KAAPA | Detaining Authority Duty-Bound To Consider Previous Opinion Of Advisory Board; Non-Consideration Of Relevant Materials Fatal: Kerala HC

2022 LiveLaw (Ker) 608

IN THE HIGH COURT OF KERALA AT ERNAKULAM
ALEXANDER THOMAS; J., SOPHY THOMAS; J.
W.P (Crl) No.588 of 2022; 7 October, 2022
DEVIKA K.D. *versus* **STATE OF KERALA**

Petitioner by Adv. Ajeesh M Ummer; Respondents by Government Pleader K.A. Anas

J U D G M E N T

Alexander Thomas, J.

The prayers in the instant Writ Petition (Criminal), seeking the pleas of Habeas Corpus and Certiorari, involving the challenge against a detention order passed against the detenu under Section 3(1) of the Kerala Anti-Social Activities (Prevention) Act (KAAP Act), are as follows:

"i. Call for the records leading to Exts.P1 quash the same by the issuance of a writ of certiorari or any other appropriate writ, order or direction.

ii. Issue a writ of habeas corpus commanding therespondents to produce the body of the detenu viz. Ratheesh @ Kara Ratheesh, aged 39 years, S/o. Ravi, Chethikkattu, Kadappara, Mattor Village, Malayattoor, Ernakulam, PIN683 587, the husband of the petitioner who is illegally detained in Central Prison, Kannur before this Hon'ble Court and set him at liberty forthwith. and

iii. Grant such other relief as this Hon'ble Court deemsfit and proper in the circumstances of the case including the costs of this Writ Petition (Criminal)."

2. Heard Shri.Ajeesh M. Ummer, the learned counsel appearingfor the petitioner and Sri.K.A.Anas, the learned Prosecutor appearing

for the respondents.

3. The petitioner is the wife of the detenu Shri.Ratheesh @ KaraRatheesh, who has been ordered to be detained in terms of Section 3(1) of the KAAP Act, 2007.

4. In the instant case, R4 (Sponsoring Authority) has givenreport dated 14.02.2022 to the 2nd respondent - authorised Detaining Authority (District Collector & District Magistrate), recommending that, in view of the involvement of the detenu in five crimes mentioned therein, it is a fit case for the Detaining Authority to exercise its discretion so as to form subjective satisfaction to issue orders of detention to prevent the detenu from committing further prejudicial anti-social activities, as conceived in the above Act. After consideration of the Sponsoring Authority's report, the 2nd respondent-authorised Detaining Authority has passed Ext.P1 detention order dated 21.04.2022, ordering, under Section 3(1) of the KAAP Act, that the detenu be detained. Ext.P1 detention order has been duly executed with the arrest and detention of the detenu on 21.04.2022 itself. According to the respondents, the detention order, the grounds of detention and the relevant documents thereto have been duly served on the detenu on 21.04.2022 itself, as evidenced by the receipt given by him. Further, it is common ground that Ext.P1 detention order dated 21.04.2022 has been duly approved by the 1st respondent, a competent authority of the State Government, the Home Department, under Section 3(3) of the above Act, on 06.05.2022. Thereafter, R1-Government has placed the matter for consideration of the Advisory Board on 10.05.2022. The 5th respondent-Advisory Board has given opportunity of hearing to the detenu on 07.06.2022 and has given the report on

10.06.2022, recommending to the Government that there is sufficient cause for detaining the detenu, so as to enable the Government to confirm Ext.P1 detention order. Thereafter, R1-competent authority of the State Government, the Home Department has issued orders, as per G.O.(Rt)No.1744/2022/Home dated 24.06.2022, confirming Ext.P1 detention order dated 21.04.2022, in terms of Section 10(4) of the Act. In the confirmation order, the Government has opined that there is sufficient cause for the issuance of Ext.P1 detention order and that the detenu may thus be preventively detained for a period of six months from 21.04.2022, which is up to 20.10.2022.

5. In the instant case, the last prejudicial activity, as disclosedby the fifth crime in this case, is said to be committed on 29.12.2021. The time period between the last prejudicial activity and the detention order is 3 months and 24 days. There is no controversy that the respondents have complied with the time lines stipulated in Section 7(2), regarding the communication of the commencement of the detention order within five days, issuance of the approval order under Section 3(3) within 12 days after excluding public holidays, and under Section 9(1) for placement of the matter by the Government to the Advisory Board within three weeks from the date of detention order, and also regarding the time line under Section 10(1) of the Act, which obligates the Advisory Board to furnish the report within 9 weeks from the date of detention.

6. The 2nd respondent-Detaining Authority has placed reliance on five crimes, in which the detenu has been involved, for the issuance of the detention order. The details of the five crimes are contained in the counter affidavit dated 02.09.2022, filed by the 1st respondent-State Government, more particularly in para No.6 thereof on pages 3 to 6 thereof. The chronological order has been followed therein, as regards the first three crimes, but the last crime has been shown as the fourth crime and the penultimate crime has been shown as the fifth crime, as the fifth crime shown in the counter affidavit was pending investigation at that time. However, for the sake of easy clarity, it will be better to follow the chronological order of the date of registration of the crimes. The details of the crimes, following the chronological order *viz-a-viz* the date of registration, are as follows:

"(i) ***Crime No.2180/2016 of Kalady Police Station registered u/s 323, 324, 326, 307 of IPC****:*

The case is that on 11.09.2016, night, the accused under the leadership of the detenu formed an unlawful assembly and caused bodily hurt to the complainant, along with his gang and attempted to murder him. The detenu is the 4th accused in this case. He was arrested on 08.10.2016, subsequently admitted to judicial custody and enlarged on bail on 31.01.2017. After completing the enquiry, charge sheet was submitted before the court on 30.11.2016 and the case is pending trial before the Assistant Sessions Court, Perumbavoor as SC No.352/18.

(ii) ***Crime No.2195/2016 of Kalady Police Station registered u/s 323, 324, 308 of IPC:***

The case is that on 11.09.2016, evening, the detenu and other accused formed an unlawful assembly in furtherance of an enmity caused on the soil business conducted by the detenu and the complainant and the detenu held the collar of complainant's shirt and attempted to stab towards his head with a knife which might have led to his death and the said act injured his forehead, as he eluded his head and the other accused beat on the complainant's neck and back with a pipe and the said act caused bruise on his ring finger, while he obstructed the same with his left hand and then the accused hit him on his head, back and chest alternately. The detenu is the 1st accused in this case. He was arrested formally on 17.12.2016 and then remanded. Chargesheet was submitted before the court on 26.11.2016 and the case is pending trial before the Hon'ble Subordinate & Asst. Sessions Court as SC No.287/17.

(iii) ***Crime No.2259/2016 of Kalady Police Station registered u/s 427, 324, 326, 302 of IPC:***

The case is that with an intention to murder the complainant the detenu and his gang formed an unlawful assembly and conspired many times and on 26.09.2016, morning, they crashed on the scooter ridden by the complainant, with a car and then brutally and mortally injured him with a steel knife and iron sword, which led to his death while under treatment in a hospital. The detenu is the 1st accused in this case. He was arrested on 08.10.2016, then remanded and subsequently enlarged on bail on 04.08.2017. Chargesheet was submitted before the Court on 19.12.2016 and the case is pending trial before the Hon'ble Addl. District Court N. Paravoor as SC No.251/17.

(iv) ***Crime No.1134/2020 of Perumbavoor Police Station registered u/s 454, 380, 427 of IPC, Section 5 in the Kerala Prevention of Damage of Private Property & Payment of Compensation Act 2019 (9 of 2019), Section 4(2)(d)(f) r/w 5 of Kerala Epidemic Decease Ordinance 2020****:*

The case is that on 24.05.2020, afternoon, with an intention to cause religious rivalry, the accused formed an unlawful assembly and came near the Mahadeva Temple, Kalady in 3 vehicles with deadly weapons, trespassed into the cinema set, including a Christian Church, created at Kalady Manappuram, with the permission of the temple organizing committee for cinema shooting, robbed some valuable items kept in that building and damaged the building which caused a loss of Rs.80 Lakh to the Cinema producing company and contaminated the wall of the shrine adjacent to the cinema set and caused other damages which led to a loss of Rs.25,000/- to the temple and also acted against the orders of Central and State Governments to prevent COVID-19 spread and violated the Epidemic Disease Ordinance of State Government. In this case, the detenu was arrested on 25.05.2020 and remanded on26.06.2020. Subsequently, he was released on bail on 28.07.2020. The case is under investigation.

(v) ***Crime No.03/2022 of Kalady Police Station registered u/s 447, 506 of IPC****:*

The case is that the 1st and 2nd accused, who are the accused in Crime No.2180/2016, which is under trial before the Court in which the complainant of this case is the complainant, the 1st accused, on the abetment of the detenu who is the 2nd accused, entered the house premises of the complainant several times in between the period 2021 January to 2021 December and asked to settle the case, and since he didn't concede the same, the 1st accused threatened to murder the complainant and his brother who is the 5th witness, within 90 days with the help of the detenu which was heard by the 2nd witness and he informed the same to the complainant which caused fear of death to the complainant. The detenu was arrested on 28.01.2022 and subsequently enlarged on bail on 28.01.2022. Charge sheet was submitted before the Court on 28.01.2022 and the case is pending trial before the Hon'ble Judicial First Class Magistrate Court-I, Perumbavoor."

7. If all the above said five crimes are taken into account, then the detenu may fulfil the definitional parameters of "known rowdy", as per Section 2(p)(iii) read with Section 2(t) of the above Act, inasmuch as, involvement in a minimum number of three crimes, committed during the period of 7 years, prior to the detention order, would be fulfilled. So also, the definitional parameters of anti-social activities, as per Section 2 (a), would also be fulfilled accordingly.

8. It is common ground that, prior to the issuance of thepresent Ext.P1 detention order dated 21.04.2022, the respondents had issued two previous detention orders as against the very same detenu. According to the respondents, as furnished in the pleadings in the counter affidavit of the 4th respondent (Sponsoring Authority), after para 4 thereof, the detenu has been involved in altogether 21 crimes. The first five crimes mentioned therein are the five crimes covered by the present Ext.P1 detention order. Item Nos. (vi) to (xxi) mentioned therein are crimes, in which the detenu has been involved during the prior period. We are mainly concerned with the five crimes mentioned in the present Ext.P1 detention order, in as much as the said crimes alone are said to have been committed during the seven year period, prior to the present detention order i.e, Ext.P1.

9. The respondent-District Magistrate-cum-District Collectorhad issued detention order dated 08.02.2008, ordering that the detention of the present detenu under Section 3(1) of the Act is to be made, with immediate effect, for a period of six months, and we are told that, thereby, the detenu has been arrested and detained on 09.02.2008. The Government confirmed the said detention order, as per order dated 18.04.2008 and it was ordered therein that the detention will be for a period of six months from 09.02.2008. The said detention proceedings were challenged before this Court by filing W.P.(Crl.)No.180 of 2008. The Division Bench of this Court had rendered judgment dated 17.06.2008, allowing the main pleas in W.P.(Crl.)No.180 of 2008, by holding that the order passed by the authorised Detaining Authority itself, initially fixing the period of detention as six months is ultra vires the provisions contained in Article 22 (4) of the Constitution of India and also against the provisions of the Act and this was so found by placing reliance on the dictum laid down by this Court in an earlier decision in ***Anitha Bruse*** *v.* ***State of Kerala*** **[2008 (2) KLT 857]**. Hence, this Court, as per judgment dated 17.06.2008 in W.P.(Crl.)No.180 of 2008, had directed the respondents to immediately release the detenu. We are told that the detenu was thus released on 17.06.2008 itself.

10. Later, the respondent-District Collector had issued yet another detention order dated 08.10.2020 under Section 3(1) of the Act. The Government had approved the said detention order, as per Section 3(3) of the Act. The matter was placed before the Advisory Board. The Advisory Board has issued proceedings in RC No.29/2020 dated 27.11.2020, recommending to the Government that the Board is of the opinion that there is no sufficient cause for the continued detention of the above detenu-Ratheesh and that he shall be released from custody, if it is not required. The Advisory Board had tendered its opinion and recommendation under Section 10(1) of the Act that there is no sufficient cause for the continued detention of the above detenu-Sri.Ratheesh, and that he shall be released from custody, if not required in connection with any other case. The said report, in favour of the detenu, rendered on 27.11.2020, by the Advisory Board, in respect of the second detention order, does not form a part of the records in the present Ext.P1 detention order. However, the learned Prosecutor has made available a copy of the same for our perusal and the operative portion of the opinion of the Advisory Board, so tendered on 27.11.2020, reads as follows:

"13. The next point to be considered is whether or not there is sufficient cause for the detention of the detenu in preventive custody to ensure that he is not involving in any anti-social activities adversely affecting the peaceful life of the public in the locality. We have already dealt with the anti-social activities of the detenu and the steps taken both under the ordinary laws and under the Act as a corrective measure in paragraph 10 above. Hence we are not repeating it here. An order under Section 3(1) of the Act can be made against the detenu only if the remedies available under the ordinary laws are ineffective and not sufficient to meet the requirement. The fact that the detenu is involved in a large number of criminal cases by itself is not a sufficient ground for making an order under the Act. All the legal requirements for making such an order have to be fulfilled. Bail was granted to the detenu in all the cases except the last one. The High Court has granted bail to the detenu in Crime Case No.620/2014 subject to conditions. It is specifically stated in the bail order that if he commits breach of any of the conditions the investigating agency can move the court for cancellation of bail. Accordingly when the detenu had involved in Crime No.1134 of 2020 the Station House Officer, Angamaly Police Station filed petition for cancellation of bail granted in B.A.No.999/2017 and Crl.M.A.No.5747/2017 on 22.08.2020 and the same is pending consideration by the court (vide first paragraph of the consideration of the matter in the order by the Authorized Officer). In such circumstances it was for the police authorities to point out the urgency and press for orders in the said application. This, it is not stated, have been done. Section 107 CrPC proceedings are also pending. This would show that the remedies available under the ordinary laws have not be exhausted."

11. Pursuant thereto, the Government has passed order dated09.12.2020, under Section 10(4) of the Act, revoking the said detention order dated 08.10.2020 and the detenu was released from detention immediately thereafter.

12. It is after the said two rounds of detention proceedings thatthe present Ext.P1 detention order dated 21.04.2022 has been issued. The first four crimes mentioned hereinabove are the four crimes taken into account for the second detention order dated 08.10.2020, which was revoked by the Government, based on the opinion of the Advisory Board as above.

13. Apart from the above said four crimes, the detenu is allegedto have involved himself as accused No.2 in the fifth crime, which is said to have occurred on 29.12.2021 mentioned above, which is after the revocation of the second detention order.

14. The petitioner has raised the about five contentions and weneed to consider only the first three contentions, as we are inclined to allow the pleas of the petitioner, as regards the second and third contentions, and hence, there is no necessity for us to examine the additional contentions urged by the petitioner.

15. Contention (a):-

The first contention urged by the learned counsel for the petitioner is that there has been unreasonable and unexplained delay as between the last prejudicial activity and the date of the detention order, and so the live and proximate link between the last prejudicial activity and the detention order has been snapped and lost and hence, Ext.P1 detention order is liable to be interfered with on that ground alone. In that regard, the learned counsel for the petitioner pointed out that, even going by the admitted case of the respondents, the last prejudicial activity (date of the alleged commission of the last crime, which is the fifth case) is on 29.12.2021, whereas, admittedly, the detention order, as per Ext.P1, has been issued only on 21.04.2022, and that there is thus a delay of 3 months and 24 days, and that the said delay has not been properly explained, and that therefore, the live-link, as between the last prejudicial activity and the purpose of detention, has been snapped and lost.

16. Per contra, the learned Prosecutor would urge that, it is truethat the date of commission of the last crime is on 29.12.2021, but the said crime was reported and registered as FIR only on 01.01.2022, and the detenu could be arrested only on 28.01.2022, and the Final Report was also duly filed in the above case on 28.01.2022. Immediately thereafter, the Sponsoring Authority has considered all the relevant aspects and has issued report dated 14.02.2022, recommending the Detaining Authority for detention of the alleged detenu, and thereafter, the Detaining Authority has passed Ext.P1 detention order on 21.04.2022, considering the fact that the detenu could be arrested only on 28.01.2022 and that since the Final Report was filed on 28.01.2022, the Sponsoring Authority required some minimal reasonable time for considering the matter, to decide as to whether recommendation should be made, and such consideration and report was made on 14.02.2022, and immediately, after receipt of the Sponsoring Authority's report dated 14.02.2022, the respondentDistrict Magistrate, as the authorised Detaining Authority, has considered the various aspects, and has issued Ext.P1 detention order on 21.04.2022. The time gap between the date of arrest of the detenu in the last crime and the Sponsoring Authority's report is only 17 days, and the time gap between the Sponsoring Authority's report and the detention order is only about 66 days.

17. After hearing both sides, we note that the Division Bench of this Court in ***Aswathy*** *v.* ***State of Kerala*** **[2019 (5) KHC 436 = 2019 (4) KLT 379]** has dealt with a case of the

alleged delay, wherein the last prejudicial activity (crime) was registered on 09.06.2018 and the detenu had surrendered and was arrested only on 21.07.2018 and he was later released on bail on 14.08.2018 and the Sponsoring Authority had given the report on 22.09.2018, and the impugned detention order was passed by the District Collector on 06.10.2018, and the detention order could be executed by the arrest of the detenu only on 26.10.2018. The time gap between the arrest of the accused in that case (21.07.2018) and the date of the detention order (06.10.2018) was 2 months and 16 days. The Division Bench of this Court in ***Aswathy's*** case *supra* **[2019 (5) KHC 436 = 2019 (4) KLT 379]** held that the delay has been satisfactorily explained therein, inasmuch as the detenu-accused could be arrested only subsequently, and that the delay is not fatal in such a case, and the live link between the last prejudicial activity and the purpose of detention cannot be said to have been lost. In the instant case, the time gap between the date of arrest of the detenu (28.01.2022) and issuance of Ext.P1 detention order (21.04.2022) is only about 2 months and 13 days. It has been born in mind that the Sponsoring Authority, who is none other than the District Police Chief of the entire District, will certainly take some time to get various inputs to give their recommendations and since it is the third detention order, certainly the Detaining Authority would also require reasonable time to take a proper and prudent decision in the matter. In the facts and circumstances of this case, we are not persuaded to accept the first contention of the detenu that the delay in this case is fatal, so as to interdict the detention order. Accordingly, the first contention, raised on behalf of the detenu, would fail and the same would stand repelled.

18. Contention (b):-

The second contention raised by the petitioner is that, going by the mandate contained under Section 13 (2) of the Act, revocation or expiry of the detention order shall not be a bar for issuance of another detention order under Section 3 against the same person, if he continues to be a person falling within the definition of “known rowdy” or “known goonda”, as given in Section 2 (o) or Section 2(p) and if one of the three contingencies mentioned thereunder are satisfied. In the instant case, the respondents have admittedly taken into account the fifth crime, which is stated to be subsequent to the revocation of the previous detention order. Further, more crucially, it is contended that the fifth crime is one involving only bailable offences and further that, going by the materials in the fifth crime, which is given along with Ext.P1 detention order, there is no material whatsoever to connect the detenu with the alleged crime, except certain hearsay version as against A1 therein (one Sri.Bobby) and there is not even any hearsay version therein as against the present detenu (A2 therein). Further that, in the instant case, subsequent to the confirmation of the present detention order, the competent Criminal Court has discharged the present detenu (A2 therein) in respect of his involvement in the fifth crime (Crime No.3/2022 of Kalady Police Station, Ernakulam Rural Police District). The subsequent discharge of the detenu by itself may not be relevant, but that the sheet-anchor of the detenu's case is that, even going by the admitted materials relied on in the said fifth crime, there is no worthwhile material whatsoever, to connect the detenu with any of the offences mentioned therein, which are only bailable offences, as per Sections 447, 506 and 109 read with Section 34 of the IPC. The factual details regarding the said contention has also been advanced before us by Shri.Ajeesh M.Ummer, the learned counsel appearing for the petitioner, by placing reliance on the materials supplied to him, in respect of the said fifth crime, as can be seen from pages 246 to 267, more particularly pages 251 to 258 thereof. We will deal with those factual aspects in our findings and therefore, there is no necessity for us to replicate those factual aspects now.

19. Further, the learned counsel for the petitioner would place reliance on the dictum laid down by the Full Bench of this Court in para 18 of ***Abdul Wahab*** *v.* ***State of Kerala*** **[2017 (3) KLT 548 (FB)]** as well as the dictum laid down in paras 26 and 41 of the decision of the Division Bench of this Court in ***Uma*** *v.* ***State of Kerala*** **[2010 (4) KLT 511]**, to the effect that the Detaining Authority should independently apply his mind, on the recommendations of the Sponsoring Authority (District Police Chief), and cannot be a prisoner of the findings that is made by the Police Investigating Agency, in the crimes registered at the Police Station concerned.

20. Per contra, the learned Prosecutor would submit that theGovernment, as the original authority or as a confirmation authority, or the District Collector as the authorised Detaining Authority, is bound to take into account a crime registered by the Police Station concerned, in terms of the provisions contained in the Cr.P.C., as a crime/FIR, and those authorities do not have the power to examine as to whether or not offences are disclosed thereby, as may be done by a court of law. Further that, in the instant case, the involvement of the detenu, not only in the last and fifth crime, but also in the first four crimes, mentioned supra, will have to be cumulatively considered by the respondents-authorities concerned, and that even this Court finds serious flaws, if any, with the last crime, Section 7 (4) of the Act would come into play and the first four crimes alone can be the basis for proper subjective satisfaction, going by the dictum laid down by the Full Bench of this Court in ***Radhika*** *v.* ***State of Kerala*** **[2015 (2) KHC 183 (FB)= 2015 (2) KLT 134 (FB)]**.

21. The next contention of the petitioner is another facet of thesecond contention and therefore, it may be in the fitness of these to record the next contention of the petitioner and we would give our findings, as regards both the second contention and the third contention later on.

22. Contention (c):-

The third contention raised by the petitioner is that, even if it is assumed that the first four crimes, out of the five crimes, involved in the present case, which are the four crimes involved in the previously revoked detention order, would be taken into account for the subjective satisfaction, as contended by the Prosecutor, by placing reliance on the Full Bench dictum in ***Radhika's*** case *supra* **[2015 (2) KLT 134 (FB)]** and also by placing reliance on Section 7 (4) of the Act. Still, the cardinal aspect of the matter is that the Advisory Board's report dated 27.11.2020 and in RC No.29/2020, in relation to the previously revoked detention order, has not even been considered at all by either the Sponsoring Authority, and more particularly, by the Detaining Authority, while issuing the present Ext.P1 detention order. The said cardinal and relevant piece of material, which is the Advisory Board's report, which led to the previously revoked detention order, does not even form a part of the records of either the Sponsoring Authority or the Detaining Authority, in the present proceedings, as can be seen from Ext.P1 series of documents, made available to the detenu, and that non-consideration of the said Advisory Board report, in relation to the previously revoked detention order, would be highly fatal, in the facts and circumstances of this case. Hence, it is contended that, even if it is assumed that the first four crimes could have been the valid basis for the subjective satisfaction, the non-consideration of the previous Advisory Board's report, in favour of the detenu, is highly fatal, inasmuch as the very exercise done now, which led to Ext.P1 detention order, is on the basis of Section 13 (2) of the Act. Further that, going by the scheme of Section 13 (2) of the Act, the Advisory Board's report, which led to the previously revoked detention order, is a highly relevant and crucial material, which should have been duly considered and

assessed by the detaining authority and pointedly, if they had taken a decision thereafter one way or the other, then things could have been different. Further, it is pointed out that Ext.P2 produced herein, which is the previous revocation order passed by the Government, in respect of the second detention order (on the basis of the above said previous Advisory Board's report dated 27.11.2020) was also not considered, either by the Sponsoring Authority and more particularly, by the detaining authority, and copy of Ext.P2 was never supplied to the detenu in this proceedings, and Ext.P2 has been produced by the petitioner herein, as the same was served to the detenu, at the time of the revocation of the second detention order. The non-consideration of the previous Advisory Board's report and the previous revocation order of the Government, in respect of the second detention order, are highly fatal in the facts of this case. It is pointed out that neither the non-confidential part of the previous Advisory Board's report as well as the previous revocation of the Government (Ext.P2) has formed a part of the records, in connection with Ext.P1 detention order.

23. To this, the learned Prosecutor pointed out that theprevious Advisory Board's report would show that the previous revocation order was found fault with only on the basis of two technical flaws, firstly, that the bail cancellation application was pending consideration before the Criminal Court and that therefore, it was within the realm of police authorities to point out the urgency and press for orders in that application, and that secondly, Section 107 Cr.P.C. proceedings were also pending and that the ordinary remedies, as per the Cr.P.C, in terms of pursuing, firstly, the bail cancellation option and secondly, Section 107 proceedings, were not considered by the Detaining Authority. In the instant case, a reading of Ext.P1 detention order would make it clear that the Detaining Authority, after due application of mind, has pointedly held that, in the facts of this case, the option of ordinary criminal law remedies will not be sufficient to prevent the detenu from committing further prejudicial anti-social activities and that the matter in relation to Section 107 Cr.P.C. proceedings have been pointedly considered. Further that, going by Section 10(3) of the Act, proceedings of the Advisory Board and its report, except that part of the report in which the opinion of the Advisory Board is specified, shall be confidential.

24. Section 13 and Section 7(4) of the Act would be relevant for the present purposes and the same provide as follows:

Section 13:

*"**13. Revocation of detention order.** - (1) A detention order may, at any time, be revoked or modified by the Government.*

(2) The revocation or expiry of a detention order shall not be a bar for the issuance of another detention order under section 3 against the same person, if he continues to be a person falling within the definition of known rowdy or known goonda as given in section 2(o) or section 2(p) and if,-

(i) after release, he is, found to have, againinvolved in an offence of the nature described in section 2(o) or section 2 (p) at least one instance; or

(ii) the facts, which came to the notice of theGovernment or the authorised officer after the issuance of the earlier detention order, considered along with previously known facts are sufficient to cause a reasonable apprehension that he is likely to indulge in or promote or abet antisocial activities; or

(iii) the procedural errors or omissions, byreason of which the first order was revoked, are rectified in the procedure followed with regard to the subsequent order, even if the subsequent order is based on the very same facts as the first order."

Section 7(4):

7. Grounds of order of detention to be disclosed. *- (1) xxxx*

(2) xxxx

(3) xxxx

(4) The order of detention shall not be deemed to beinvalid 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."

25. A reading of Section 13 of the Act, more particularlySection 13 (2), would make it clear that revocation or expiry of the detention order shall not be a bar for issuance of another detention order, under Section 3 of the Act, against the same person, if he continues to be a person falling within the definition of 'known rowdy' or 'known goonda', as given in Section 2 (o) or Section 2 (p) and if, after release, he is, found to have been again involved in an offence of the nature described in Section 2 (o) or Section 2 (p), at least in one instance. In the instant case, it appears that Ext.P1 detention order was proceeded on the premise that the parameters of Section 13 (2) (i) of the Act are fulfilled, inasmuch as the detenu has committed the fifth crime, which was after the revocation of the previous detention order. There is no dispute that the offences involved in the fifth crime would attract the parameters of "known rowdy", as per Section 2(p) (iii) of the Act.

26. The matters, in relation to Section 7 (4) of the Act, need beadverted to only at a later stage. The main contention urged by the petitioner is that the admitted materials in relation to the fifth crime, as given in Ext.P1 series of documents, as mentioned above, will not in any manner, even disclose any of the alleged offences against the detenu, viz., Sections 447, 506 and 109 read with Section 34 of the IPC. Reliance is placed on the dictum laid down by the Full Bench of this Court in para 18 of the ***Abdul Wahab's*** case *supra* **[2017 (3) KLT 548 (FB)]** and paragraphs 26 and 41 of the decision of the Division Bench in ***Uma's case*** *supra* **[2010 (4) KLT 511]** in that regard.

27. It is the admitted case of both sides that the materials, inrelation to the fifth crime, are given in pages 246 to 267 of the paper book of this W.P (Crl.), which form part of Ext.P1 series of documents supplied by the petitioner and those materials are in relation to the FIR, statements of witnesses given at the stage of investigation as well as the final report in the aforesaid fifth crime. A reading of those materials would show that the F.I statement of the de facto complainant therein (CW1) is given at pages 251 and 252 and that the additional statement of the de facto complainant (CW1) is given at page 253, statement of CW2, the brother of the de facto complainant, and the statements of other persons from whom statements have been recorded are given at pages 254 to 258. A reading of the version of the de facto complainant, given at page 251, as per the First Information Statement and the additional statement, would make it clear that his case is that, on 29.12.2021 at 9.30 p.m in the night, he had heard A1 therein (one Sri.Bobby) uttering out in the nearby public road that steps will be taken to exterminate the de facto complainant and his brother. A reading of the First Information Statement and the additional statement of the de facto complainant (CW1) would show that his version is that he was told by CW2 (one Sri.Mundakkal Ratheesh) that the latter had overheard, on 29.12.2021 at 9.30 p.m, while sitting in his residence that A1 in the said case (one Sri.Bobby) had uttered out in public that the de facto complainant and his brother will be exterminated, that the de facto complainant was informed of this version by CW2 that he

had overheard the above said utterance, said to have been made by A1. Further, the de facto complainant states that he apprehends that the said utterance would only have been made by A1 at the instance of A2 therein (present detenu), inasmuch as A2 has previous enmity against the de facto complainant, as the de facto complainant had previously given evidence in another case, which led to the conviction of A2 therein (present detenu). The version given by CW2 is also to the same effect that he had overheard A1 (one Sri.Bobby) uttering out, at 9.30 p.m in the night on that day, that he would exterminate the de facto complainant and his brother. Further, CW2 would also inform the Police that this utterance would have been made by A1, presumably at the instigation of A2 (present detenu) on account of A2's previous enmity against the de facto complainant. It is the specific case of the de facto complainant that he had deposed against A2 (present detenu) in a previous case, which led to the conviction of the detenu and that, on account of this enmity, A2 in the fifth crime (present detenue) as well as A1 in the fifth crime had caused grave injuries to the de facto complainant, which led to the registration of the first among the five crimes mentioned above.

28. Statement from yet another lady was also taken, who is saidto be a close neighbour of CW2 and from the same location where A1 is said to have made the public utterance on 29.12.2021 and the said person would give statement to the Police, in the course of investigation (given at page 258 of the paper book), that on that day, she had gone to sleep only at 10.30 p.m and till that time she had not heard any such public utterance, said to have been made by A1 therein (Bobby). Further, on this basis, final report/charge sheet has been filed in the fifth crime, details of which are given in pages 251 to 265. It is common ground that the version given by the person concerned, given at page 258 of the paper book, in the course of the investigation, which seems to contradict the version of CW2, has not been made part of the records of the final report in the above said fifth crime. The above said materials would clearly show that there is no dispute that subsequent to the confirmation of the detention order, the criminal court concerned has discharged the present detenu in respect of his involvement in the fifth crime, as can be seen from Ext.P7 order dated 24.08.2022. At the outset, it has to be noted that it is already well settled by the ruling of the Full Bench of this Court in ***Stenny Aleyamma Saju*** *v.* ***State of Kerala*** **[2017 (3) KLT 676 (F.B)]** para 15 that, acquittal or discharge of the detenue/accused will not, in any manner, affect the decision making process of the detention order passed under the above Act. However, the crucial aspect in the matter is that the above said materials would indisputably show that the entire version projected against the detenu, who is accused No.2 in the fifth crime, is only on the basis of the hearsay version of the de facto complainant and the version of CW2, to the effect that CW2 had overheard A1 (Bobby) uttering out that steps will be taken to exterminate both the de facto complainant and his brother. CW2 or any of the other witnesses, including the de facto complainant, has no case that any one has overheard A1 (Bobby) uttering out that the above said threat to the life of the de facto complainant and his brother is made at the instance of the present detenu (A2 therein). The de facto complainant presumes and infers that the above said threatening utterance would have been made by A1 (Bobby) only at the instance of A2 (present detenu). It has to be noted that the only FIR registered after the first four crimes was the subject matter of the revoked previous detention order.

29. A Full Bench of this Court, in para 18 of ***Abdul Wahab*** *v.* ***State of Kerala*** **[2017 (3) KLT 548 (F.B)]**, has held as follows:

"18. Section 3 of the Act envisages initiation of action by the detaining authority, based on the information received from a police officer not below the rank of a Superintendent of Police with regard to the activities of any 'known goonda' or 'known rowdy', with a view to prevent such person

from committing any anti-social activities in the State. This by itself is a pointer to the fact that mere filing of charge sheet by the Investigating Officer is not enough and that the vital information has to come from a much higher level officer of the rank not below that of the Superintendent of Police, who normally will be heading a district. Investigation may be conducted and completed by an officer at much lower level, say, Sub Inspector of Police or Circle Inspector of Police, as the case may be. The proceedings leading to the registration of crime or submission of charge sheet, as the case may be, have to pass through the hands of higher level officer -Superintendent of Police, who has to pass on the information to the detaining authority, which gives the cause of action to proceed with further steps. The particulars so furnished by the higher level officer have to be subjected to scrutiny by the detaining authority, who has to arrive at a finding of his own as to the various requirements contemplated under the statute. This Court does not require any second thought to hold that the detaining authority is not supposed to sign on the dotted lines, based on the final report submitted by the Investigating Officer or the information made available through the officer at higher level/Superintendent of Police. Of course, the final report, if any, could be one of the pieces of information being passed on by the officer at higher level (Superintendent of Police), to be acted upon by the detaining authority. If the charge sheets contains sufficient materials to connect the detenue to the offence levelled against him, it is enough for the detaining authority to act upon the same and record satisfaction with proper and independent application of mind; not merely based on the finding of the police officer in the charge sheet. If it is inadequate in any respect, it is very much open for the detaining authority to probe more. All materials made available to the detaining authority by the officer not below the rank of the SP could be looked into by the detaining authority, without confining such scrutiny to the final report submitted under S.173(2) Cr.P.C. alone. He can call for further materials, if necessary, or get clarification on the particulars, if at all any obscurity is there. The order to be passed by the detaining authority shall be pursuant to such independent analysis and not a dictated one. The scope of such independent analysis and necessity to pursue ardent efforts/stringent course is further discernible from the necessity to get 'Government approval' within 12 days of passing the order, in terms of S.3(3) of the Act, failing which the order will lapse. Scrutiny at different levels is prescribed, mainly with a view to ensure that freedom of a citizen is not dealt with in a casual manner or according to the whims and fancies of the police. The provision is also categoric to the effect that both in the case of 'known goonda' under S.2(o) and 'known rowdy' under S.2(p), except in the case of finding guilt by the Court, such branding is possible on investigation or enquiry by the authorities concerned, on complaints initiated by persons other than police officers in the specified number of instances, subject to the proviso therein. As such, the acts and deeds of the police are stipulated to be taken with circumspection and with more vigil, care and caution, lest it should be misused. The role of the detaining authority gathers more momentum/importance under this circumstance".

30. A Division Bench of this Court in ***Uma*** *v.* ***State of Kerala*** **(2010 (4) KLT 511)** has held in para Nos.26 and 41 thereof as follows:

26. It is well settled that subjective satisfaction entertained by the detaining authority is not justiciable. This Court does not sit in appeal in proceedings under Art.226 of the Constitution over the decisions taken by the detaining authority on the basis of the materials placed before the detaining authority as to whether preventive detention is necessary or warranted. The short area of jurisdiction is to ascertain whether the subjective satisfaction is entertained properly on the basis of materials placed before the detaining authority. If the entertainment of the latter subjective satisfaction is vitiated by mala fides or by total absence of materials or by reference to and reliance on materials which cannot legally be taken note of, certainly the powers of judicial review vested in this Court can be invoked and the order of detention on the basis of such alleged subjective satisfaction can be set aside. But certainly if there are materials it is not open to this Court to sit in appeal over the subjective satisfaction entertained by the detaining authority.

41. We find merit in this contention raised by the learned counsel for the petitioner. Though for the purpose of deciding whether a person is a known rowdy or a known goonda satisfaction of the Investigating Officer under S.2(o)(ii) or S.2(p)(iii) may be sufficient, for the purpose of

entertaining the latter subjective satisfaction we are certainly of the opinion that the detaining authority must himself be satisfied by a consideration of all materials that the detention of the detenu is necessary. The detaining authority we have no hesitation to assert cannot be a prisoner of the findings of the Investigating Officer. If that contention were accepted, the insistence on entertainment of the latter subjective satisfaction by the detaining authority would become illusory and unreal. We agree with the learned counsel for the petitioner and hold that the latter subjective satisfaction must be entertained by the detaining authority subjectively on the basis of the materials placed before the detaining authority. The conclusions of the Investigating Officer cannot be permitted to take the place of the subjective satisfaction of the detaining authority".

31. In the light of the above said dictum, laid down by the FullBench of this Court and by the Division Bench of this Court in ***Abdul Wahab's*** case supra **[2017 (3) KLT 548 (F.B)]** and ***Uma's*** case supra **(2010 (4) KLT 511)** respectively, there cannot be any doubt that there has to be independent and proper application of mind, rendered at the instance of the detaining authority and that the detaining authority cannot mechanically act upon either the recommendations of the sponsoring authority or on the basis of the findings and opinion of the Police Agency investigating the crime concerned. After examining the facts of this case, in the light of the above said dictum, we are of the firm view that the above said materials made available before the detaining authority are too tenuous and fragile to enable the detaining authority to take a considered view that the detenu is involved in the said offence and that therefore, he is likely to commit further prejudicial anti social activities.

32. As held by the Full Bench, the particulars furnished by the Police authorities and the sponsoring authority will have to be subjected to scrutiny by the detaining authority, so as to arrive at a finding of its own, as to the various requirements contemplated under the statute. Further, it has been conclusively held that the detaining authority cannot be a prisoner of the finding of the Police investigating agency. There has to be due, proper and independent application of mind in that regard by the detaining authority. A reading of Ext.P1 detention order would make it clear that the above said materials, mentioned hereinabove, have been made part of the records and the detaining authority, without any proper and due application of mind, holds that the fifth crime, which is the most important parameter for triggering an action in terms of clause (i) of Section 13(2) of the Act, should be the basis for the impugned decision.

33. Faced with this situation, the learned Prosecutor would point out that clause (ii) of Section 13(2) would also empower the detaining authority to rely on facts, which came to the notice of the Government or the authorised officer after the issuance of the earlier detention order, considered along with the previously known facts, are sufficient to cause a reasonable apprehension that he is likely to indulge in or promote or abet anti social activities. In the instant case, the above said materials, at pages 246 to 267 of the paper book, in relation to the fifth crime can be easily taken as facts disclosed from those materials, which came to the notice of the detaining authority of the Government, subsequent to the revocation of the previous detention order and that therefore, the subjective satisfaction is justified in terms of clause (ii) of Section 13(2), if this Court holds that the parameters in terms of clause (i) of Section 13(2) is not satisfied. This argument is strongly opposed by the counsel for the petitioner.

34. After hearing both sides, we are of the view that none of thematerials, now relied on by the respondents, would even remotely indicate that the respondent-detaining authority and the respondentGovernment has a case that the above said materials can be taken to disclose facts, in terms of clause (ii) of Section 13(2). If there had been a consideration in that regard and if the detaining authority had come to the considered conclusion, in the

facts of this case, that the above said materials would disclose facts which comes within the parameters of clause (ii) of Section 13(2), then, probably, the scenario would have been different. There has been no consideration at all in that regard by the detaining authority or by the other respondents, as to whether the above said materials mentioned above, in relation to the fifth crime could be taken at least as disclosing facts within the meaning of clause (ii) of Section 13(2).

35. The main line of consideration in Ext.P1 is to the effect thatthe fifth case is taken as a crime registered after the revocation of the previous detention order and therefore, it proceeds on the premise as if clause (i) of Section 13(2) is coming to play. Since there is no consideration as to whether clause (ii) of Section 13(2) would apply in the instant case, we are not in a position to countenance the above said plea of the learned Prosecutor. The aspect relating to clause (iii) of Section 13(2) would be dealt with by us later. So, we are constrained to take the view that the materials, relied on in relation to the fifth crime, cannot be said to be proper and relevant materials, so as to disclose any serious offence, as alleged in the fifth crime, as against the present detenu, for the above said reasons. Moreover, very crucially, it has to be borne in mind that the penultimate crime (viz., fourth crime) is stated to have occurred on 24.05.2020 and the last & the fifth crime is said to have occurred on 29.12.2021. So, the time period between the penultimate crime and the last crime is one year and seven months (19 months) and more crucially, all the offences involved in the last crime are only bailable offences, in which the allegations are sought to be sustained mainly on the basis of hearsay and inferences, based on surmises.

36. The subsequent aspect of the matter is the contention of the learned Prosecutor, based on Section 7(4), as well as the contention made by the petitioner, regarding the non consideration of the previous Advisory Board's report, which led to the revocation of the previous detention order.

37. The learned Prosecutor would point out that Section 7(4) would mandate that the detention order cannot 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.

38. Further, the learned Prosecutor would also place relianceon the dictum laid down by the Full Bench of this Court in ***Radhika*** *v.* ***State of Kerala*** **[2015 (2) KLT 134 (F.B)]**. It has been held that the advice of the Advisory Board, which led to the revocation of the previous detention order, does not purge the efficacy of those prejudicial activities or their vigor as to criminality, to exclude them from being counted, when the person concerned involves himself in prejudicial activities, subsequent to the revocation of the detention order and when those earlier prejudicial activities are followed by subsequent prejudicial activity or activities, all of them ought to be taken as a strong string of potent activities, which will sustain the continuity of the live-link, for the purpose of another order of detention. If the competent authority enters satisfaction as to the requirement to issue another detention order, taking into consideration all or any of the earlier prejudicial activities, along with the subsequent prejudicial activities, there is no illegality in that. Accordingly, it is urged by the Prosecutor that, even if the fifth and last crime is totally eschewed, for the purpose of consideration, as to whether subjective satisfaction is proper for justifying the detention order, the first four crimes, though forming a part of the earlier

revoked detention order, can still be the basis for a valid subjective satisfaction for the present detention order. In that regard, the legal position, in regard to the applicability of Section 13(2), as enunciated by the above-said Full Bench ruling and also the specific provisions in Section 7(4), would justify, taking into account the first four crimes for forming the valid basis for the subjective satisfaction of the present detention order, even though those four crimes were the subject matter of the revoked detention order. We will deal with the above said aspect of the matter first. In that regard, it is contended by the learned counsel appearing for the petitioner that, since the first four crimes were taken into account for the previously revoked detention order, the same cannot be the subject matter of consideration for the subjective satisfaction of the present detention order and that the best of those four crimes can be taken into account only for forming the objective satisfaction as to whether the detenue can be classified as either a 'known goonda', as per Section 2(o) or as a 'known rowdy' in terms of Section 2(p). Further that, the subjective satisfaction for forming the opinion for the issuance of the detention order under Section 3(1) cannot be on the basis of the first four crimes. The issue in the above regard is certainly fully covered in favour of the respondents, as per the dictum laid down by the Full Bench in ***Radhika's*** *case* supra **[2015 (2) KLT 134 (F.B.)]** and also the specific provisions in Section 7(4). The said finding made by us is independent of the argument of the petitioner, regarding the effect of the non consideration of the previous opinion of the Advisory Board, which led to the revocation of the previous detention order. That aspect of the matter will be dealt with separately by us.

39. The issue relating to the correctness of the view taken by the Division Bench of this Court in ***Praseetha*** *v.* ***State of Kerala and others*** **(2009 (4) KHC 382 = ILR 2009 (4) Ker.896)** was the subject matter of reference to the Full Bench, which was considered in ***Radhika's*** *case* supra **[2015 (2) KLT 134 (F.B.)]**. The issue that arose before the Full Bench in ***Radhika's case*** supra **[2015 (2) KLT 134 (F.B.)]** was as to whether the alleged occurrences, taken into consideration by passing an order of detention, which was revoked by the Government under Section 10(4) of the Act on the advice of the Advisory Board, could be counted and reckoned, along with the later prejudicial acts, for the issuance of another detention order under Section 3 of the Act, in terms of Section 13(2) thereof. The Full Bench has clearly held, in paras 8 to 11 and 13, in ***Radhika's*** *case* supra **[2015 (2) KLT 134 (F.B.)]** as follows:

"8. When subsequent conduct of the same person results in prejudicial activity or activities reckonable in terms of the Act, that will trigger and maintain a live-link with the earlier prejudicial activities, though such earlier prejudicial activities, by themselves, would not have weighed as sufficient enough to sustain the earlier detention order. The advice of the Board in relation to an earlier detention order is only as regards the sufficiency of the cause as to that detention order, on the basis of those prejudicial activities which were reckoned to pass that particular detention order. Such advice of the Board does not purge the efficacy of those prejudicial activities or their vigor as to criminality, to exclude them from being counted when the person concerned involves in prejudicial activities subsequent to the revocation of that detention order. When those earlier prejudicial activities are followed by subsequent prejudicial activity or activities, all of them ought to be taken as a string of potent activities which will sustain with continuity of live-link for the purpose of another order of detention. If the competent authority enters satisfaction as to the requirement to issue another detention order, taking into consideration all or any of the earlier prejudicial activities along with the subsequent prejudicial activities, there is no illegality in that. That is undoubtedly within terms of the Act.

9. A detention order may, at any time, be revoked or modified by the Government. That power under Section 13(1) of the Act is a statutory one. It is a statutory power; so positioned that it ought to be exercised maintaining the requisite constitutional and statutory balance, bearing in mind the

constitutional rights of the person against whom the detention order is issued vis-a- vis the powers to detain and the grounds of detention as are provided for in the Act; without forgetting the object and purpose of the Act. Therefore, the issuance of an order of revocation under Sub-section 1 of Section 13 cannot be made in derogation of the constitutional principles governing the repository of that statutory power; which is nothing short of fairness in action, both in relation to the detenu, as also the public at large; bearing in mind the mischiefs sought to be prevented by such statutory provisions authorising detention orders. Remember; the Act enacted in 2007, stands now with no successful challenge to its constitutional validity.

10. Looking at Sub-section 4 of Section 10, all that can be seen is that the Government have the obligation to revoke a detention order on the advice of the Board on consideration of the grounds of that particular detention order which is compulsorily liable for such scrutiny in terms of Sections 8 to 10 of the Act. That is an obligatory process in terms of the constitutional provisions governing preventing detention.

11. What emerges from the aforesaid discussions is that once an order of detention is revoked either as a measure of obligatory revocation referable to Section 10(4) of the Act or by recourse to revocation under Section 13(1), the resultant revocation is, qualitatively, of no distinction among themselves as regards their impact on the prejudicial activities counted for the purpose of the earlier detention order. This means that notwithstanding whether it is an obligatory revocation under Section 10(4) or a voluntary revocation under Section 13(1), the prejudicial activities which were reckoned for the purpose of an earlier detention order can nevertheless be counted, providing the live-link to issue another order of detention against the same person in the light of Sub-section 2 of Section 13; which provision is only to the effect that the revocation or expiry of a detention order shall not be a bar for the issuance of another detention order under Section 3. Therefore, the power to issue the detention order is always under Section 3 and all that subsection 2 of Section 13 does is to enumerate the situations where another detention order under Section 3 can be issued against the same person who was covered by an earlier detention order.

13. Having regard to the conclusions arrived at above, we hold that the ratio of Praseetha (supra) is erroneous to the extent it is contrary to what is stated herein. We, therefore, answer the reference in both the cases by declaring that the revocation of an order of detention under the Act on the basis of the advice of the Board under Section 10(4) does not take away the efficacy of the alleged acts counted for the detention order so revoked, to exclude them from being reckoned to impose another detention order as provided under Section 13(2) of the Act. The revocation of a detention order by the Government, either on the basis of the advice of the Board or otherwise, makes out no qualitative distinction; and, therefore, the quality of revocation of the detention order under Sub-section 4 of Section 10 is, in no way, different from the quality of revocation under Sub-section 1 of Section 13 of the Act. Praseetha (supra) is hereby overruled to the extent of declaration of law made herein".

40. Thus, it is well settled by the Full Bench of this Court in ***Radhika's*** *case* supra **[2015 (2) KLT 134 (F.B.)]** that, when the earlier prejudicial activities, which led to the previously revoked detention order, are followed by subsequent prejudicial activity or activities, then all of them can be taken as a string of potent activities, which will sustain the continuity of the live-link, for the purpose of another order of detention and if the competent authority enters satisfaction as to the requirement to issue another detention order, taking into consideration all or any of the earlier prejudicial activities, along with the subsequent prejudicial activities, there is no illegality in that. Further that, once an order of detention is revoked, either as a measure of obligatory revocation in terms of Section 10(4) or by recourse to revocation under Section 13(1), the resultant revocation is, qualitatively, of no distinction among themselves, as regards the impact on the prejudicial activities reckoned for the purpose of the earlier detention order. Therefore, it has been held that, notwithstanding whether it is an obligatory revocation under Section 10(4) or a voluntary revocation under Section 13(1), the prejudicial activities, which were reckoned for the

purpose of an earlier detention order, can nevertheless be reckoned for providing the live-link, to issue another order of detention against the same person, in the light of Section 13(2); which provision is only to the effect that the revocation or expiry of a detention order shall not be a bar for the issuance of another detention order under Section 3. In other words, in the present case, all the five crimes, including the first four crimes, which was the subject matter of the subjective satisfaction of the previous detention order, which was revoked, should be taken into account, as rightly contended by the Prosecutor. In other words, the contra contention of the counsel for the petitioner, that the first four crimes cannot be a valid reason for determining the subjective satisfaction under Section 3(1), is only to be repelled and rejected and we do so.

41. Now, we come to the cardinal aspect of the matter, regarding the effect of non consideration of the previous opinion of the Advisory Board, which led to the revocation of the previous detention order. We have already quoted the relevant part of the previous opinion of the Advisory Board, which led to the revocation of the previous detention order, as rendered by the Advisory Board on 27.11.2020 in RC No.29/2020, in relation to the previous detention order, which was revoked. As can be seen from a reading of the reasonings given by the Advisory Board, in para 13 of the proceedings dated 27.11.2020, quoted herein above, the Advisory Board has found fault with the previous detention order, mainly on two reasons. Firstly, that the cancellation of bail application is pending consideration before the court and it is within the realm of the Police to point out the urgency and press for orders in the said application. Secondly, that Section 107 Cr.P.C proceedings are also pending and thus, the remedy available in the ordinary laws for bail cancellation option, under Section 107 Cr.P.C proceedings, has not been examined or exhausted. The first four crimes in the five crimes of the present detention order are the four crimes considered in the previous detention order. The Advisory Board has pointed out certain procedural flaws, as stated in para 13 of the Advisory Board's report. The Government is bound to act on the same, in terms of the mandate contained in Section 10(4). In this regard, since the main aspect is as to whether the above said four crimes can be the valid basis for subjective satisfaction under Section 3(1), the statutory provision, contained in clause (iii) of Section 13(2), would be highly important and relevant. Clause (iii) of Section 13(2) would mandate that revocation of the previous detention order shall not be a bar for issuance of another detention order under Section 3 against the same person, if he continues to be a person falling within the definition of 'known rowdy' or 'known goonda' and if the procedural errors or omissions, by reason of which the first order was revoked, are rectified in the procedure followed, with respect to the subsequent order, even if the subsequent order is based on the very same facts as the first order.

42. In the light of these provisions, there cannot be any doubt that the grounds and reasons which weighed with the Advisory Board, to recommend for the revocation of the previous detention order, which is, in fact, binding on the Government, as per Section 10(4), would be highly relevant and crucial to determine as to whether a subsequent revocation order is to be issued. True that, as contended by the petitioner, even if the fifth crime is excluded, the first four crimes could be otherwise valid reasons for subjective satisfaction under Section 3(1), inasmuch as, presently, the requirement of three cases, which had occurred seven years prior to the detention order, are satisfied. But, since the procedural errors and omissions have been specifically delineated by the Advisory Board in the previous opinion, at least the aspects relating to the reasons and grounds, made by the advisory authority and which is binding on the Government, should have been duly taken note of by the detaining authority before deciding as to whether subjective satisfaction can be formed on the basis of those four crimes. In the instant case, neither

the previous opinion of the Advisory Board as well as the previously revoked detention order, at Ext.P2 herein, have formed a part of the records of Ext.P1 detention proceedings. A reading of the index of Ext.P1 detention proceedings, at page 38 of the paper book, would clearly indicate that only 11 items identified therein and neither the Advisory Board's report or at least its non confidential part, containing the reasons and the previous revocation order of the Government, form a part of the records. In other words, there is no doubt that neither the sponsoring authority nor the detaining authority has considered the effect of the previous opinion of the Advisory Board as well as Ext.P2 revocation of the previous detention order issued by the Government. Ext.P2 was, in fact, served to the detenu at the time of his release, consequent to the revocation of the second detention order.

43. We specifically queried as to whether, going by the practiceand norms of the State Government, at least the non confidential part of the opinion of the Advisory Board, which is in favour of the detenu, and revocation of the detention order by the Government, will be forwarded by the Government to the detaining authority and the sponsoring authority. We asked this query, inasmuch as Section 10(3) of the Act would inter alia stipulate that the proceedings of the Advisory Board and its report, except that part of the report in which the opinion of the Advisory Board is specified, shall be confidential.

44. The learned Prosecutor would submit, on the basis ofinstructions of the competent officials of the respondent-Government in the Home Department that, as a matter of consistent practice and norms, the State Government would duly communicate a copy of the report of the Advisory Board, which is in favour of the detenu, recommending for revocation, as well as the order of the Government revoking the detention order to the detaining authority as well as to the sponsoring authority concerned, so as to enable them to consider any future detention order, if necessity thereof arises. However, it is not very clear as to whether copies of the previous opinion of the Advisory Board and Ext.P2 revocation order have, in fact, been communicated in this case by the State Government to the respondent-detaining authority (District Collector) and the respondent-sponsoring authority. Either due to such non forwarding or due to the omission of the respondent-detaining authority, that these vital and relevant piece of materials namely, the previous opinion of the Advisory Board as well as the previous revocation order of the Government at Ext.P2, have not formed a part of Ext.P2 detention proceedings and have not been considered at all by the detaining authority, before it has formed the opinion that subjective satisfaction is fulfilled in this case, for justifying the preventive detention order against the present petitioner at Ext.P1.

45. The Hon'ble Justice J.B Pardiwala, speaking on behalf ofthe three Judge Bench of the Apex Court, in paras 27 and 29 of the judgment dated 30.09.2022 in Crl. Appeal No.1708 of 2022 (arising out of SLP (Criminal) No.6683 of 2022), in the case ***Sushanta Kumar Banik v. State of Tripura and others*** **[(2022) SCC Online SC 1333]**, has held as follows:

"27. From the above decisions, it emerges that the requisite subjective satisfaction, the formation of which is a condition precedent to passing of a detention order will get vitiated if material or vital facts which would have bearing on the issue and weighed the satisfaction of the detaining authority one way or the other and influence his mind are either withheld or suppressed by the sponsoring authority or ignored and not considered by the detaining authority before issuing the detention order.

29. The preventive detention is a serious invasion of personal liberty and the normal methods open to a person charged with commission of any offence to disprove the charge or to prove his innocence at the trial are not available to the person preventively detained and, therefore, in

prevention detention jurisprudence whatever little safeguards the Constitution and the enactments authorizing such detention provide assume utmost importance and must be strictly adhered to".

46. The Apex Court, in the above said verdict, has placedreliance on the previous decisions of the Apex Court in the case in ***Asha Devi*** v. ***Additional Chief Secretary to Government of Gujarat and another*** [(1979) 1 SCC 222] as well as in the case in ***Sk Nizamuddin*** *v.* ***State of West Bengal*** [(1975) 3 SCC 395]. In that regard, it is to be noted that in ***Asha Devi's*** case (supra) [(1979) 1 SCC 222], the Apex Court has held, in para 6, as follows:

"6. ..... if material or vital facts which would influence the minds of the detaining authority one way or the other on the question whether or not to make the detention order, are not placed before or are not considered by the detaining authority it would vitiate its subjective satisfaction rendering the detention order illegal".

47. In ***Sk Nizamuddin's*** case supra [(1975) 3 SCC 395], in paragraph 3, the Apex Court has held as follows:

"3. We should have thought that the fact that a criminal case is pending against the person who is sought to be proceeded against by way of preventive detention is a very material circumstance which ought to be placed before the District Magistrate. The circumstance might quite possible have an impact on his decision whether or not to make an order of detention. It is not altogether unlikely that the District Magistrate may in a given case take the view that since a criminal case is pending against the person sought to be detained, no order of detention should be made for the present, but the criminal case should be allowed to run its full course and only if it fails to result in conviction, then preventive detention should be resorted to. It would be most unfair to the person sought to be detained not to disclose the pendency of a criminal case against him to the District Magistrate".

48. In the light of these aspects, we have no hesitation to holdthat the previous opinion of the Advisory Board, which led to the revocation of the previous detention order, and even the revocation of the previous detention order, are highly relevant and crucial materials which ought to have been examined and considered by the detaining authority before it had taken a decision in terms of Ext.P1. In the instant case, the non consideration of such relevant materials is fatal and the decision making process, in relation to Ext.P1, is liable to be interdicted. Moreover, it has to be borne in mind that the opinion of the Advisory Board, in favour of the detenu, as above, is binding on the Government, going by the mandate contained in Section 10(4) and that therefore, relevance and crucial nature of those materials assume more and greater importance.

49. In that regard, the learned Prosecutor has placed relianceon the observations of the Division Bench of this Court in paras 6, 17 and 22 of the decision in ***Nalini*** vs. ***State of Kerala and others*** [**ILR 2014(1) Ker.281]**, at pp.291-292, to contend for the position and has argued that the non consideration of the opinion of the Advisory Board cannot be fatal, in a case of this nature. Paras 6, 17 and 22 of the decision in ***Nalini's*** case supra [**ILR 2014(1) Ker.281]** read as follows:

"6. The second contention raised was that the detenu was not supplied all the materials relied on by the detaining authority while passing Ext.P1 order. The counsel contended that in Ext.P1, the detaining authority had relied on an earlier order of detention and the report then made by the Advisory Board, on the basis of which, the detention order was revoked. He also contended that in the detention order, the detaining authority has relied on the report of confidential investigation and police station records which were also not supplied to the detenu.

17. However, learned Government Pleader contended that a reading of Ext.P1 order itself would show that the detaining authority has only made reference to the previous order of detention and

the report then made by the Advisory Board only for stating complete factual details and that those were neither relied on nor did they form part of the grounds of detention, requiring them to be supplied to the detenu. Therefore, according to her, non-supply of the earlier order of detention or the report of the Advisory Board did not vitiate the order of detention in any manner.

22. In our view, having read Ext.P-1 order, we are inclined to think that the detaining authority has merely made reference to the earlier order of detention and the report of the Advisory Board for the limited purpose of stating the facts and has not relied on any of those documents and those documents do not form part of the grounds of detention. Since the law is settled in the Apex Court judgments in the cases of Mst. L.M.S. Ummu Saleema's case (supra) and Abdullah Kadher's case (supra) that only those documents which form part of the grounds of detention need be supplied to the detenu, we are satisfied that the documents referred to above do not form any of those records and therefore, their non-supply would not render Ext.P-1 order illegal".

50. A reading of para Nos.6, 17 and 22 of the decision of the Division Bench of this Court in ***Nalini's*** case supra **[ILR 2014(1) Ker.281]** would make it clear that the specific contention raised therein was that the detenue was not supplied with a copy of the opinion of the Advisory Board, on the basis of which, the previous detention order was revoked in his favour. This was the only precise contention raised therein. To this contention, the reply of the State, as can be seen from para No.17 of the decision, was that the impugned detention order would make it clear that the detaining authority has not placed any reliance on the said opinion of the Advisory Board and that, therefore, only those documents, which have been relied on by the detaining authority in the detention order, need to be supplied to the detenue and that, therefore, non supply of the report of the Advisory Board will not, in any manner, vitiate. To these rival pleas, at paras 6 and 17 (supra), the Division Bench of this Court, in para 22 of ***Nalini's*** case (supra) **[ILR 2014(1) Ker.281]** has held that the argument of the State would merit consideration inasmuch as the detaining authority has not placed reliance on the opinion of the Advisory Board and that, therefore, there is no necessity to give a copy of the report of the Advisory Board. No contention was raised therein that the non consideration of the opinion of the Advisory Board, in favour of the detenu, which led to the previous detention order, was highly relevant and crucial in the decision making process of the detention proceedings and that therefore, non consideration of such materials would vitiate the decision making process. Therefore, the decision of the Division Bench of this Court, in para 22 of ***Nalini's*** case (supra) **[ILR 2014(1) Ker.281]**, is no authority for the proposition that the opinion of the Advisory Board, in favour of the detenu, which led to the revocation of the previous detention order, is not at all relevant and crucial for the decision making process for the next detention order. Hence, we are not in a position to accept the above said plea of the respondent-State in that regard.

51. True that Section 10(3) of the Act would inter alia stipulatethat the proceedings of the Advisory Board and its report, except that part of the report, in which the opinion of the Advisory Board is specified, shall be confidential. Therefore, if the respondent-State Government has any considered view that the Advisory Board's report, in its entirety, cannot be given, as it is confidential, then at least non confidential parts of the opinion of the Advisory Board, in favour of the detenu, more particularly, not only the conclusions therein but also the specific reasonings which led to the conclusion, should be made available by the State Government to both the detaining authority and to the sponsoring authority, in order to enable such authorities to consider as to whether a fresh detention order, in terms of Section 13(2), is warranted, if due to subsequent events.

52. For instance, in this case, para 13 of the Advisory Board'sprevious opinion, rendered on 27.11.2020, which contains the basic reasons, as well as the last paragraph

thereof, which deals with the conclusion, should have been made available to both the detaining authority and the sponsoring authority. It was the bounden duty of those authorities, more particularly, the detaining authority, to consider the impact and effect of the said opinion of the Advisory Board, to decide as to whether the ingredients of Section 13(2) are duly fulfilled. It is all the more necessary when the Advisory Board, in its previous opinion, has pointed out specific procedural flaws and that therefore, the parameters in clause (iii) of Section 13(2) would then be highly relevant and prominent. So, at least after such due consideration by the detaining authority, the non confidential part of the opinion of the Advisory Board, in favour of the detenu, which led to the revocation of the previous detention order, and the order of the State Government, revoking the previous detention order, should have been made available to the detenue concerned, as well as for the consideration of the detaining authority, as they are relevant and crucial. We say so, only in view of the stipulations in Section 10(3) and despite the specific submissions of the Prosecutor that, as a matter of fact, going by the consistent practice, even otherwise, the State Government is supplying copies of the opinion of the Advisory Board, in favour of the detenue and the revocation of the detention order to both the detaining authority and the sponsoring authority.

53. The last argument of the Prosecutor is that the two reasons of pointing out procedural flaws in the previous opinion of the Advisory Board, relate to the bail cancellation option and Section 107 Cr.P.C proceedings, and that a reading of Ext.P1 detention order would make it clear that the aspect regarding Section 107 Cr.P.C proceedings has been duly considered by the detaining authority and it has been found that, taking recourse to the ordinary criminal laws would not be sufficient to prevent the further prejudicial activities of the detenu in this case. True, it may be so. But, even a reading of Ext.P1 detention order would make it clear that the aspect relating to the bail cancellation option has not been specifically considered, which would be in contravention of the mandatory requirements of clause (iii) of Section 13(2) that all the procedural flaws in the previously revoked order are rectified. So, the impugned order is vitiated on this count as well. Further, the crux and core of the matter is regarding the non consideration of the previous opinion of the Advisory Board and the previous revocation order by the Government, in the decision making process at Ext.P2. If the said opinion of the Advisory Board had been duly considered by the detaining authority and thereafter, the detaining authority had come to the conclusion that, after due consideration of the opinion of the Advisory Board, the detaining authority is still constrained to take the view that there is subjective satisfaction for issuing a preventive detention order against the detenue, then the scenario could have been possibly different. That is not the case in the present hand. The crucial and relevant aspects of the matter, as above, have been completely eschewed and excluded from the decision making process of the detaining authority. Hence, this aspect will be fatal to the decision making process, which led to Ext.P1. Further, it is also pointed out by the learned Prosecutor that one of the bail cancellation applications was rejected by the Sessions Court subsequently, and another bail cancellation application is even now pending before this Court. This aspect would show that the option of bail cancellation application was not sufficient to meet the requirement to prevent the prejudicial activities of the detenue. We are not impressed with this argument for the very same reasons given above, more so, in view of the requirements of Section 13(2)(iii). We are essentially in the process of judicial review of the decision making process and we are not sitting as an appellate authority on the decision of the detaining authority and hence, we are constrained to take the view that, due to the exclusion of the consideration of a highly relevant and crucial aspects, as above, the decision making process is fatal and vitiated.

54. True that, we would fully accept the contention ofSri.K.A Anas, learned Prosecutor appearing for the respondents, that even if the fifth crime is totally eschewed, still the first four crimes could have been reckoned as a valid basis for the subjective satisfaction under Section 3(1), in the facts of this case. But, the non consideration of the above said crucial and relevant materials of the previous opinion of the Advisory Board and Ext.P2 order and the requirements of Section 13(2)(iii), has vitiated the decision making process, which led to the subjective satisfaction in relation to the first four crimes and therefore, we have to interdict the decision making process.

55. The upshot of the above discussions is that the impugned decision making process, which led to the impugned Ext.P1 detention proceedings, is liable to be interdicted for quashment, in the present judicial review proceedings.

56. Hence, it is ordered that Ext.P-1 detention order No.DCEKM/3051/2022/M.7 dated 21.4.2022, issued by the 2nd respondent District Magistrate & District Collector, Ernakulam, as confirmed by the 1st respondent State Government in the Home Department, as per G.O(Rt.)No. 1744/2022/Home dated 24.6.2022, will stand quashed and set aside. Consequently, it is ordered that the respondent authorities and the Jail authorities concerned (Superintendent, Central Prison, Kannur), where the detenu Sri.Ratheesh @ Kara Ratheesh, is detained, shall immediately release the detenu from jail and set him at liberty, if his detention is not required in any other case.

The Registry of this Court and the Secretary to the office of the Advocate General will immediately communicate a copy of this judgment to the respondents herein as well as the Superintendent, Central Prison, Kannur, for necessary information and immediate compliance.

With these observations and directions, the above W.P(Crl) will stand finally disposed of.