



IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.....OF 2026
(@ SLP (CrI.) No.8439 of 2026)

ALFIYA.A

...APPELLANT(S)

VERSUS

STATE OF KERALA & ORS.

...RESPONDENT(S)

O R D E R

- 1) Leave granted.
- 2) The present appeal arises out of the final judgment and order dated 08.04.2026 passed by the High Court of Kerala at Ernakulam¹ in Writ Petition (Criminal) No. 566 of 2026, by which the High Court dismissed the petition for a writ of habeas corpus filed by the appellant and declined to interfere with the detention of her husband, Muhammed Rafi².
- 3) The appeal calls in question the order of detention dated 13.01.2026 passed against the detenu by the first respondent under sub-section (1) of Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988³, as well as the order dated 19.03.2026 by which the said order of detention was confirmed for a period of one year.
- 4) The facts giving rise to the present appeal are as follows:

¹ In short "High Court"

² In short "detenu"

³ In short "PITNDPS Act"

- 4.1) On 16.05.2024, Crime No. 640 of 2024 came to be registered at the Anchalummoodu Police Station against, inter alia, the detenu for offences under Sections 22(b) and 29(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the “NDPS Act”). The detenu was arrested in connection with the said case and was thereafter released on bail on 26.07.2024.
- 4.2) On 31.08.2025, Crime No. 2171 of 2025 came to be registered at the Karunagappally Police Station against the detenu for an offence under Section 22(c) of the NDPS Act. The detenu was arrested in connection with the said case and was remanded to judicial custody.
- 4.3) On 28.10.2025, the detenu was granted bail in Crime No. 2171 of 2025 by the Court of Session.
- 4.4) In the meantime, proceedings under Section 126 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as the “BNSS”) came to be initiated against the detenu.
- 4.5) On 10.11.2025, the Station House Officer concerned submitted a proposal for the preventive detention of the detenu under the PITNDPS Act. The said proposal was forwarded by the sponsoring authority on 12.11.2025 and, after being processed by the competent authorities, culminated in the order of detention dated 13.01.2026.
- 4.6) On 13.01.2026, the first respondent, being an officer specially empowered for the purpose (hereinafter referred to as the "Detaining Authority"), passed the

order of detention against the detenu under sub-section (1) of Section 3 of the PITNDPS Act. The report in respect of the said order was forwarded to the Central Government on 16.01.2026.

- 4.7) The order of detention was executed on 05.02.2026, on which date the detenu was taken into custody, and he was lodged in the Central Prison, Thiruvananthapuram, on 06.02.2026. The grounds of detention were served upon him on 06.02.2026.
- 4.8) On 13.02.2026, the detenu submitted two representations, one addressed to the Advisory Board constituted under Section 9 of the PITNDPS Act (hereinafter referred to as the "Advisory Board") and the other addressed to the Detaining Authority.
- 4.9) On 16.02.2026, the case was referred to the Advisory Board. The Advisory Board heard the detenu on 10.03.2026 and submitted its report on 13.03.2026, opining that there was sufficient cause for the detention of the detenu.
- 4.10) On 19.03.2026, the State Government confirmed the order of detention and directed that the detenu be detained for a period of one year from the date of his detention. The rejection of the representation submitted by the detenu was communicated to him on 27.03.2026.
- 4.11) Being aggrieved by the order of detention and the order of confirmation, the appellant filed Writ Petition (Criminal) No. 566 of 2026 before the High Court seeking a writ of habeas corpus. By the judgment and

order dated 08.04.2026 impugned before us, the High Court dismissed the said writ petition and declined to interfere with the detention of the detenu.

4.12) The High Court principally examined the effect of the detenu having been enlarged on bail and the pendency of proceedings under Section 126 of the BNSS. It held that neither circumstance precluded the exercise of the power of preventive detention under the PITNDPS Act and, accordingly, declined to interfere with the detention. Hence, the present appeal.

- 5) The appellant has now approached this Court, assailing the judgment of the High Court and reiterating the challenge to the order of detention and the order of confirmation.
- 6) We have heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent State, and we have perused the material placed on record.

ANALYSIS

- 7) Before we turn to the questions that arise in this appeal, it is necessary to bear in mind the nature of the jurisdiction that is invoked when an order of preventive detention is called in question. Such an order is not passed upon proof of guilt established at a trial, but upon the subjective satisfaction of the Detaining Authority that the detention of a person is necessary to prevent him from acting in a manner prejudicial

to the object which the PITNDPS Act seeks to serve. It is not for this Court, while examining the legality of such an order, to sit in judgment over the sufficiency of the material on which the satisfaction is founded, or to substitute its own opinion for that of the Detaining Authority on the question whether the detenu ought to have been detained. To that extent the area of judicial review is a narrow one.

- 8) That narrowness, however, does not reduce judicial scrutiny to an empty formality. Preventive detention permits the deprivation of the liberty of a person on the basis of what he may do and not on the basis of what he has been found to have done. A power of that description, which is a serious inroad into the personal liberty guaranteed by Article 21 of the Constitution of India (hereinafter referred to as the "Constitution"), can be sustained only if it is exercised in strict conformity with the conditions which the Constitution and the statute have prescribed for its exercise. Those conditions are not technicalities to be observed in form and disregarded in substance. They constitute the only safeguards available to a person who is detained without the benefit of a trial, and they are, therefore, to be enforced with corresponding strictness.
- 9) In the present appeal, the question which arises before us is whether the constitutional safeguards attaching to the right of the detenu to make a representation against his preventive detention were duly observed. We propose to consider this

question after setting out the constitutional and statutory framework within which it falls to be answered.

THE CONSTITUTIONAL AND STATUTORY FRAMEWORK

- 10) The Constitution, while permitting preventive detention, does not leave the person detained wholly without protection. Clause (5) of Article 22 of the Constitution provides as follows:

"22. (5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order."

- 11) Two distinct obligations flow from this provision, and both are cast upon the authority making the order. The first is to communicate to the detenu, as soon as may be, the grounds on which the order of detention has been made. The second is to afford him the earliest opportunity of making a representation against the order. The right to make a representation would be an empty right if it did not carry with it a corresponding obligation on the part of the authority to consider that representation, and to consider it independently and with reasonable despatch. The communication of the grounds and the opportunity to represent are not ends in themselves. They exist so that the detenu may effectively resist his detention at the earliest point of time, and any

failure which renders that opportunity illusory strikes at the root of the detention.

- 12) The PITNDPS Act is a law providing for preventive detention within the meaning of Article 22 of the Constitution. The power to detain is conferred by Section 3, sub-section (1) of PITNDPS Act which is in the following terms insofar as it is material:

"3. (1) The Central Government or a State Government, or any officer of the Central Government, not below the rank of a Joint Secretary to that Government, specially empowered for the purposes of this section by that Government, or any officer of a State Government, not below the rank of a Secretary to that Government, specially empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person that, with a view to preventing him from engaging in illicit traffic in narcotic drugs and psychotropic substances, it is necessary so to do, make an order directing that such person be detained."

- 13) It is necessary to understand that the power under Section 3(1) of PITNDPS Act may be exercised either by the State Government itself or by an officer of the State Government who is not below the rank of a Secretary and who has been specially empowered in that behalf. When the power is exercised by such an officer, the satisfaction which the section requires is the satisfaction of that officer, arrived at upon his own application of mind, and the order is his order and not that of the Government. This distinction is not one of mere

form, and its significance will become apparent when we come to consider the manner in which the representation of the detenu was dealt with in the present case.

- 14) The further stages of a detention under the PITNDPS Act are regulated by Section 9, which gives effect to the requirement of Article 22 of the Constitution that no detention shall ordinarily continue beyond three months unless an Advisory Board has reported that there is sufficient cause for it. Under clause (b) of Section 9, the appropriate Government is required to make a reference to the Advisory Board within five weeks from the date of detention. Under clause (c), the Advisory Board is required to consider the reference and to submit its report within eleven weeks from the date of detention, specifying its opinion as to whether or not there is sufficient cause for the detention. Under clause (f), where the Advisory Board has reported that there is sufficient cause, the appropriate Government may confirm the order of detention, and where it has reported that there is no sufficient cause, the appropriate Government is bound to revoke the order and to release the person forthwith.
- 15) One feature of this statutory scheme is of particular significance in the present case. The consideration of the detenu's representation by an authority competent to revoke the detention stands on a footing distinct from the consideration of the case by the Advisory Board. The opinion of the Advisory Board is directed to the question whether there

is sufficient cause for the detention, whereas consideration of the representation gives effect to the constitutional right guaranteed by Article 22(5) of the Constitution. One cannot substitute the other, and compliance with the obligation to refer the matter to the Advisory Board does not absolve the competent authority of its independent obligation to consider the representation with the expedition which the constitutional guarantee requires.

THE RIGHT OF REPRESENTATION AND ITS CONSIDERATION

- 16) The issue which requires determination concerns the right of the detenu to make a representation against the order of detention and the manner in which the representation actually made by him was dealt with. This ground goes to the legality of the detention as a whole, and for the reasons that follow we are of the opinion that it is well founded.
- 17) It has already been noted that Article 22(5) of the Constitution casts upon the authority making the order of detention two distinct obligations, and that the second of them is to afford the detenu the earliest opportunity of making a representation against the order. That opportunity carries with it, as a necessary concomitant, the obligation of the authority to inform the detenu of the persons or bodies to whom he may address his representation. Where the order of detention has been made by an officer specially empowered under Section 3(1) of the PITNDPS Act, the detenu is entitled to make a

representation to that officer, who made the order and who is competent to revoke it, and he must be informed of that right. That such a right, distinct from the right to represent to the State Government, to the Advisory Board and to the Central Government, enures to the detenu and must be made known to him, was settled by a Constitution Bench of this Court in ***Kamleshkumar Ishwardas Patel v. Union of India***⁴, in relation to this very Act among others. The failure to inform the detenu of it renders the opportunity to represent incomplete and deprives him of a valuable safeguard.

- 18) In the present case, the order of detention was made by the Detaining Authority in exercise of the power conferred upon an officer specially empowered under Section 3(1) of the PITNDPS Act. The detenu was informed that he could make representations to the State Government, the Advisory Board and the Central Government. He was not separately informed that he was entitled to make a representation to the officer who had made the order of detention in exercise of the specially conferred statutory power. The omission is evident from the detention order itself. The fact that the detenu nevertheless addressed one of his representations to the Detaining Authority cannot cure the failure to inform him of that constitutional right. The obligation was upon the authority to communicate the right and could not depend upon whether the detenu independently became aware of it.

⁴ (1995) 4 SCC 51

19) The matter does not rest with the failure to inform the detenu of his right. The representation addressed to the Detaining Authority was submitted on 13.02.2026. The case was thereafter referred to the Advisory Board on 16.02.2026. The Advisory Board submitted its report only on 13.03.2026. Neither the order of confirmation nor the counter affidavit filed before this Court discloses any separate consideration or decision upon the representation by the Detaining Authority in exercise of its statutory power. On the contrary, the case of the respondents is that the representation was examined together with the opinion of the Advisory Board and the other connected documents. This sequence indicates that the representation was kept pending until the Advisory Board had rendered its opinion and was thereafter dealt with as part of the governmental exercise of confirmation. The consideration of a representation under Article 22(5) and the examination undertaken by the Advisory Board are distinct constitutional processes. The opinion of the Advisory Board cannot substitute the independent consideration required from an authority competent to revoke the detention. This principle stands recognised by this Court in **Gracy v. State of Kerala**⁵, and **K.M. Abdulla Kunhi v. Union of India**⁶. The record in the present case does not disclose the distinct and independent decision which the constitutional guarantee required.

⁵ (1991) 2 SCC 1

⁶ (1991) 1 SCC 476

- 20) There is also an unexplained delay in dealing with the representation. Even if the order of confirmation dated 19.03.2026 is treated as the first decision upon the representation dated 13.02.2026, a period of 34 days had elapsed before such consideration. A further period of eight days elapsed before the rejection was communicated to the detenu on 27.03.2026. No separate order deciding the representation has been placed before us. Nor has any satisfactory or day-to-day explanation been furnished for the time taken either to consider the representation or to communicate the decision. The general statement that the representation was examined together with the opinion of the Advisory Board does not explain the delay. It instead reinforces the conclusion that the representation was not treated as an independent constitutional process requiring immediate attention.
- 21) We accordingly hold that the safeguards attaching to the right of the detenu to make a representation against his detention were not observed. The detenu was not informed of his right to represent to the Detaining Authority who had made the order. The record does not disclose any independent decision upon the representation by the Detaining Authority in exercise of his own statutory power. The consideration disclosed by the respondents was undertaken only as part of the subsequent confirmation exercise, and even that consideration was attended by an unexplained delay. These infirmities violate Article 22(5) of the Constitution and are

sufficient to render the continued detention of the detenu illegal.

CONCLUSION

- 22) The infirmities noted above are not mere technical or procedural irregularities capable of being cured by substantial compliance. They concern the enforcement of the constitutional right guaranteed by Article 22(5) to a person detained without trial. Once a mandatory constitutional safeguard governing preventive detention is found to have been violated, the continued detention cannot be sustained. The High Court did not examine whether the representation submitted by the detenu received the independent and expeditious consideration required by Article 22(5) of the Constitution. Since that issue bears directly upon the legality of the continued detention, the judgment of the High Court cannot be sustained.
- 23) Accordingly, the appeal is allowed. The judgment and order dated 08.04.2026 passed by the High Court in Writ Petition (Criminal) No. 566 of 2026 is set aside. The order of detention dated 13.01.2026 passed against the detenu under Section 3(1) of the PITNDPS Act and the order of confirmation dated 19.03.2026 are quashed.
- 24) The detenu, Muhammed Rafi, shall be set at liberty forthwith, unless his detention or custody is required in connection with any other case.

25) Pending application(s), if any, shall stand disposed of. There shall be no order as to costs.

.....J.

[VIKRAM NATH]

.....J.

[SANDEEP MEHTA]

NEW DELHI;

JULY 28, 2026