhanya M. [2025 (4) KHC 637] on a finding that the facts and circumstances were insufficient to classify the detenu's action as harmful for the maintenance of public order. Notably, the said detention order was passed based on the cases alleging offences under the Kerala Money Lenders Act and the Kerala Prohibition of Charging Exorbitant Interest Act, 2012 were alleged. It was mainly by taking note of the fact that the facts and circumstances in the said cases did not fall under the category of public order, the Hon'ble Supreme Court set aside the order of detention and made a finding that the State could approach the competent court for cancellation of bail.

14. However, in the case at hand, the cases considered by the detaining authority to pass the impugned order of detention are not cases registered alleging offences under the Kerala Money Lenders Act or Kerala Prohibition of Charging Exorbitant Interest Act, 2012. Rather, the impugned order of detention has been passed based on cases registered alleging offences under the NDPS Act and the IPC, which are certainly harmful for the maintenance of the public order, or will fall under the definition of anti - social activities. Therefore, the petitioner cannot be

heard to say that instead of passing the impugned order of detention, the remedy was to file an application for cancellation of bail".

(Underline supplied)

19. In the judgment dated 14.08.2026 in W.P.(Crl.) CNR : KLHC010683642026 2026:KER:86841 34 W.P.(Crl.)No.1388 of 2026 No.590 of 2026 [2026:KER:62707], a Division Bench of this Court, headed by the Hon'ble the Chief Justice, while considering a writ petition filed by the father of the detenue therein, challenging the order of preventive detention issued under Section 3(1) of the PITNDPS Act, held thus;

> "30. The materials placed before this Court further reveal that the detaining authority was fully aware of the fact that the detenu had already been enlarged on bail. The question, therefore, is not whether the detenu was in custody on the date of the detention order, but whether the detaining authority had arrived at a genuine subjective satisfaction that the ordinary criminal law and the conditions imposed while granting bail were inadequate to prevent the detenu from indulging in further prejudicial activities.
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> 31. Although it was open to the authority to apply for cancellation of the bail on the ground of violation of the earlier bail terms and conditions, it appears that the authority concerned has practically abandoned the application for cancellation of bail until an order was passed on 2nd July 2026 from the production of the said application. The application for cancellation of bail when considered in the context of the detention order, it shall be presumed that the authorities wanted to pursue an ordinary criminal law to prevent the alleged detenue from enlargement on bail. There is no consideration of that aspect of the matter either in the order of detention or in CNR : KLHC010683642026 2026:KER:86841 35 W.P.(Crl.)No.1388 of 2026 the final order of confirmation. The detaining authority observed that the present bail conditions in the order dated 13th November 2025 are not sufficient to curb his criminal activities since he has violated similar bail conditions that have passed which did not reflect upon the fact that the application for cancellation of bail was filed and whether the authority should wait till the outcome of the said application. In the event the authority is of the view that the application for cancellation of the bail would require some time to be considered and the alleged detenue if not detained in the meantime would be a threat to the society, then that should be reflected from the order of detention. In this regard reference may be made to the judgment of the Hon'ble Supreme Court in Adishwar Jain v. Union of India [(2006) 11 SCC 339] in which it was held as under:-
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> "15. Delay, as is well known, at both stages has to be explained. The court is required to consider the question having regard to the overall picture. We may notice that in Sk. Serajul v. State of W.B. [(1975) 2 SCC 78: 1975 SCC (Cri) 425] this Court opined: (SCC p. 80, para 2) "There was thus delay at both stages and this delay, unless satisfactorily explained, would throw considerable doubt on the genuineness of the subjective satisfaction of the District Magistrate, Burdwan recited in the order of detention. It would be reasonable to assume that if the District Magistrate of

> Burdwan was really and genuinely CNR : KLHC010683642026 2026:KER:86841 36 W.P.(Crl.)No.1388 of 2026 satisfied after proper application of mind to the materials before him that it was necessary to detain the petitioner with a view to preventing him from acting in a prejudicial manner, he would have acted with greater promptitude both in making the order of detention as also in securing the arrest of the petitioner, and the petitioner would not have been allowed to remain at large for such a long period of time to carry on his nefarious activities.
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> 32. The detention order is conspicuously silent as to the filing of the cancellation application. Equally absent is any consideration as to why statutory remedy for cancellation of the bail would either be unavailable or inadequate to prevent the detenue from indulging in further prejudicial activity. The very fact that the application for cancellation of bail has been filed would show that the authority concerned was satisfied that ordinary criminal law would be sufficient in the instant case. "

(Underline supplied)

20. Again, in Sulaiman M.V v. State of Kerala [2026 KHC Online 1994], a Division Bench of this Court headed by the Hon'ble the Chief Justice, while considering a writ petition filed challenging the detention order issued under Section 3 (1) of the PITNDPS Act, held thus;

> "52. Coming to the next ground that the proper course available to the authorities was to seek cancellation of bail rather than to invoke the drastic provisions of the PITNDPS Act, it is contended that the failure to adopt CNR : KLHC010683642026 2026:KER:86841 37 W.P.(Crl.)No.1388 of 2026 such a course demonstrates non - application of mind on the part of the detaining authority. However, it has to be seen that the detention order cannot be quashed on this ground alone, as the authorities concerned have specifically recorded that the continued detention of the detenu was necessary with a view to prevent him from engaging in illicit traffic in narcotic drugs and psychotropic substances. At this juncture, we refer to the decision of the Division Bench of this Court in Anandhu Shaji v. State of Kerala and Others [2025 SCC OnLine Ker. 14487], wherein it was held as follows:
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> "11. We are not oblivious to the fact that when an effective and alternative remedy exists to prevent a person from repeating criminal activities, resorting to detention under preventive detention laws is neither warranted nor permissible. However, merely because a remedy of bail cancellation is available, it cannot be said that a detention order under the PITNDPS Act cannot be passed. When there is an imminent danger of repetition of criminal activities by a person who indulges in drug peddling activities, cancellation of bail orders already secured by him would not be sufficient to deter such a person from indulging in criminal activities. The reason is that, first of all, the purpose and scope of an application for cancellation of bail and preventive detention are different. That apart, the bail cancellation procedure, having regard to the ground realities, is a time - consuming one. There is no assurance that an order of CNR : KLHC010683642026 2026:KER:86841 38 W.P.(Crl.)No.1388 of 2026 cancellation of bail could be secured in time before the

person concerned indulges in another criminal activity. Preventive detention laws are enacted to address such exigencies. It is on account of these reasons that it has been held by the courts consistently that the authorities under the preventive detention laws need not have to wait till orders are passed on the application for cancellation of bail, for passing an order of detention. If it is held that, if there is an option for cancellation of bail, a detention order cannot be passed, it would render the preventive detention laws ineffective. Moreover, even after the cancellation of bail, there is no legal impediment to granting bail subsequently. Therefore, it cannot be said that cancellation of bail is an effective alternative remedy, and when such an alternative remedy is available, a detention order is not at all necessitated."

(emphasis supplied)

53. On a perusal of the materials placed before us, it can be deduced that the authorities were fully conscious of the bail orders and the conditions imposed therein, but were nevertheless satisfied that such conditions had failed to act as an effective deterrent against the detenu's continued involvement in prejudicial activities. Having regard to the antecedents of the detenu, the repetitive nature of the offences alleged against him, and the likelihood of his persisting in similar activities in future, the authorities rightly concluded that recourse to ordinary remedies under the criminal law would not be CNR : KLHC010683642026 2026:KER:86841 39 W.P. (Crl.)No.1388 of 2026 sufficient to achieve the object of the preventive detention law". (Underline supplied)

21.From the principles stated in the aforementioned judgments regarding the necessity of the exhaustion of the ordinary criminal law remedy of cancellation of bail, before initiation of the proceedings for preventive detention by the Division Bench of this Court as well as by the Apex Court, it can only be said that such a course would depend upon facts of the case concerned and it cannot be accepted as a general proposition. Whether it is necessary to initiate the steps for cancellation of bail before initiating steps for ordering preventive detention depends upon the facts and circumstances of each case. When there is imminent danger of repetition of criminal activities by a person who can be classified as 'known goonda' or 'known rowdy', or a person indulges in drug peddling activities, cancellation of bail orders already secured by him would not be sufficient to deter such a person from indulging in criminal activities. Moreover, the conclusion of such steps is a time-consuming process since the concept of cancellation of bail order or preventive detention is entirely different. Cancellation of bail generally requires cogent and overwhelming circumstances, such as interference with the administration of justice, absconding of the accused, witness intimidation or evidence tampering by the accused, abuse of liberty granted to him by the accused, a fundamentally defective bail order, etc. But in the case of preventive detention, even if the bail CNR : KLHC010683642026 2026:KER:86841 40 W.P. (Crl.)No.1388 of 2026 cancellation is not available, the detention authority must independently satisfy the statutory conditions governing preventive detention and comply with the constitutional safeguards. The matters to be taken into consideration for ordering cancellation of bail are distinct from the matters to be considered for ordering preventive detention. Therefore, we have no hesitation to hold that the aforesaid argument of non-taking of steps for cancellation of bail raised by the learned counsel for the petitioner as a ground to challenge Ext.P1 order in the present writ petition holds no merit. Therefore, we find no merit in the

contention of the petitioner that Ext.P1 order is vitiated due to non- consideration of alternative remedy of cancellation of bail granted to the detenue in the previous criminal cases. "

(Underline supplied)

17. Viewed in the light of the principles already stated by this Court as extracted above, we find no merit in the contention of the petitioner that the detention order is void for non-

exhaustion of the ordinary criminal law remedy of cancellation of bail.

18. The upshot of the above discussions is that the orders under challenge in the present writ petition are liable to be set aside for the reason of absence of the independent consideration CNR : KLHC010683642026 2026:KER:86841 41 W.P.(Crl.)No.1388 of 2026 of the representation submitted by the detenue, and the unexplained and inordinate delay in sponsoring the detenue for subjecting him to preventive detention.

In the result, this writ petition is allowed by setting aside the impugned Exts.P1 to P3 orders under challenge in this writ petition. The 5th respondent Superintendent of Jail, High Security Prison, Viyyur, is directed to release the detenue forthwith if his detention is not required in connection with any other case. The Registry shall communicate this order to the 5th respondent by e-

mail at once.

Sd/-

ANIL K. NARENDRAN, JUDGE Sd/-

MURALEE KRISHNA S., JUDGE MSA CNR : KLHC010683642026 2026:KER:86841 42 W.P.(Crl.)No.1388 of 2026 APPENDIX OF WP(CRL.) NO. 1388 OF 2026 PETITIONER EXHIBITS Exhibit P1 A TRUE COPY OF THE ORDER NO.DCMPM/4745/2026- S1 DATED 01.07.2026 OF THE 2ND RESPONDENT Exhibit P2 A TRUE COPY OF THE ORDER NO.HOME-

SSA1/292/2026- HOME DATED 15.07.2026 OF THE 1ST RESPONDENT Exhibit P3 A TRUE COPY OF THE G.O(RT).NO.744/2026/HOME DATED 05.09.2026 Exhibit P4 A TRUE COPY OF THE REPRESENTATION DATED 09.07.2026 SUBMITTED BEFORE THE 1ST RESPONDENT RESPONDENT EXHIBITS Exhibit R1(b). True copy of the relevant page of the dispatch register kept by Home Department. Exhibit R(1)a. True copy of the Letter No.HOME-

SSA1/292/2026-HOME dated 18-07-2026 from Home Department to the petitioner.