



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

&

THE HONOURABLE MR. JUSTICE MURALEE KRISHNA S.

TUESDAY, THE 6TH DAY OF OCTOBER 2026 / 14TH ASWINA, 1948

WP (CRL.) NO. 1269 OF 2026

CRIME NO.334 OF 2026 OF VATTIYOORKAVU POLICE STATION

PETITIONER:

ASWATHI G R
AGED 38 YEARS
W/O R SUGATHAN, RESIDING AT PUTHANVILA VEEDU, TC
10/1223(33/170), VNRA 246-C, NEAR CPT, VATTIYOORKAVU
P.O., THIRUVANANTHAPURAM, PIN - 695013

BY ADVS.
SHRI.SUVIN.R.MENON
SMT.PARSHATHY S.R.
SHRI.GOVIND P.
SHRI.ACHUTH KRISHNAN R.
SMT.CRISTY THERASA SURESH
SRI.RISHIKESH HARIDAS

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY,
DEPARTMENT OF HOME, ROOM NO. 357 A & 358, MAIN BLOCK,
GOVERNMENT SECRETARIAT THIRUVANANTHAPURAM,
KERALA, PIN - 695001
- 2 DISTRICT COLLECTOR & DISTRICT MAGISTRATE
OFFICE OF THE DISTRICT COLLECTOR, DISTRICT
COLLECTORATE, THIRUVANANTHAPURAM, PIN - 695043



- 3 DEPUTY COMMISSIONER OF POLICE (CRIME) ,
OFFICE OF THE COMMISSIONER OF POLICE (LAW & ORDER) ,
THYCAUD, THIRUVANANTHAPURAM CITY, PIN - 695014
- 4 SUPERINTENDENT
CENTRAL PRISON & CORRECTIONAL HOME,
VIYYUR, THRISSUR, PIN - 680010
- 5 SECRETARY
ADVISORY BOARD, KAAPA, SREENIVAS,
VIVEKANANDA NAGAR, PADAM ROAD,
ELAMAKKARA PO, KOCHI, PIN - 682026

BY ADVS.

SHRI.ASIF ALI, DIRECTOR GENERAL OF PROSECUTION
SHRI.RASHEED C.NOORANAD, SPL.GOVERNMENT PLEADER
SMT.LALIZA T.Y., SENIOR G.P.

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON
25.09.2026, THE COURT ON 06.10.2026 PASSED THE FOLLOWING:

**"CR"****JUDGMENT****Muralee Krishna S., J.**

This writ petition (criminal) is filed under Article 226 of the Constitution of India by the wife of the detainee Mr. Sugathan R., S/o Raveendran Nair P., residing at Puthanvila Veedu, TC 10/1223(33/170), VNRA 246-C, near CPT, Vattiyoorkavu P. O., Thiruvananthapuram, who is detained in Central Prison and Correctional Home, Viyyur, seeking a writ of certiorari to quash Exts.P1 detention order dated 08.06.2026, issued by the 2nd respondent District Collector and District Magistrate, Thiruvananthapuram, under Section 3(1) of the Kerala Anti-Social Activities (Prevention) Act, 2007 ('KAA (P) Act' for short), Ext.P2 order of approval dated 21.06.2026 issued under Section 3(3) of the KAA (P) Act by the 1st respondent State and Ext.P32 order dated 06.07.2026 issued under Section 10(4) read with Section 12 of the KAA (P) Act by the 1st respondent State, 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 1 to 4 to produce the detainee and set him at liberty forthwith, contending that his detention in the Central Prison is illegal for various reasons.

2. The pleadings and materials on record would show that for ordering preventive detention of the detainee, by classifying him as a 'known rowdy', the 2nd respondent has taken into consideration 7 criminal cases in which the detainee was involved. They are;

Sl. No.	Crime No.	Station	Offence	Chargesheeted or not
1	1687/2019	Vattiyoorkavu Police Station	341, 294(b), 323, 324, 308, 34 of IPC	Chargesheeted and pending for trial
2	677/2023	Vattiyoorkavu Police Station	294(b), 506, 447, 427, 367, 34 of IPC	Chargesheeted and pending for trial
3	678/2023	Vattiyoorkavu Police Station	447, 294(b), 506, 34 of IPC	Chargesheeted and pending for trial
4	253/2025	Vattiyoorkavu Police Station	126(2), 296(b), 118(1), 118(2), 115(2), 110, 35 of BNS	Chargesheeted and pending for trial
5	723/2025	Vattiyoorkavu Police Station	126(2), 351(2) of BNS	Chargesheeted and pending for trial
6	93/2026	Vattiyoorkavu	351(2) BNS & Section	Chargesheeted



		Police Station	2 of Kerala Disturbances of Public Meeting Act, 1961	and pending for trial
7	334/2026	Vattiyoorkavu Police Station	296(b), 118(1), 110, 35 of BNS	Pending Investigation

The last prejudicial activity in which the detainee was involved is Crime No.334 of 2026 of Vattiyoorkavu Police Station, registered for the offences punishable under Sections 296(b), 118(1), 110 read with Section 35 of the Bharatiya Nyaya Sanhita, 2023 ('BNS' for short), the incident of which occurred on 22.03.2026. Out of the 7 criminal cases considered by the 2nd respondent, investigation was completed in 6 cases, and the final reports have been filed before the jurisdictional courts. In the initial 5 criminal cases, the detainee was granted bail by the competent courts. In the 6th criminal case, though the final report was filed before the competent court, the detainee was not arrested as he was absconding. In the last criminal case, the investigation is not completed, and the detainee was not arrested. However, in that criminal case, the detainee had submitted an anticipatory bail petition before this Court and, by Ext.P3 order dated 01.06.2026, this Court allowed the said petition and directed the detainee to



appear before the Investigating Officer within a week from the date of that order. Thereafter, the detenue filed a petition on 05.06.2026 before this Court under Section 528 of the BNSS seeking extension of time to surrender, a copy of which is produced as Ext.P4 in the writ petition. By Ext.P5 order dated 10.06.2026, this Court allowed Ext.P4 petition, granting two weeks' further time to comply with the directions in Ext.P3 order.

2.1. After the registration of the crime in the last prejudicial activity, i.e., Crime No.334 of 2026 of Vattiyoorkavu Police Station, the Assistant Commissioner, Cantonment, Thiruvananthapuram City, submitted the sponsoring report dated 01.04.2026 to the 2nd respondent, based on the report dated 31.03.2026 of the Station House Officer, Vattiyoorkavu Police Station, seeking issuance of an order under Section 3(1) of the KAA (P) Act against the detenue. Based on the said reports, Ext.P1 detention order dated 08.06.2026 was issued by the 2nd respondent. Ext.P1 detention order was executed on the morning of 10.06.2026. Being aggrieved, the wife of the detenue is now before this Court with this writ petition.



3. The 3rd respondent filed a counter affidavit dated 01.09.2026, opposing the averments in the writ petition, producing therewith Exts.R3(a) to R3(d) documents. Similarly, on behalf of the 1st respondent, a counter affidavit dated 05.09.2026 is filed in the writ petition opposing the averments in the writ petition and producing therewith Exts.R1(a) to R1(c) documents. The 2nd respondent has also filed a counter affidavit dated 07.09.2026, opposing the averments in the writ petition.

4. Heard Shri. Saurav Mishra, the learned Senior Counsel for the petitioner and Shri. Asif Ali, the learned Director General of Prosecution.

5. The learned Senior Counsel for the petitioner addressed the following arguments, impugning the detention order;

(1) The detainee has submitted Exts.P26 and P27, representations dated 12.06.2026, one addressed to the Additional Chief Secretary (Home Department) and another addressed to the Chief Secretary to the Government, against the detention order. Though those representations were



received by the Government on 29.06.2026, the Government waited till the receipt of the opinion of the Advisory Board. This course adopted by the Government caused prejudice to the valuable right of the detainee for independent consideration of his representations and thus violates the fundamental right guaranteed to him under Article 22(5) of the Constitution of India. In support of his aforesaid argument, the learned Senior Counsel relied on the judgments of the Apex Court in **Dr. Rahamatullah v. State of Bihar [(1981) 4 SCC 559]**, **Smt. Gracy v. State of Kerala [(1991) 2 SCC 1]**, **M. Ahamedkutty v. Union of India [(1990) 2 SCC 1]** and **Sarabjeet Singh Mokha v. District Magistrate, Jabalpur [(2021) 20 SCC 98]**.

(2) Out of the 7 criminal cases considered by the detaining authority, the detainee was granted bail in 5 cases. In the 6th case, he was not arrested, and in the 7th case, he was granted anticipatory bail. The sufficiency of bail conditions to prevent the detainee from involving himself in similar criminal activities in future was not considered appropriately



by the authority concerned, which also vitiates Ext.P1 order of detention. In support of his aforesaid argument, the learned Senior Counsel relied on the judgment of the Apex Court in **Joyi Kitty Joseph v. Union of India [(2025) 4 SCC 476]**.

(3) Several pages of documents supplied to the detainee along with Ext.P1 order are either missing or illegible. This non-supply or supplying of illegible copies also caused prejudice to the detainee, as he was denied the right to submit a proper representation and therefore the fundamental right guaranteed to him under Article 22(5) of the Constitution of India was violated. In support of the aforesaid argument, the learned Senior Counsel relied on the judgments of the Apex Court in **State of Manipur v. Buyamayum Abdul Hanan @ Anand [(2022) 19 SCC 509]** and **Pramod Singla v. Union of India [(2024) 19 SCC 791]**.

(4) The intention behind the law of preventive detention of a person is to maintain public order and not law and order. In



the instant case, from Ext.P1 order, it is clear that the intention behind the issuance of the said order by the authorities is to maintain law and order and not public order. On this point, the learned Senior Counsel relied on the judgments of the Apex Court in **Nenavath Bujji v. State of Telangana [(2024) 17 SCC 294]**, and **Dhanya M. v. State of Kerala [2025 SCC OnLine SC 1315]**.

(5) By pointing out the statements in Ext.P1 order with respect to Crime Nos.1687 of 2019, 677 of 2023, 723 of 2025 and 334 of 2026 of Vattiyoorkavu Police Station, the learned Senior Counsel vehemently submitted that there is non-application of mind by the 2nd respondent as evident from the fact that the stages of those criminal cases or the steps taken in those criminal cases are wrongly mentioned in Ext.P1 order. The learned Senior Counsel highlighted that in respect of the incident in Crime No.1687 of 2019 of Vattiyoorkavu Police Station, there is a counter case registered as Ext.P10 on the complaint of the detainee, which is not mentioned in Ext.P1 order. As far as Crime No.677 of



2023 of Vattiyoorkavu Police Station is concerned, the application for cancellation of bail submitted by the prosecution in that case was returned by the Court. But in Ext.P1 order, it is stated that the said application is pending. In Crime No.723 of 2025 of Vattiyoorkavu Police Station, a compounding petition was filed before this Court by the detainee and the defacto complainant, which was later withdrawn. Moreover, the de facto complainant therein is a neighbour of the detainee, and these vital aspects are not considered in Ext.P1 order. In Crime No.334 of 2026 of Vattiyoorkavu Police Station, a prior complaint was made by the detainee and based on that complaint, Crime No.334 of 2026 was registered as a counter case. The detainee was granted anticipatory bail in that crime, and the time for complying with the conditions in Ext.P3 anticipatory bail order was extended by this Court by Ext.P5 order. This was also not appreciated in Ext.P1 order. Though in Ext.P1 order, proceedings under Sections 107, 110(g) of Cr.P.C. and Section 126 of BNSS were stated as initiated against the



detenue, the said proceedings were stayed by this Court as per the order dated 23.05.2025 in CrI.M.A.No.1 of 2025 in CrI.M.C.No.4490 of 2025 filed by the detenue, as evident from Ext.P22 order, and this fact was also not mentioned in Ext.P1 order. Therefore, Ext.P1 order is void for non-application of mind.

(6) The detenue is a Councillor of Thiruvananthapuram Municipal Corporation. Ext.P33 order would show that Ext.P28 application filed by the detenue for his temporary release under Section 14 of the KAA (P) Act was rejected by the Government without proper consideration of the same. In fact, the preventive detention proceedings were initiated against the detenue due to political malafides.

6. On the other hand, the learned Director General of Prosecution argued that the detenue is a person included in the rowdy list from 2014 onwards. A rowdy history sheet was opened against him as per the order dated 19.04.2014 of the Assistant Commissioner of Police, Cantonment, Thiruvananthapuram City. The said rowdy history sheet was renewed up to 31.12.2026.



Altogether, 22 criminal cases are registered against him, as evident from the rowdy history sheet. Proceedings under Section 129 of BNSS were also initiated against him by submitting a report by the Sub Inspector of Police, Vattiyoorkavu Police Station, before the Sub Divisional Magistrate, Thiruvananthapuram. There were two externment orders dated 04.10.2023 and 29.08.2025 issued against the detainee on previous occasions. In between the two externment orders, the detainee was involved in 3 criminal cases referred to as Sl. Nos.3, 4 and 5 in Ext.P1 detention order. Though the detainee was arrested on 10.06.2026 in pursuance of Ext.P1 detention order, he refused to receive the arrest intimation as well as the copies of the documents attempted to be served on him. Moreover, the detainee and his co-accused attacked the Police personnel who went to arrest the detainee and in respect of that incident Ext.R3(c) Crime No.696 of 2026 of Vattiyoorkavu Police Station was registered for the offences under Sections 121(1), 132 read with Section 3(5) of BNS and Section 117(e) of the Kerala Police Act, 2011, on 10.06.2026 at 4:17 hrs. Subsequently, all documents are supplied to the detainee on 10.06.2026 itself, and



even if some of the documents are omitted, or some pages of the same are illegible, it will not vitiate the detention order. In support of the aforesaid argument, the learned Director General of Prosecution relied on the judgment of this Court in **Shaji v. State of Kerala [2014 (1) KLJ 33]** and **Joicy v. State of Kerala [2018 (1) KHC 37]**. It is further argued by the learned Director General of Prosecution that out of the 7 criminal cases considered against the detainee for classifying him as a known rowdy, 6 cases are chargesheeted and 1 case is at the stage of investigation. All the cases are offences affecting the human body and hence squarely fall under the definition of 'rowdy', under Section 2(t) of the KAA (P) Act. All the necessary facts are considered by the authority concerned, and even the registration of the case and counter in respect of two incidents in which the detainee was involved are also stated in Ext.P1 order. The settlement of one of the criminal cases referred to as the 5th crime in Ext.P1 order is not a ground to contend that the said crime is not a qualified one to declare the detainee as a known rowdy. In support of the aforesaid argument, the learned Director General of Prosecution



relied on the judgment of a Division Bench of this Court in **Vijayamma v. State of Kerala [2014 (4) KHC 368]**. By relying on the judgment of a Division Bench of this Court in **Fazaludin v. State of Kerala [2014 (1) KHC 14]**, the learned Director General of Prosecution submitted that the fact that the detainee is a member of Thiruvananthapuram Municipal Corporation has nothing to do with the order of preventive detention. So also, by relying on the judgment of another Division Bench of this Court in **Abdul Razack A.A. v. State of Kerala [2015 (4) KLT SN 52]**, the learned Director General of Prosecution argued that while issuing the detention order, the gravity of the offences also counts. As far as the consideration of the representations submitted by the detainee is concerned, the learned Director General of Prosecution submitted that, Ext.P28 representation submitted by the detainee was not even dated and even then that representation was considered and rejected by the Government as per Ext.P33 order order dated 08.07.2026. So also Exts P26 and P27 representations are considered in Ext.P32 order and hence there is no violation of any of the fundamental rights of the detainee.



7. We have perused the materials on record and appreciated the rival submissions made at the Bar. In the instant case, though the detainee is involved in several criminal cases, as evident from the rowdy history sheet opened against him on 19.04.2014 and also the documents produced by the 3rd respondent along with the counter affidavit as Ext.R3(a) to Ext.R3(d), for issuing an order of preventive detention, 7 criminal cases ranging from the year 2019 to 2026, which were extracted in the initial paragraph of this judgment, were taken into consideration by the authorities concerned. Out of those criminal cases, the last prejudicial activity is Crime No.334 of 2026 of Vattiyoorkavu Police Station, the incident of which occurred on 22.03.2026 at 11.30 a.m. The detainee was granted anticipatory bail in that case by this Court as per Ext.P3 order dated 01.06.2026 with a direction to appear before the Investigating Officer within a week from the date of that order. The time for compliance of the conditions in Ext.P3 order was later extended as per Ext.P5 order dated 10.06.2026 in CrI.M.A.No.1 of 2026, for a period of two weeks from that date. However, meanwhile, the



Assistant Commissioner, Cantonment, Thiruvananthapuram City submitted the sponsoring report dated 01.04.2026 based on the report dated 31.03.2026 of the Station House Officer, Vattiyoorkavu Police Station, to the 2nd respondent, requesting an order under Section 3(1) of the KAA (P) Act against the detainee. Based on that report, Ext.P1 detention order was issued by the 2nd respondent, and the detainee was arrested on 10.06.2026 at wee hours from his residence. According to the respondents, the detainee attacked the Police party when he was attempted to be arrested, and in respect of that incident, Crime No.696 of 2026 of Vattiyoorkavu Police Station was registered against the detainee on 10.06.2026 at 4:17 hrs. Pursuant to the arrest on 10.06.2026, the detainee was detained in Central Prison and Correctional Home, Viyyur. By Ext.P2 order dated 21.06.2026, Ext.P1 order of detention was confirmed under Section 3(3) of the KAA (P) Act and by Ext.P32 order dated 06.07.2026, the detention was directed to be continued for a period of six months under Section 10(4) read with Section 12 of the KAA (P) Act.

8. The 1st contention raised by the learned Senior Counsel



appearing for the petitioner is that though the detenu submitted Exts.P26 and P27 representations dated 12.06.2026 to the Government, they were not considered independently and the Government waited for the opinion of the Advisory Board, which is not warranted and thus the constitutional safeguard guaranteed to the detenu was violated.

9. In **S.K. Abdul Karim v. State of West Bengal [(1969) 1 SCC 433]**, which was a writ of habeas corpus filed under Article 32 of the Constitution of India by the petitioners seeking their release from the detention which was ordered under Section 3(2) of the Preventive Detention Act, 1950, the Apex Court held thus:

“12. Faced with this difficulty, counsel on behalf of the respondent conceded that in a case where the detention is for a period of less than three months or in a case contemplated by Article 22(7), the State Government will be legally obliged to consider the representation of the detenu. But it was suggested that in a case where a reference has to be made to the Advisory Board it was not necessary for the State Government to consider the representation. We are unable to accept this argument as correct. There is no such dichotomy in the scheme of Article



22(5) of the Constitution and there is no reason why it must be interpreted in a different manner for the two classes of detenues. It is manifest that the right under Article 22(5) to make a representation has been guaranteed independent of the duration of the period of detention and irrespective of the existence or non-existence of an Advisory Board. The constitution of an Advisory Board for the purpose of reporting whether a person should or should not be detained for a period of more than three months is a very different thing from a right of consideration by the State Government whether a person should be detained even for a single day. The obligation of the detaining authority to consider the representation is different from the obligation of the Advisory Board to consider the representation later on at the time of hearing the reference. It follows, therefore, that even if reference is to be made to the Advisory Board under Section 9 of the Act, the appropriate government is under legal obligation to consider the representation of the detenu before such a reference is made.

13. In the present case, Sk. Abdul Karim has alleged that his representation was not considered by the State Government before it was forwarded to the Advisory Board. This allegation is not controverted in the counteraffidavit filed on behalf of the respondent. What is at stake in this case is the issue of personal freedom which is one of the basic principles of a democratic State. A predominant position and role is given in our Constitution to human



personality and human freedom as the ultimate source of all moral and spiritual values. Preventive detention is a serious invasion of personal liberty, and, therefore, the Constitution has provided procedural safeguards against the improper exercise of the power of preventive detention. All the procedural requirements of Article 22 are in our opinion mandatory in character and even if one of the procedural requirements is not complied with, the order of detention would be rendered illegal. Accordingly, the order of detention, dated 17.02.1968, made against Petitioner 2, Sk. Abdul Karim and the subsequent order of the Governor of West Bengal, dated 24th April, 1968, confirming the order of detention must be held to be illegal and ultra vires and Petitioner 2, Sk. Abdul Karim was entitled to be released.”

(Underline supplied)

10. In **Jayanarayan Sukul v. State of West Bengal [(1970) 1 SCC 219]**, in a writ petition filed under Article 32 of the Constitution of India requiring the respondent to show cause as to why the petitioner who has been under preventive detention should not be released, the Apex Court held thus:

“20. Broadly stated, four principles are to be followed in regard to representation of detenus. First, the appropriate authority is bound to give an opportunity to the detenu to make a representation and to consider the representation of the detenu as early as possible. Secondly, the consideration



of the representation of the detenu by the appropriate authority is entirely independent of any action by the Advisory Board including the consideration of the representation of the detenu by the Advisory Board. Thirdly, there should not be any delay in the matter of consideration.

It is true that no hard and fast rule can be laid down as to the measure of time taken by the appropriate authority for consideration, but it has to be remembered that the Government has to be vigilant in the governance of the citizens. A citizen's right raises a correlative duty of the State. Fourthly, the appropriate Government is to exercise its opinion and judgment on the representation before sending the case along with the detenu's representation to the Advisory Board. If the appropriate Government will release the detenu the Government will not send the matter to the Advisory Board. If however the Government will not release the detenu the Government will send the case along with the detenu's representation to the Advisory Board. If thereafter the Advisory Board will express an opinion in favour of release of the detenu the Government will release the detenu. If the Advisory Board will express any opinion against the release of the detenu the Government may still exercise the power to release the detenu."

(Underline supplied)

11. In **Haradhan Shah v. State of West Bengal [(1975) 3 SCC 198]**, while considering the constitutional validity



of the Maintenance of Internal Security Act, 1971, the Apex Court held thus:

"29. Principles of natural justice are an element in considering the reasonableness of a restriction where Article 19 is applicable. At the stage of consideration of representation by the State Government, the obligation of the State Government is such as Article 22(5) implies. Section 8 of the Act is in complete conformity with Article 22(5) because this section follows the provisions of the Constitution. If the representation of the detenu is received before the matter is referred to the Advisory Board, the detaining authority considers the representation. If a representation is made after the matter has been referred to the Advisory Board, the detaining authority will consider it before it will send representation to the Advisory Board."

(Underline supplied)

12. In **Dr. Rahamatullah [(1981) 4 SCC 559]**, while considering a writ petition filed under Article 32 of the Constitution of India, against the detention of the petitioner therein under Section 3(2) of the National Security Act, 1980, the Apex Court held thus;

"7. The law is well-settled that in case of preventive detention of a citizen, the obligation of the appropriate government is two-fold: (i) to afford the detenu the



opportunity to make a representation and to consider *the representation* which may result in the release of the detenu, and (ii) to constitute a Board and to communicate the representation of the detenu along with other materials to the Board to enable it to form its opinion and to obtain such opinion. The former is distinct from the latter. As there is a two-fold obligation of the appropriate government, so there is a two-fold right in favour of the detenu to have his representation considered by the appropriate government and to have the representation once again considered by the Government in the light of the circumstances of the case considered by the Board for the purpose of giving its opinion. See: Narendra Purshotam Umrao v. B.B. Gujral [(1979) 2 SCC 637] and Pankaj Kumar Chakrabarty v. State of West Bengal [(1969) 3 SCC 400]”

(Underline supplied)

13. In the matter of **M. Ahamedkutty [(1990) 2 SCC 1]** while considering the provisions of the COFEPOSA Act, this Court said that the detaining authority is duty-bound to afford the detenu the earliest opportunity of making the representation against the order of detention and the representation to be made effective, the copies of the documents relied upon by the detaining authorities on the grounds are necessary to be supplied. The detenu has a right to be furnished with the grounds of detention



along with documents so referred or relied upon. Paragraphs 19 to 21 of that judgment read thus;

"19. The next submission is that of non-supply of the bail application and the bail order. This Court, as was observed in *Mangalbhai Motiram Patel v. State of Maharashtra*, [1981 (1) SCR 852], has 'forged' certain procedural safeguards for citizens under preventive detention. The Constitutional imperatives in Article 22(5) are two fold: (a) The detaining authority must, as soon as may be i.e., as soon as practicable, after the detention communicate to the detenu the grounds on which the order of detention has been made, and (2) the detaining authority must afford the detenu the earliest opportunity of making the representation against the order of detention. The right is to make an effective representation and when some documents are referred to or relied on in the grounds of detention, without copies of such documents, the grounds of detention would not be complete. The detenu has, therefore, the right to be furnished with the grounds of detention along with the documents so referred to or relied on. If there is failure or even delay in furnishing those documents it would amount to denial of the right to make an effective representation. This has been settled by a long line of decisions: *Ramachandra A. Kamat v. Union of India*, [1980 (2) SCR 1072]; *Frances Coralie Mullin v. W.C. Kharnbra and others* [1980 (2) SCR 1095]; *Smt. Ichhu Devi Chararia v. Union of*



India [1981 SCR 640]; Pritam Nath Hoon v. Union of India [1981 (1) SCR 682]; Shri Tushar Thakkar v. Union of India [(1980) 4 SCC 499]; Lallubhai Jogibhai Patel v. Union of India [(1981) 2 SCC 427]; Kirit Kumar Chaman Lal Kundaliya v. Union of India [(1981) 2 SCC 436] and Smt. Ana Carelina D'Souza v. Union of India [(1981) Suppl. SCC 53].

20. It is immaterial whether the detenu already knew about their contents or not. In Mehrunissa v. State of Maharashtra, [(1981) 2 SCC 709], it was held that the fact that the detenu was aware of the contents of the documents not furnished was immaterial and non-furnishing of the copy of the seizure list was held to be fatal. To appreciate this point one has to bear in mind that the detenu is in jail and has no access to his own documents. In Mohd. Zakir v. Delhi Administration [(1982) 3 SCC 216] it was reiterated that it being a Constitutional imperative for the detaining authority to give the documents relied on and referred to in the order of detention *pari passu* the grounds of detention, those should be furnished at the earliest so that the detenu could make an effective representation immediately instead of waiting for the documents to be supplied with. The question of demanding the documents was wholly irrelevant and the infirmity in that regard was violative of Constitutional safeguards enshrined in Article 22(5).

21. It is also imperative that if the detenu was already in jail the grounds of detention are to show the awareness of



that fact on the part of the detaining authority, otherwise there would be non-application of mind and detention order vitiated thereby. In the instant case though the order of detention ex facie did not mention of the detenu having been in jail, in paragraph 3 of the grounds of detention it was said that he was arrested by the Superintendent (Intelligence) Air Customs, Trivandrum on 31.01.1988 and he was produced before the Additional Chief Judicial Magistrate (Economic Offences), Ernakulam the same day. It was clearly said: "You were remanded to judicial custody and you were subsequently released on bail," From the Records it appears that the bail application and the bail order were furnished to the detaining authority on his enquiry. It cannot, therefore, be said that the detaining authority did not consider or rely on them. It is difficult, therefore, to accept the submission of Mr. Kunhikannan that those were not relied on by the detaining authority. The bail application contained the grounds for bail including that he had been falsely implicated as an accused in the case at the instance of persons who were inimically disposed towards him, and the bail order contained the conditions subject to which the bail was granted including that the accused, if released on bail, would report to the Superintendent (Intelligence) Air Customs, Trivandrum on every Wednesday until further order, and that he will not change his residence without prior permission of court to 25.02.1988. This being the position in law, and non-supply of the bail application and the bail



order having been apparent, the legal consequence is bound to follow”.

(Underline supplied)

14. In **Smt. Gracy [(1991) 2 SCC 1]**, in a writ petition filed under Article 32 of the Constitution of India, by the mother of the detainee seeking quashing of the detention order passed against her son under Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, the Apex Court held thus;

“4. On the above facts, the question is: Whether there has been any infraction of the guarantee under Article 22(5) of the Constitution as a result of Central Government's omission to consider the detenus representation independent of its consideration by the Advisory Board? The Central Government's stand is that the detenu's representation being addressed to the Advisory Board to which it was submitted during pendency of the reference before the Advisory Board, there was no obligation on the Central Government also to consider the same independently since the representation was not addressed to the Central Government.

5. The constitutional mandate in Article 22(5) was considered recently by a Constitution Bench in *K. M. Abdulla Kunhi and B. L. Abdul Khader v. Union of India, State of*



Karnataka (JT 1991 (1) SC 216: 1991 AIR SCW 362), in view of some conflict in earlier decisions of this Court regarding the detaining authority's obligation to consider the detenu's representation independently of the Advisory Board's duty in this behalf. The Constitution Bench held as follows: (SCC pp. 483-484, para 11):

"It is now beyond the pale of controversy that the constitutional right to make representation under Clause (5) of Article 22 by necessary implication guarantees the constitutional right to a proper consideration of the representation. Secondly, the obligation of the Government to afford to the detenu an opportunity to make representation is distinct from the Government's obligation to refer the case of detenu along with the representation to the Advisory Board to enable it to form its opinion and send a report to the Government. It is implicit in Clauses (4) and (5) of Article 22 that the Government while discharging its duty to consider the representation cannot depend upon the views of the Board on such representation. It has to consider the representation on its own without being influenced by any such view of the Board. The obligation of the Government to consider the representation is different from the obligation of the Board to consider the representation at the time of hearing the references. The Government considers the representation to ascertain essentially whether the order is in conformity with the power under the law. The Board, on the other hand, considers the representation and the case of the detenu to



examine whether there is sufficient cause for detention. The consideration by the Board is an additional safeguard and not a substitute for consideration of the representation by the Government. The right to have the representation considered by the Government is safeguarded by Clause (5) of Article 22 and it is independent of the consideration of the detenus case and his representation by the Advisory Board under Clause (4) of Article 22 read with Section 8(c) of the Act. See: Sk. Abdul Karim v. State of West Bengal [(1969) 1 SCC 433]; Pankaj Kumar Chakrabarty v. State of West Bengal [1970 (1) SCR 543]; Shayamal Chakraborty v. Commissioner of Police, Calcutta [(1969) 2 SCC 426]; B. Sundar Rao v. State of Orissa [(1972) 3 SCC 11]; John Martin v. State of West Bengal [1975 (3) SCR 211]; S.K. Sekawat v. State of West Bengal, [1975 (2) SCR 161] and Haradhan Saha v. State of West Bengal, [1975 (1) SCR 778]."

(Emphasis supplied)

6. It is thus clear that the obligation of the Government to consider the representation is different and in addition to the obligation of the Board to consider it at the time of hearing the reference before giving its opinion to the Government. Consideration of the representation by the Government has to be uninfluenced by the view of the Advisory Board. In short, the detenu's right to have the representation considered by the Government under Article 22(5) is independent of the consideration of the detenus case and his representation by the Advisory Board. This



position in law is also not disputed before us.

9. It being settled that the aforesaid dual obligation of consideration of the detenu's representation by the Advisory Board and independently by the detaining authority flows from Article 22(5) when only one representation is made addressed to the detaining authority, there is no reason to hold that the detaining authority is relieved of his obligation merely because the representation is addressed to the Advisory Board instead of the detaining authority and submitted to the Advisory Board during pendency of the reference before it. It is difficult to spell out such an inference from the contents of Article 22(5) in support of the contention of the learned Solicitor General. The contents of Article 22(5) as well as the nature of duty imposed thereby on the detaining authority support the view that so long as there is a representation made by the detenu against the order of detention, the aforesaid dual obligation under Article 22(5) arises irrespective of the fact whether the representation is addressed to the detaining authority or to the Advisory Board or to both. The mode of address is only a matter of form which cannot whittle down the requirement of the constitutional mandate in Article 22(5) enacted as one of the safeguards provided to the detenu in case of preventive detention."

(Underline supplied)

15. In **Rajammal v. State of Tamil Nadu [(1999) 1 SCC 417]**, the Apex Court, while considering the challenge



against the detention of a detenu who is a lady classified as 'bootlegger' in respect of which detention order has been passed under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982, held thus:

"7. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. This position has been well delineated by a Constitution Bench of this Court in K.M. Abdulla Kunhi v. Union of India [(1991) 1 SCC 476]. The following observations of the Bench can profitably be extracted here:

"It is a constitutional mandate commanding the authority concerned to whom the detenu submits his



representation to consider the representation and dispose of the same as expeditiously as possible. The words 'as soon as may be' occurring in clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and disposed of with a sense of urgency without an avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the detention law concerned, within which the representation should be dealt with. The requirement, however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal."

8. The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned.

9. What happened in this case was that the Government which received remarks from different authorities submitted



the relevant files before the Under-Secretary for processing it on the next day. The Under-Secretary forwarded it to the Deputy Secretary on the next working day. Thus there is some explanation for the delay till 09.02.1998. Thereafter the file was submitted before the Minister who received it while he was on tour. The Minister passed the order only on 14.02.1998. Though there is explanation for the delay till 09.02.1998, we are unable to find out any explanation whatsoever as for the delay which occurred thereafter. Merely stating that the Minister was on tour and hence he could pass orders only on 14.02.1998 is not a justifiable explanation when the liberty of a citizen guaranteed under Article 21 of the Constitution is involved. Absence of the Minister at the Headquarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen."

(Underline supplied)

16. In **Sarabjeet Singh Mokha [(2021) 20 SCC 98]**, while considering an appeal filed against the judgment of the Division Bench of the Indore Bench of the High Court of Madhya Pradesh, whereby a writ petition filed under Article 226 of the Constitution of India, challenging the detention order passed against the appellant under Section 3(2) of the National Security



Act, 1980, was rejected by the High Court, the Apex Court held thus;

"46. There is absolutely no reasonable basis for explaining the circumstances in which the representation dated 18.05.2021 was not considered by the State Government until after the Advisory Board had submitted its report on 15.06.2021. As we have indicated on the basis of the precedents of this Court, the consideration of the representation by the State Government is qualitatively different from the reference to the Advisory Board. This Court, in *Ankit Ashok Jalan v. Union of India* [(2020) 16 SCC 127] had held that the State Government is not bound to wait on the Advisory Board's report before deciding the representation and must do so, as expeditiously as possible. In spite of awaiting the receipt of the report of the Advisory Board which was eventually issued on 15.06.2021, the State Government took another one month in arriving at a decision on the appellant's representation dated 18.05.2021. The State Government did not furnish any valid reasons for either of the two courses of action."

(Underline supplied)

17. In **Lamiya A.P. v. State of Kerala [2026 KHC Online 2053]**, a Division Bench of this Court headed by the Hon'ble the Chief Justice, while considering a writ petition filed in respect of a detainee under the provisions of KAA (P) Act, who was



classified as 'known rowdy', held thus:

"21. There is a dual obligation on the appropriate Government and a dual right in favour of the detenu, namely, (1) to have his representation irrespective of the length of detention considered by the appropriate Government and (2) to have once again that representation in the light of the circumstances of the case considered by the Board before it gives its opinion. If in the light of that representation the Board finds that there is no sufficient cause for detention the Government has to revoke the order of detention and set at liberty the detenu. Thus, whereas the Government considers the representation to ascertain whether the order is in conformity with its power under the relevant law, the Board considers such representation from the point of view of arriving at its opinion whether there is sufficient cause for detention. The obligation of the appropriate Government to afford to the detenu the opportunity to make a representation and to consider that representation is distinct from the Government's obligation to constitute a Board and to communicate the representation amongst other materials to the Board to enable it to form its opinion and to obtain such opinion. See: Paragraph 10 of the decision in **Pankaj Kumar Chakrabarty v. State of West Bengal [(1969) 3 SCC 400]**.

22. In brief, there is a constitutional obligation on the State to consider the representations of detainees, irrespective of



whether such representation was made before or after the reference is made to the Advisory Board and in any event, such representation cannot be kept pending till the Advisory Board decides the matter

23. The detention order thus cannot be sustained in absence of any explanation offered by the State for not considering the said representation made simultaneously, but not considered separately and only after the Advisory Board forwarded its recommendation. It is quite evident that the Government was awaiting the report of the Advisory Board.”

(Underline supplied)

18. From the judgments referred to supra, the principle that can be drawn is that the detainee has the right to submit separate representations to the Advisory Board as well as to the Government as permitted under Section 7(2) of the KAA (P) Act and the Government is duty-bound to consider the representations submitted by the detainee independently. The unexplained delay in considering the representation violates the constitutional safeguard guaranteed under Article 22(5) of the Constitution of India, making further detention of the detainee bad in the eyes of law. The Government is acting in a dual capacity as far as an order of preventive detention is concerned. When a representation is



received from the detainee, its independent consideration by the Government is mandated under law. There is no necessity for the Government to wait for the opinion of the Advisory Board to consider the representation submitted by the detainee. In the instant case, though the detainee has submitted Exts.P26 and P27 representations dated 12.06.2026, one before the Additional Chief Secretary and one before the Chief Secretary, they were not at all considered by the Government. The representation referred to in Ext.P32 order is Ext.P28 representation submitted by the detainee either to cancel the detention order or for his temporary release, as evident from the 5th reference in Ext.P32 order. So also, in Ext.P33 reply submitted by the Additional Chief Secretary to the detainee, it can be seen that the representation considered in that letter is also Ext.P28 representation and also another representation submitted by the petitioner herein on 23.06.2026 before the Chief Secretary. In such circumstances, we have no hesitation to hold that the order of preventive detention issued against the detainee is liable to be set aside on the ground of non-consideration of the representations submitted by the detainee.



19. While considering the argument of the learned Senior Counsel regarding the non-consideration of the sufficiency of the bail conditions imposed on the detenu in Ext.P3 order of anticipatory bail is concerned, it is relevant to note that in **Joyi Kitty Joseph [(2025) 4 SCC 476]**, while considering an appeal filed by the wife of the detenu challenging the detention order issued against her husband under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, the Apex Court held thus;

“32. Likewise, in the present case, we are not concerned as to whether the conditions imposed by the Magistrate would have taken care of the apprehension expressed by the detaining authority; of the detenu indulging in further smuggling activities. We are more concerned with the aspect that the detaining authority did not consider the efficacy of the conditions and enter any satisfaction, however subjective it is, as to the conditions not being sufficient to restrain the detenu from indulging in such activities.

33. Aameena Begum v. State of Telangana [(2023) 9 SCC 587], noticed with approval Vijay Narain Singh v. State of Bihar [(1984) 3 SCC 14] and extracted para 32 from the same Vijay Narain Singh [(1984) 3 SCC 14]: (SCC pp. 35-



36)

"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 ... 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)

34. The criminal prosecution launched and the preventive detention ordered are on the very same allegations of organised smuggling activities, through a network set-up, revealed on successive raids carried on at various locations, on specific information received, leading to recovery of huge cache of contraband. When bail was granted by the jurisdictional court, that too on conditions, the detaining authority ought to have examined whether they were sufficient to curb the evil of further indulgence in identical activities; which is the very basis of the preventive detention



ordered.”

(Underline supplied)

20. This Court, in **Devu Saji v. State of Kerala [2026 KHC OnLine 697]**, while considering the challenge raised by the wife of the detainee therein against the order of preventive detention issued under Section 3(1) of the KAA (P) Act, this Court held thus;

“58. In the instant case, though Ext.P1 order of detention states that the detaining authority considered the bail order and found that the bail conditions are not sufficient to deter the detainee from repeating criminal activities, the conditions imposed by the competent court while granting bail to the detainee are not even extracted or stated in Ext.P1 order of detention. Therefore, the mere statement made in Ext.P1 order of detention that the bail conditions are not sufficient to deter the detainee from repeating criminal activities, is not at all sufficient to import subjective satisfaction of the detaining authority on the above aspect, before an order of preventive detention can be made under Section 3(2) of the KAA (P) Act. In that view of the matter, the conclusion is irresistible that Ext.P1 order of preventive detention is one passed by the detaining authority without considering the efficacy of the bail conditions, and without entering any subjective satisfaction as to the bail conditions not being sufficient to restrain the detainee from indulging in



anti - social activities. On that sole ground, Ext.P1 order of preventive detention cannot be sustained in law”.

(Underline supplied)

21. In the instant case, by Ext.P3 order dated 01.06.2026, the detainee was granted anticipatory bail by this Court, in the last prejudicial activity, by imposing certain conditions. However, those bail conditions are not stated in Ext.P1 order. The sufficiency of those bail conditions to prevent the detainee from involving in similar criminal activities in future or breaching the public order is not discernible from Ext.P1 order. Being an order which curtails the fundamental rights of a person even without trial, the authorities should exhaust all other statutory steps available to prevent the detainee from involving in similar activities of breach of public order, before initiation of steps for preventive detention. In view of the principles stated in **Joyi Kitty Joseph [(2025) 4 SCC 476]** and in **Devu Saji [2026 KHC OnLine 697]** it is clear that Ext.P1 order is liable to be set aside on the ground of non-consideration of sufficiency of bail conditions imposed on the detainee.

22. As far as the argument of the learned Senior Counsel



on the point of difference between law and order and public order, in **Nenavath Bujji [(2024) 17 SCC 294]**, a decision relied on by the learned Senior Counsel for the petitioner, in a Special Leave Appeal filed at the instance of the detenue, who is detained under Section 3(2) of the Telangana Prevention of Dangerous Activities of Boot-leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders, Land Grabbers Act, Spurious Seed Offenders, Insecticide Offenders, Fertiliser Offenders, Food Adulteration Offenders, Fake Document Offenders, Scheduled Commodities Offenders, Forest Offenders, Gaming Offenders, Sexual Offenders, Explosives Substances Offenders, Arms Offenders, Cyber Crime Offenders and White Collar or Financial Offenders Act, 1986, directed against the judgment of the High Court for the State of Telangana and Hyderabad, the Apex Court held thus;

"33. 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, 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. [See: Union of India v. Amrit Lal Manchanda [(2004) 3 SCC 75]]”

(Underline supplied)

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



"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* [(2011) 5 SCC 244] 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 others* [2025 SCC OnLine SC 502], 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 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."

(Emphasis supplied)

XXXX

XXXX

XXXX

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 [(2023) 9 SCC 633] 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]; Mallada K. Sri Ram v. State of Telangana [(2023) 13 SCC 537], 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 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."

(Emphasis supplied)

24. While going through the principles stated in **Nenavath Bujji [(2024) 17 SCC 294]** and **Dhanya M. [2025 (4) KHC 637]** as extracted above, we find no relevancy for those principles



to the facts of the present case as it cannot be said that Ext.P1 order was issued without considering the issue of breach of public order by the acts of the detainee. So also, we find no relevancy as far as the principles stated in the judgments of this Court in **Fazaludin [2014 (1) KHC 14]**, **Abdul Razack A. A. [2015 (4) KLT SN 52]**, and **Vijayamma [2014 (4) KHC 368]**, relied by the learned Director General of Prosecution to the facts of the present case.

25. In the writ petition, it is specifically pleaded that page Nos.45, 51, 85, 113, 133, 149, 191, 199, 215, 231, 233, 235, 253, 255 and 283 were missing and the pages 55, 56, 65, 66, 67, 70, 72, 73, 96, 101, 102, 105, 114, 115, 116, 117, 118, 122 to 132, 157, 165, 166, 168, 170, 189, 190, 201, 203, 205, 206, 221, 222, 237, 243, 244, 252, 270, 272, 273, 277 and 284 are illegible among the documents supplied to the detainee. On going through Ext.R3(b) documents produced by the 3rd respondent, we find force in the aforesaid pleadings in the writ petition and the submissions made by the learned Senior Counsel. From Ext.R3(b) documents, we notice that several pages of those documents



supplied to the detainee are illegible. So also, some of the pages of the documents are missing.

26. In **Joicy [2018 (1) KHC 37]**, the judgment relied by the learned Director General of Prosecution, a Division Bench of this Court, while considering a writ petition filed against the preventive detention of the detainee, who is the husband of the petitioner therein, under Section 3(1) of the KAA (P) Act, held thus;

"16. KAAPA is enacted to prevent as well to have effective control over, anti-social activities of persons indulged in such activities, to protect the community or the public at large free from threat or danger by the unruly behaviour of those persons. Quarrel, fight, clash or assault between people for some reason or other, are quite common in a society though a major group of people wish to live in harmony and peace. Still issues are there and cases are being registered by police though their prime duty is to prevent such instances. When anti-social activities are caused by a person repeatedly which seriously cause disturbance, threat, feeling of insecurity, danger etc. to a society at large or to the people of the locality, Section 3 of KAAPA gives power to the detaining authority to pass an order to prevent it. The words employed in the relevant provision 'it is necessary so



to do' contemplates objective and subjective satisfaction of the detaining authority to pass such stringent orders curtailing the freedom of an individual to a certain extent, for the society at large. As the prime intention of the Act is to prevent or control anti - social activities by such persons who fall within the sweep of 'Known goonda' or 'Known rowdy', for the safety of the public, the detaining authority is vested with power to take tough and stringent decisions giving prime importance to the welfare of society than the private right of an individual by putting him behind the bar without trial as a preventive measure for the period stipulated in the Act. As preventive order is passed on suspicion, the criminal antecedents of the person affecting public order or disturbing the community, enable the detaining authority to arrive at subjective satisfaction. In Crime No. 1040 of 2013, the victim is even a minor and the allegation is that the detenu has attempted to murder him along with the co-indictees as he opposed peddling of narcotic items and drugs by the detenu in his locality. The subjective satisfaction of the detaining authority that the detenu is dangerous to the life of the community as a whole, is clearly discernible from the order, based on his past conduct and incidents involved by him. In Ext.P1 all the cases have been narrated in detail and details of the cases were forwarded as Exts.P4 to P8 along with Ext.P2 report of the sponsoring authority. It is revealed that the detenu is indulged in prejudicial acts for a long time and as he has



become a threat to the society, the sponsoring authority recommended preventive detention and the detaining authority on subjective satisfaction so as to safeguard the interests of the Society passed the order. The argument of the learned Counsel for the detenu that Ext.P1 is not supported by valid grounds cannot be accepted as the details of all the cases in which the detenu had involved are narrated in detail and it was considered after meticulous evaluation. It is further argued that the order is vitiated as all the documents relied on by the authority to pass the order were not furnished to him and there is non-compliance of Section 7 of KAAPA.

Section 7 of KAAPA reads as follows:

- (1) When a person is arrested in pursuance of a detention order, the officer arresting him shall read out the detention order to him and give him a copy of such order.
- (2) The grounds of detention, specifying the instances of offences, with copies of relevant documents, as far as practicable, on the basis of which he is considered as a "known goonda" or "known rowdy" and giving such materials relating to his activities on the basis of which his detention has been found necessary, shall be furnished to him as soon as possible nevertheless, in any case, within five days of detention and he shall also be informed in writing, under acknowledgement, of his right to represent to the Government and before the Advisory Board against his detention".

But proviso 4 to Section 7 reads as:



"4) The order of detention shall not be deemed to be invalid merely because one or more of the facts or circumstances cited among the grounds are vague, non - existent, irrelevant or invalid for any reason whatsoever and such order shall be deemed to have been made by the Government or the Authorised officer after having been satisfied about the need for detention with reference to the remaining facts and circumstances, provided that the minimum conditions for being classified as a known goonda or known rowdy are satisfied."

17. A reading of this provision itself would show that the order shall not be deemed to be invalid merely because a copy of relevant document was not served on him. Section 7 only says that copies as far as practicable shall be served on him. But of course that does not show that the rigour in the procedure laid down can be diluted by the authorities on the other hand, the mandatory provisions and procedural safeguards have to be strictly followed."

(Underline supplied)

27. In **Shaji [2014 (1) KLJ 33]**, in a writ petition filed against the order of preventive detention of the detenu therein under Section 3 of the KAA (P) Act, another Division Bench of this Court held thus;

"28. In this context, counsel also contended that documents in relation to Section 107 CrPC proceedings were also relied on in Ext. P1 order and that it was not served on the detenu.



In Ext. P1 order what is stated by the detaining authority is that though Section 107 proceedings have been initiated against the detenu on 18.07.2010 and are pending before Sub Divisional Magistrate, Kollam, there has not been any progress in the matter and it was therefore that he was satisfied that in spite of the above, the detenu should be detained under the Act. This therefore means that the detaining authority did not rely on Section 107 CrPC proceedings and only if the detaining authority had relied on such proceedings, detaining authority would have been obliged to supply the documents in relation thereto to the detenu in compliance with the principles laid down by the Apex Court in the judgment referred to above. Further, if the document in relation to Crime No. 1098 of 2010 was of any advantage to the detenu and if he wanted to rely on the same, it was for him to have made a request to the detaining authority or the Government to supply him those documents, which also was not done. Therefore, we are not prepared to accept the case of the petitioner on this count also."

(Underline supplied)

28. In **Buyamayum Abdul Hanan @ Anand [(2022) 19 SCC 509]**, in an appeal directed against the decision of the High Court of Manipur setting aside the order of detention of the detenue passed under the Prevention of Illicit Traffic in Narcotic



Drugs and Psychotropic Substances Act, on the premise that the Police failed to supply legible copies of the documents to the detainee, which were relied upon by the appellants while passing the order of detention, the Apex Court held thus;

“22. Thus, the legal position has been settled by this Court that the right to make representation is a fundamental right of the detenu under Article 22(5) of the Constitution and supply of the illegible copy of documents which has been relied upon by the detaining authority indeed has deprived him in making an effective representation and denial thereof will hold the order of detention illegal and not in accordance with the procedure contemplated under law.”

(Underline supplied)

29. The Apex Court in **Pramod Singla [(2024) 19 SCC 791]**, in which the appeal was 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 the appellant on grounds of delay in considering his representation was denied. In that judgment the Apex Court considered whether there is any conflict between the principles of law laid down in **K.M. Abdulla Kunhi and 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 [(1970) 1 SCC 219]**. After considering the ratio of the law laid down in the judgments, in **Pramod Singla [(2024) 19 SCC 791]**, the Apex Court held thus:

“33. 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 order is not liable to be struck down on this ground. We therefore hold Issue II in favour of the respondent.

Issue III — Whether the illegible documents written in Chinese submitted to the appellant herein are grounds enough for quashing the impugned detention order?

34. In cases where illegible documents have been supplied to the detainee, a grave prejudice is caused to the detainee in availing his right to send a representation to the relevant authorities, because the detainee, while submitting his representation, does not have clarity on the grounds of his or her detention. In such a circumstance, the relief under



Article 22(5) of the Constitution of India and the relevant statutory provisions allowing for submitting a representation are vitiated, since no man can defend himself against an unknown threat.

35. In *Harikisan v. State of Maharashtra* [1962 SCC OnLine SC 117], this Court held that in cases of preventive detention, as per the principles enshrined under Article 22(5) of the Constitution of India, the detaining authority must explain the grounds of detention to the detainee, and must provide the material in support of the same and in the language understood by the detainee. The relevant paragraph of the said judgment is being reproduced herein:

“...The grounds in support of the order served on the appellant ran into fourteen typed pages and referred to his activities over a period of thirteen years, beside referring to a large number of court proceedings concerning him and other persons who were alleged to be his associates. Mere oral explanation of a complicated order of the nature made against the appellant without supplying him the translation in script and language which he understood would, in our judgment, amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making a representation against the order..”

36. In the present case at hand, the appellant - detainee, 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 order is not liable to be struck down on this ground. We therefore hold Issue II in favour of the respondent."

(Underline supplied)

30. When legible copies of material documents relied by the authorities concerned for issuing the order of preventive detention are not supplied to the detainee, the statutory right guaranteed to him for submitting a proper representation to the Government concerned or before the Advisory Board against the order is violated, as he could not gather full information of the cases considered against him and the facts taken into consideration by the detaining authority. If the illegible copies



supplied or the copies of the documents not supplied are not material documents taken into consideration by the authority concerned, it will have no bearing on the detention order. In the instant case, as already noted, several pages are missing, and several pages are illegible in the documents supplied to the detainee. Those documents cannot be said as immaterial. The respondents are also having no case that those documents were not relied on by the second respondent for issuing the detention order. Therefore, we find force in the submission of the learned Senior Counsel for the petitioner that the detainee was not supplied with or supplied with illegible copies of some of the material documents relied upon by the second respondent to arrive at the subjective satisfaction for issuing Ext.P1 order and we find no merit in the contention of the learned Director General of Prosecution that there is substantial compliance as far as supply of documents to the detainee is concerned. Therefore, the order of preventive detention impugned in the present case is liable to be set aside on the aforesaid ground also.

31. While coming to the next argument raised by the



learned Senior Counsel regarding the non-application of mind in considering the criminal cases registered against the detainee in Ext.P1 order, we find merit in that contention also. It is gatherable from the documents produced along with the writ petition that in respect of the incident in Crime No.1687 of 2019 of Vattiyoorkavu Police Station, there is a counter case registered on the complaint of the detainee, which is marked as Ext.P10 in the writ petition. The said FIR was registered on 25.08.2019 at 23:13 hrs., whereas the FIR in Crime No.1687 of 2019 was registered on 25.08.2019 at 17:40 hrs. But there is no mention of the aforesaid Ext.P10 FIR in Ext.P1 order. So also, as far as Crime No.677 of 2023 of Vattiyoorkavu Police Station is concerned, it is stated in Ext.P1 order that an application for cancellation of bail is pending before the jurisdictional court in that crime. However, Ext.P11 proceedings dated 01.06.2026 uploaded in the e-courts website from the District Court concerned would show that the bail cancellation application was returned for re-presentation. This fact is also not correctly mentioned in Ext.P1 order. As far as Crime No.723 of 2025 of Vattiyoorkavu Police Station is concerned, a



compounding petition was filed before this Court by the de facto complainant, and it was subsequently withdrawn. But this vital aspect is not reflected in Ext.P1 order. The granting of extension of time in the anticipatory bail granted to the detainee in Crime No.334 of 2026 of Vattiyoorkavu Police Station by Ext.P5 order of this Court is also not mentioned in Ext.P1 order. The staying of proceedings initiated under Sections 107, 110(g) of Cr.P.C. and Section 126 of BNSS as per Ext.P22 order is also not reflected in Ext.P1 order. The cumulative effect of these omissions shows that Ext.P1 order is issued in a casual manner without proper application of mind or subjective satisfaction.

32. The upshot of the above discussions is that the impugned Exts.P1, P2 and P32 orders are liable to be set aside for the reasons stated as above.

In the result, this writ petition is allowed by setting aside the impugned Exts.P1, P2 and P32 orders under challenge in this writ petition. The 4th respondent, Superintendent of Central Prison and Correction Home, Viyyur, is directed to release the detainee Mr. Sugathan R., S/o Raveendran Nair P., forthwith, if his detention is



not required in connection with any other case. The Registry shall communicate this order to the 4th respondent by e-mail at once.

Sd/-

ANIL K. NARENDHAN, JUDGE

Sd/-

MURALEE KRISHNA S., JUDGE

MSA

APPENDIX OF WP(CRL.) NO. 1269 OF 2026

PETITIONER EXHIBITS

- Exhibit P1 A TRUE COPY OF THE DETENTION ORDER NO. DCTVM/6127/2026-C5 DATED 08.06.2026 ISSUED BY THE 2ND RESPONDENT, ALONG WITH ITS ENGLISH TRANSLATION
- Exhibit P2 A TRUE COPY OF THE ORDER OF APPROVAL DATED 21.06.2026 ISSUED BY THE 1ST RESPONDENT
- Exhibit P3 A TRUE COPY OF THE ORDER DATED 01.06.2026 OF THIS HON'BLE COURT IN BA NO. 2491 OF 2026
- Exhibit P4 A TRUE COPY OF THE CRL.M.APPL. NO. 1 OF 2026 IN BA NO. 2491 OF 2026
- Exhibit P5 A TRUE COPY OF THE ORDER DATED 10.06.2026 IN CRL.M.APPL. NO. 1 OF 2026 IN BA NO. 2491 OF 2026
- Exhibit P6 A TRUE COPY OF THE GROUNDS OF DETENTION SUPPLIED TO THE DETENUE THROUGH HIS FRIEND, RAJEEV DATED 08.06.2026
- Exhibit P7 A TRUE COPY OF THE COMPLAINT DATED 02.02.2026 GIVEN BY V K PRASANTH MLA TO THE STATION HOUSE OFFICER OF VATTIYOORKAVU POLICE STATION
- Exhibit P8 A TRUE COPY OF THE FIR IN CRIME NO. 93 OF 2026 ON THE FILES OF VATTIYOORKAVU POLICE STATION
- Exhibit P9 A TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME NO. 1687 OF 2019 OF VATTIYOORKAVU POLICE STATION
- Exhibit P10 A TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME NO. 1674 OF 2019 OF VATTIYOORKAVU POLICE STATION
- Exhibit P11 A TRUE COPY OF THE PROCEEDINGS DATED 01.06.2026 IN CRL.M.P. NO. 1 OF 2026 AS UPLOADED IN THE E-COURTS WEBSITE



- Exhibit P12** A TRUE COPY OF THE FIR IN CRIME NO. 252 OF 2025 ON THE FILES OF VATTIYOORKAVU POLICE STATION
- Exhibit P13** A TRUE COPY OF THE ORDER DATED 30.08.2025 OF THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE - II, NEDUMANGAD IN C.P. NO. 72 OF 2025
- Exhibit P14** A TRUE COPY OF FIR IN CRIME NO. 253 OF 2025 ON THE FILES OF VATTIYOORKAVU POLICE STATION
- Exhibit P15** A TRUE COPY OF THE AFFIDAVIT DATED 05.08.2025 SWORN BY THE DE-FACTO COMPLAINANT CRIME NO. 723 OF 2025 OF VATTIYOORKAVU POLICE STATION AND FILED IN CRL.M.C. NO. 7445 OF 2025 BEFORE THIS HON'BLE COURT
- Exhibit P16** A TRUE COPY OF THE ORDER DATED 06.11.2025 OF THIS HON'BLE COURT IN CRL.M.C. NO. 7445 OF 2025
- Exhibit P17** A TRUE COPY OF THE FIR IN CRIME NO. 335 OF 2026 ON THE FILES OF VATTIYOORKAVU POLICE STATION
- Exhibit P18** A TRUE COPY OF THE LETTER DATED 31.03.2026 SIGNED BY THE STATION HOUSE OFFICER OF THE VATTIYOORKAVU POLICE STATION TO THE POLICE DEPUTY COMMISSIONER (LAW & ORDER) THIRUVANANTHAPURAM CITY
- Exhibit P19** A TRUE COPY OF ORDER DATED 27.10.2023 OF THE SUB DIVISIONAL MAGISTRATE COURT, THIRUVANANTHAPURAM IN MC NO. 274 OF 2023
- Exhibit P20** A TRUE COPY OF THE ORDER DATED 04.12.2023 OF THIS HON'BLE COURT IN CRL.M.C. NO. 9574 OF 2023
- Exhibit P21** A TRUE COPY OF ORDER DATED 08.05.2025 OF SUB DIVISIONAL MAGISTRATE COURT, THIRUVANANTHAPURAM IN M.C NO. 154 OF 2025
- Exhibit P22** A TRUE COPY OF ORDER DATED 23.05.2025 OF THIS



HON'BLE COURT IN CRL.M.C. NO. 4490 OF 2025

- Exhibit P23 A TRUE COPY OF THE ORDER DATED 07.10.2025 OF
ADVISORY BOARD UNDER KAAPA
- Exhibit P24 A TRUE COPY OF THE REPORT DATED 11.05.2026
SENT BY THE 3RD RESPONDENT TO 2ND RESPONDENT
- Exhibit P25 A TRUE COPY OF THE REPORT DATED 02.06.2026
SENT BY THE 3RD RESPONDENT TO 2ND RESPONDENT
- Exhibit P26 A TRUE COPY OF THE REPRESENTATION DATED
12.06.2026 SEND TO THE 1ST RESPONDENT THROUGH
THE 4TH RESPONDENT
- Exhibit P27 A TRUE COPY OF REPRESENTATION DATED
12.06.2026 GIVEN TO THE CHIEF SECRETARY OF
GOVERNMENT OF KERALA
- Exhibit P28 A TRUE COPY OF REPRESENTATION DATED JUNE,
2026 GIVEN TO THE ADVISORY BOARD UNDER KAAPA
- Exhibit P29 A TRUE COPY OF THE REPRESENTATION DATED
25.06.2026 SUBMITTED BY THE DETENUE BEFORE
THE ADDITIONAL CHIEF SECRETARY, HOME
DEPARTMENT, GOVERNMENT OF KERALA
- Exhibit P30 A TRUE COPY OF THE REPRESENTATION DATED
25.06.2026 SUBMITTED BEFORE THE CHIEF
SECRETARY OF THE GOVERNMENT OF KERALA
- Exhibit P31 A TRUE COPY OF THE OPINION OF THE ADVISORY
BOARD DATED 01.07.2026
- Exhibit P32 A TRUE COPY OF THE ORDER NO. G.O. (RT)NO.
2276/2026/HOME DATED 06.07.2026 DATED
06.07.2026 ISSUED BY THE 1ST RESPONDENT
- Exhibit P33 A TRUE COPY OF THE LETTER DATED 08.07.2026
ISSUED BY THE UNDER SECRETARY, HOME
DEPARTMENT, GOVERNMENT OF KERALA
- Exhibit P34 A TRUE COPY OF THE REPRESENTATION DATED
05.07.2026 SUBMITTED BEFORE THE ADDITIONAL
CHIEF SECRETARY OF HOME DEPARTMENT,
GOVERNMENT OF KERALA



Exhibit P35 A TRUE COPY OF THE REPRESENTATION DATED 05.07.2026 SUBMITTED BEFORE THE CHIEF SECRETARY, GOVERNMENT OF KERALA

Exhibit P36 A TRUE COPY OF THE LETTER DATED 13.07.2026 ISSUED BY THE UNDER SECRETARY OF THE 1ST RESPONDENT

Exhibit P37 A TRUE COPY OF LETTER NO. SSA5/163/2026-HOME DATED 20.07.2026 ISSUED BY THE UNDER SECRETARY, HOME DEPARTMENT, GOVERNMENT OF KERALA ALONG WITH ENGLISH TRANSLATION

Exhibit P38 A TRUE COPY OF THE LETTER NO. S.S.A5/163/2026-HOME DATED 06.08.2026 ISSUED BY THE SPECIAL SECRETARY

RESPONDENT ANNEXURES

Exhibit R3 (a) A COPY OF THE ROWDY HISTORY SHEET

EXHIBIT R3(b) TRUE COPY OF THE DOCUMENTS RELIED UPON BY THE DETAINING AUTHORITY WHICH WERE SERVED TO THE DETENUE WITH PROPER ACKNOWLEDGEMENTS

EXHIBIT R3(c) TRUE COPY OF FIR CRIME NO. 696/2026 OF VATTIYOORKAAVU POLICE STATION REGISTERED AGAINST THE DETENUE IN CONNECTION WITH THE ATTACK AGAINST POLICE

EXHIBIT R3(d) TRUE COPY OF THE FINAL REPORT OF CRIME 335/2025 OF VATTIYOORKAAVU POLICE STATION

EXHIBIT R1 (a) LETTER NO.HOME-SSA5/163/2026-HOME DATED 30.06.2026

EXHIBIT R1 (b) TRUE COPY OF THE LETTER SSA5/163/2026-HOME DATED 30.06.2026 ADDRESSED TO THE SECRETARY, ADVISORY BOARD, KAAP ACT.



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EXHIBIT R1 (c)

**UNOFFICIAL NOTE REPLY DATED 18.07.2026 FROM
THE LOCAL SELF GOVERNMENT**