IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

&

THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

THURSDAY, THE 29TH DAY OF SEPTEMBER 2022 / 7TH ASWINA, 1944

WP(CRL.) NO. 720 OF 2022

PETITIONER:

JANCY JOSEPH,
AGED 52 YEARS, W/O.JOSEPH, KOLASERRY HOUSE,
IYANKUNNU VILLAGE, IRITTI TALUK, KACHERIKADAVU P.O.,
KANNUR DISTRICT - 670 706.

BY ADVS.
C.DHEERAJ RAJAN
ANAND KALYANAKRISHNAN

RESPONDENTS:

1 STATE OF KERALA,
REP. BY CHIEF SECRETARY TO GOVERNMENT,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

2 THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT,
(HOME & VIGILANCE), SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.

3 THE DISTRICT MAGISTRATE,
KANNUR, COLLECTORATE, COLLECTORATE ROAD,
THAVAKKARA, KANNUR - 670 002.

4 DISTRICT POLICE CHIEF KANNUR (RURAL),
TALAP, KANNUR, KERALA - 670 002.

5 THE SUPERINTENDENT OF PRISON,
VIYYUR CENTRAL PRISON, THRISSUR,
THRISSUR DISTRICT - 678 010.

BY ADVS.
ADVOCATE GENERAL OFFICE KERALA
ADDL.DIRECTOR GENERAL OF PROSECUTION(AG-11)

OTHER PRESENT:

SRI K.A.ANAS-GP

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON 29.09.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

(CR)

ALEXANDER THOMAS & SOPHY THOMAS, JJ.

W.P. (Crl) No.720 of 2022

Dated this the 29th day of September, 2022

JUDGMENT

Alexander Thomas, J.

The prayers in the afore captioned Writ Petition (Criminal) are as follows:-

> "i. *Call for the records leading to Ext P4 and Issue a writ of certiorari or any other appropriate writ order or direction quashing the same.*
> *ii. Issue a Writ of Habeas Corpus commanding the 5th Respondent herein to produce the detenu 'Jithin Joseph' before this Honourable Court and set him at liberty forthwith.*
> *iii. Issue a Writ of Mandamus or any other appropriate Writ order or direction directing the 'High Court Registry' to number the case by dispensing the translation of the documents produced by the Petitioner in vernacular language.*
> *iv. Grant such other relief deemed fit to this Honourable Court in the interest of justice."*

2. Heard Sri.C.Dheeraj Rajan, learned counsel appearing for the petitioner and Sri.K. A. Anas, learned Public Prosecutor, appearing for the respondents.

3. The petitioner is the mother of the detenu involved in this case, viz., Sri.Jithin Joseph, aged 28 years. The detenu, Sri.Jithin Joseph, has been ordered to be detained in terms of Sec.3(1) of the

Kerala Anti-Social Activities (Prevention) Act, 2007 (KAAPA) (hereinafter referred for short as 'the Act') as per Ext.P2 detention order dated 28.04.2022, issued by the 3rd respondent-District Magistrate, in pursuance of Ext.P1 report dated 06.04.2022, issued by the sponsoring authority (4th respondent-District Police Chief). Ext.P2 detention order has been duly executed by arrest and detention of the detenu on 02.05.2022 and thereafter, he has been detained in the Central Prison, Kannur and later transferred to the Central Prison, Viyyur, Thrissur.

4. Ext.P2 detention order has been duly approved by the Government under Sec.3(3) of the Act on 13.05.2022. Thereafter, the competent authority of the 1st respondent-State Government in the Home department, has referred the matter for the recommendations and report of the Statutory Advisory Board on 18.05.2022. The Advisory Board has heard the detenu on 10.6.2022 and thereafter the Advisory Board has furnished its report on 22.06.2022, recommending to the Government that there is sufficient cause for issuance of Ext.P2 detention order so as to enable the Government to confirm the same. In pursuance thereof, the competent authority of the 1st respondent-State Government has confirmed Ext.P2 detention order on 06.07.2022, as per Ext.P4 order. The date of commission of the last offence (last prejudicial

activity) by the detenu involved in this case is on 07.03.2022. The period between the last prejudicial activity and the date of issuance of Ext.P2 detention order is 1 month and 21 days, i.e., for the period from 07.03.2022 to 28.04.2022.

5. There is no dispute that the copy of the detention order, along with the grounds of detention and all the necessary relevant documents, have been duly furnished to the petitioner at the time of execution of the detention order, as conceived in Sec.7 of the Act.

6. So also, there is no dispute that the 3rd respondent-detaining authority, has considered only three criminal cases, in which the detenu was involved, for the purpose of taking into account the various aspects for the issuance of Ext.P2 detention order. The details of the three crimes are dealt with in the detention order, and the same has also been reiterated in para No.6 on pages 4 & 5 of the counter affidavit dated 14.09.2022, filed by the 1st respondent-State Government. There are no factual disputes regarding the details of the allegations in those three crimes and for the sake of convenience the details of those crimes, as given in the said pleadings, are as follows:-

> *"6. The three cases in which the detenu involved and considered for the current order of detention and for the objective satisfaction are as follows:*

i. ***Crime No. 149/2019 of Iritty Police Station U/s 341, 308, 326 r/w 34 of IPC. (Date of Crime 14.02.2019):***

The case was that on 14.02.2019 at 10.30 PM, near Kuttupuzha, Jithin Joseph and others attacked the complainant on his face and head using helmet with an intention to cause harm. The complainant evaded some attacks which otherwise might have resulted in his death. The case is pending trial before the Hon'ble Principal Sub Court. Thalassery as SC 976/2019.

ii. ***Crime No.832/2019 of Iritty Police Station u/s 447, 427, 341, 323, 324, 294(b), 506(i) r/w 34 of IPC (Date of Crime 23.12.2019):***

The case was that on 23.12.2019 at 5.30 PM, near Vallithode, Sri. Jithin Joseph and others verbally abused and physically assaulted the complainants and hit his head with a mobile phone causing hurt when he questioned the former's act of entering a Petrol Pump lighting a cigarette. The case was chargesheeted and is pending trial before the Hon'ble JFCM Court, Mattannur as CC 115/2020.

iii. ***Crime No.221/2022 of Iritty Police Station u/s 448, 294(b), 506(ii), r/w 34 of IPC (Date of Crime 07.03.2022):***

The case was that on 07.03.2022 at 7.30 PM, at Makkandi, Sri. Jithin Joseph and others trespassed into the house of the complainant, threatened to kill the complainant with a knife, verbally abused and caused damages to tune of Rs. 6000/- to the front door of the house of the complainant. The case was pending trial before the Hon'ble JFCM Court, Mattanur as CC 325/2022, at the time of issue of detention order."

7. Going by the factual details of the three cases, there are no disputes that the detenu's involvement in the abovesaid three cases would attract him to fulfill the definition of 'known-rowdy' and 'rowdy' as conceived in Sec.2(p)(3) read with Sec.2(t) of the Act, and that the activities of the detenu disclosed in the said crimes would also fulfill the ingredients of 'anti-social activities', as conceived in Sec.2(a) of the Act. Since there are no factual disputes regarding

those legal parameters, there is no necessity for us to quote the abovesaid provisions contained in Sec.2(t), Sec.2(p)(iii), Sec.2(a), etc. of the Act, to establish the satisfaction of the ingredients in that regard.

8. So also, there is no dispute that there has been timely service of the grounds of detention and all the relevant documents, etc., along with the detention order, at the time of execution of the detention order. No specific disputes are raised by the petitioner regarding the compliance of the various time lines involved in the decision making process.

9. The learned counsel, appearing for the petitioner, has broadly raised four contentions, in support of his plea for quashment of the impugned detention order. We would refer to each of the four contentions raised by the petitioner.

Contention A:

10. The first contention, urged by the learned counsel appearing for the petitioner, is that the bail condition in respect of the first case, which is a non-bailable offence, as stated in Ext.P5 bail order, has not been considered by the detaining authority. In that regard, more particularly, it is urged that the detaining authority has not considered as to whether the bail condition in Ext.P5, that the detenu/accused shall not commit any offence during the currency of

the bail period in the first case, was sufficient to prevent him from committing such activities and that the said aspect is highly relevant and crucial in this case and non-consideration of the said aspect would be fatal to the decision making process, which led to the impugned detention order, etc. The learned counsel appearing for the petitioner would place reliance on the decision of the Division Bench of this Court in ***Mohanan v. State of Kerala*** [2014 KHC 3501] as well as the decision of the Division Bench of this Court in ***Nalini v. State of Kerala*** [2014 (1) KLT SN 22, Case No.30] (which has been referred to in para No.10 of ***Mohanan***'s case supra). Based on these decisions, it is urged by Sri.C.Dheeraj Rajan, learned counsel appearing for the petitioner, that it was obligatory on the part of the detaining authority to consider whether the bail conditions are sufficient to prevent the detenu from continuously indulging in anti-social activities and despite the bail conditions, if the detaining authority is still satisfied that the detenu requires to be detained, then the authority is still at liberty to pass an order of detention. That, in other words, the duty of the detaining authority is that he should have pointedly considered the highly relevant and crucial aspect regarding the efficacy of the bail conditions and thereafter, pursuant to due application of mind in that regard on that relevant issue, the detention authority could have taken a decision in

one way or the other including the decision to detain the detenu. That, non-consideration of that relevant aspect, regarding the efficacy of the bail conditions in Ext.P5 bail order, in respect of the first case out of the three cases is fatal to the decision making process.

11. Since, ***Nalini'***s case supra, has also been referred to in para No.10 of ***Mohanan***'s case supra [2014 KHC 3501], it will be pertinent to refer to the contents of para Nos.10 to 13 of ***Mohanan***'s case supra [2014 KHC 3501], which read as follows:-

> *"10. Again in Nalini v. State of Kerala 2014(1) KLT SC 22 Case No. 30, it was held thus;*
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> > *"The law is settled that when an accused in a criminal case, who is enlarged on bail with conditions, is sought to be detained in preventive detention, it is incumbent on the part of the detaining authority to consider whether the bail conditions are sufficient to prevent the delenu from continuing to indulge in anti-social activities and despite the conditions if the detaining authority is still satisfied that the detenu requires to be detained, the authority is still at liberty to pass an order of detention. In other words, the duty of the detaining authority is that he should pointedly consider the order passed by the court granting bail to the detenu and the conditions thereof and after due application of mind, should pass orders, either to detain or not to detain the detenu."*
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> *11. However, the learned Additional Director General of Prosecutions relied on the Division Bench judgment of this Court in Sunitha Mujeeb Rehman v State of Kerala, 2010 (4) KLT 478 and contended that in that judgment this Court had upheld an order of detention in spite of the fact that an order enlarging the detenu on bail was not considered by the detaining authority. Reference was made to paras 26 and 27 of the judgment which read thus;*
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> > *"26. We would have been happier definitely if the detaining authority had referred to the specific conditions in Ext P13. But judicial review against an order of preventive detention cannot merely be an exercise to ascertain the level of perfection achieved by the sponsoring and detaining authorities. A court in judicial review must realistically take note of all the circumstances. Here is a case where the detaining authority was evidently aware of bail granted under Ext P13. He was*

> *aware of the release of the accused on the strength of Ext. P13. Though the conditions imposed under Ext P13 are not specifically referred to, it is stated very clearly in the order of detention that the detenu is not a person who can be deterred from committing anti-social activity on the strength of conditions of bail*
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> *27. In this context, we look at the conditions of bail again. There is not one condition in Ext P13 order which is imposed by the court with an intention to deter the detenu from indulging in crimes later. Both the conditions imposed refer to the interest of a proper investigation in the said crime. Till final report is filed or earlier directions are issued, the detenu must make himself available before the Investigating Officer-evidently for interrogation. He should not tamper with the witnesses or threaten them-again a condition to secure the interests of investigation in that crime."*
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> *12. A reading of the above two paragraphs of the judgment in Sunitha Mujeeb Rehman's case (supra) itself would show that the conditions of the bail order referred to therein were incorporated only for the smooth investigation of the case involved and not for preventing the detenu from continuing the anti social activities and it was therefore that this Court did not attach any relevance to that condition and on that basis upheld the detention order. In our view, this judgment will not be of any assistance to the learned Additional Director General of Prosecutions to sustain Ext. P3 order.*
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> *13. From the judgments referred to by us, law seems to be settled that even in cases where conditions are imposed in the bail order and the detenu is enlarged on bail, detaining authority is still entitled to initiate proceedings under the Act and order detention without leaving the police to seek cancellation of the bail. But the detaining authority should consider whether in spite of the conditions imposed by the trial court enlarging the accused on bail, it is necessary to detain the detenu and whether the proceedings under the ordinary law of the land are sufficient to keep the detenu under check and control. This requirement of law should find a place in the order of detention itself, which contains the reflection of the application of mind by the detaining authority."*

12. Per contra Sri.K.A.Anas, learned Public Prosecutor, appearing for the respondents, would urge that the aspects regarding the efficacy or otherwise of the bail conditions has been duly considered by not only the sponsoring authority, but also by the detaining authority, would be evident from a reading of internal

pages 8 & 9 of Ext.P1 report of the Sponsoring Agency *{See 139 & 140 of the paper book of this WP(Crl.)}* as well as from a reading of internal pages 4 & 5 of Ext.P-2 detention order *{See 139 & 140 of the paper book of this WP(Crl.)}* The relevant contents of Ext.P-2 detention order, given on internal pages 4 & 5, are as follows:-

> *"14.02.2019 തിയ്യതി ഇരിട്ടി പോലീസ് സ്റ്റേഷനിൽ ക്രൈം നമ്പർ 149/2019 കേസ്സിൽ ഉൾപ്പെട്ട് ജൂഡീഷ്യൽ കസ്റ്റഡിയിൽ കഴിഞ്ഞ് കോടതികളുടെ കർശന ജാമ്യ വ്യവസ്ഥകൾ അനുസരിച്ചുകൊള്ളാമെന്ന അപേക്ഷയിന്മേൽ 09.04.2019 തിയ്യതി ജാമ്യം ലഭിക്കുകയും എന്നാൽ 10 മാസം കഴിയുന്നതിനു മുമ്പ താങ്കൾ വീണ്ടും 23.12.2019 തിയ്യതി ഇരിട്ടി പോലീസ് സ്റ്റേഷനിൽ ക്രൈം നമ്പർ 832/2019 കേസ്സിൽ കുറ്റകൃത്യത്തിലേർപ്പെടുകയും തുടർന്ന് താങ്കൾ വീണ്ടും പൊതുജനസമാധാന ലംഘന പ്രവർത്തനങ്ങളിൽ ഏർപ്പെടുന്നതിൽ നിന്നും താങ്കളെ തടയുന്നതിലേക്കായി ഇരിട്ടി പോലീസ് സ്റ്റേഷനിൽ 107 Cr.PC പ്രകാരം 01.04.2022 തിയ്യതി ബഹു. തലശ്ശേരി SDM കോടതിക്ക് റിപ്പോർട്ട് സമർപ്പിച്ചിട്ടുള്ളതിൽ നിന്നും താങ്കളെ കുറ്റകൃത്യത്തിൽ നിന്നും തടയുന്നതിന് സാധാരണ നിയമങ്ങൾ തികച്ചും അപര്യാപ്തമാണെന്നും മനസ്സിലാക്കുന്നു. എന്നാൽ 107 CrPC പ്രകാരമുള്ള നടപടിക്രമങ്ങൾ താങ്കളെ കുറ്റകൃത്യങ്ങളിൽ നിന്നും തടയാൻ ഉതകുന്നവയല്ലെന്നു. താങ്കൾ ഏർപ്പെട്ടിട്ടുള്ള കുറ്റകൃത്യങ്ങൾ പരിശോധിച്ചതിൽ നിന്നും 107 പ്രകാരമുള്ള നടപടികൾ എടുത്താലും താങ്കൾ കുറ്റകൃത്യങ്ങളിൽ ഏർപ്പെട്ട് പൊതുജനങ്ങൾക്ക് ദ്രോഹകരമായ പ്രവർത്തനങ്ങളിൽ ഏർപ്പെടാൻ സാദ്ധ്യതയുണ്ടെന്ന് ജില്ലാ പോലീസ് മേധാവിയുടെ റിപ്പോർട്ട് ശരിയാണെന്നും എനിക്ക് ബോദ്ധ്യമായിട്ടുണ്ട്.*
>
> *ജില്ലാ പോലീസ് മേധാവി കണ്ണൂർ റൂറൽ സമർപ്പിച്ച ശുപാർശയിലെ മേൽ പ്രസ്താവിച്ച കേസ്സുകൾ പരിശോധിച്ചതിൽ താങ്കളുടെ പ്രവർത്തികൾ കണ്ണൂർ ജില്ലയിൽ പ്രത്യേകിച്ചും ഇരിട്ടി പോലീസ് സ്റ്റേഷൻ പരിധിയിൽ പൊതുജനങ്ങളുടെ സുരക്ഷയ്ക്കും സമാധാനത്തിനും ഭംഗം വരുത്തുന്ന രീതിയിലുള്ളതാണ്. താങ്കളെ ഇത്തരം കുറ്റകൃത്യത്തിൽ നിന്ന് തടയുന്നതിന് നിലവിലുള്ള നിയമം അപര്യാപ്തമാണ്. ആയതിനാൽ താങ്കൾ കേരള സാമൂഹ്യ വിരുദ്ധ പ്രവർത്തനങ്ങൾ (തടയൽ) നിയമം 2007 സെക്ഷൻ 2(p)(iii) നിർവ്വചനത്തിലെ "അറിയപ്പെടുന്ന റൌഡി' എന്ന ഗണത്തിൽപ്പെടുന്നതും കരുതൽ തടങ്കിൽ വെക്കേണ്ടത് അനിവാര്യവുമാണ്.*
>
> *കേരള സാമൂഹ്യ വിരുദ്ധ പ്രവർത്തനങ്ങൾ (തടയൽ) നിയമം 2007 വകുപ്പ് 3 ഉപവകുപ്പ് (1) പ്രകാരം എന്നിൽ നിക്ഷിപ്തമായ അധികാരം ഉപയോഗിച്ച് ഇനിയും താങ്കൾ മേൽ സൂചിപ്പിച്ച തരത്തിലുള്ള പ്രവർത്തികളിൽ ഏർപ്പെടുന്നത് തടയണമെന്നതിനാൽ താങ്കളെ ഉടൻ പ്രാബല്യത്തിൽ വരത്തക്കവിധം കണ്ണൂർ സെൻട്രൽ ജയിലിൽ കരുതൽ തടങ്കലിൽ വെക്കുന്നതിന് ഇതിനാൽ ഉത്തരവാകുന്നു.*
>
> *ഈ ഉത്തരവിന് ആധാരമായ കാരണങ്ങൾ കാണിച്ചുകൊണ്ടുള്ള സ്റ്റേറ്റ്മെന്റ് ഇതോടൊപ്പം ചേർക്കുന്നു.*

ഈ ഉത്തരവിനെതിരെ ആക്ഷേപം ഉണ്ടെങ്കിൽ ആയത്. താങ്കൾക്ക് അഡീഷണൽ ചീഫ് സെക്രട്ടറി, ആഭ്യന്തര വകുപ്പ്, ഗവൺമെന്റ് സെക്രട്ടറിയേറ്റ്, തിരുവന്തപുരം, 695001 മുമ്പാകെയും ചെയർമാൻ, അഡ്വൈസറി ബോർഡ്, കേരള ആന്റി സോഷ്യൽ ആക്ടിവിറ്റീസ് (പ്രിവൻഷൻ) ആക്ട്, ശ്രീ നിവാസ്, പാടം റോഡ്, വിവേകാനന്ദ നഗർ, എളമക്കര, കൊച്ചി 682026 മുമ്പാകെയും ബോധിപ്പിക്കാവുന്നതാണ്. "

13. After hearing both sides, we note that, both the sponsoring agency as well as the detaining authority has pointedly considered the efficacy of the bail condition and other relevant aspects, and a reading of the pleadings and materials on record would make it clear, beyond any doubt, that a copy of Ext.P-5 bail order also formed a part of the records of this case, both in relation to Exts.P-1 & P-2. Therefore, the abovesaid plea of the petitioner, that the matters relating to bail condition in Ext.P-5 bail order has not been considered, is not tenable and sustainable.

14. Further, the learned Prosecutor has also pointed out, by placing reliance on the decision of the Division Bench of this Court in ***Anita Antony v. State of Kerala & Ors.*** *[2022 (4) KLT 721]* that, in the facts of the instant case, it may be true that after the involvement of the detenu in the first case, which is the one involving non bailable offences, wherein Ext.P-5 bail order was granted, the detenu has, indisputably, involved in two other crimes, which are the second and third cases mentioned hereinabove. Dealing with a similar contention, the Division Bench of this Court, in ***Anita Antony's*** case supra, has held in para 12 as follows:-

> *"12. The second contention is a claim that the detenu had scrupulously followed the bail conditions in the last crime [Crime No.460 of 2021 of Alappuzha North Police Station] and therefore, the subjective satisfaction to initiate proceedings under the KAA(P)A is vitiated. We cannot endorse the said submission of the learned counsel. As rightly pointed out by the learned Government Pleader, the last prejudicial activity reckoned by the detaining authority is the fourth crime and in all previous crimes, while being enlarged on bail, the detenu was put on similar condition that he shall not indulge in any criminal activity while on bail. This condition has been contemptuously violated by the detenu, as is established by the subsequent crimes, including the last one of the year 2021. Therefore, we are of the opinion that the compliance with the bail condition in the last crime cannot be gainsaid by the detenu, to assail the subjective satisfaction of the detaining authority, which is otherwise established by materials on record. "*

15. In the instant case, it may be true that the criminal court concerned, while granting bail to the detenu in the first case, has issued Ext.P-5 bail order, in which one of the conditions is that the accused should not involve in any other crimes during the currency of the bail period. A reading of Ext.P-5 bail order would clearly indicate that, all other conditions are not relevant for the present purpose, inasmuch as those conditions have become infructuous by the lapse of time, as far as the first case is concerned. A condition has been stipulated in Ext.P-5 bail order that the accused should not commit any other offences during the currency of the bail period. The detenu has got himself involved in two other cases, which are the second and third cases mentioned hereinabove. Hence, going by the dictum laid down by the Division Bench of this Court, in para 12 of ***Anita Antony's*** case supra, as noted hereinabove, the abovesaid

contention of the petitioner cannot be the basis for us to hold that the impugned decision making process which led to Ext.P-2 detention order is, in any manner, liable for interdiction in the judicial review proceedings. In other words, the first contention of the petitioner will have to be repealed by us.

Contention B:

16. The second contention urged by the petitioner is that, the detenu has been duly acquitted in the third case as per Ext.P-6 judgment dated 18.6.2022 rendered by the competent criminal court concerned, and that this aspect would clearly show that, the taking into account of the third case was highly irrelevant, as the same was not of any serious gravity and that therefore, minimum number of 3 cases are not disclosed in this case.

17. The said contention is strongly opposed by the learned Prosecutor.

18. We note that, it is well settled legal position, as enunciated by the Full Bench of this Court in para 15 of the decision in ***Stenny Aleyamma Saju v. State of Kerala & Ors.*** *[2017 (3) KLT 676 (FB)]* wherein it has been held that, the acquittal or discharge of the detenu will not enable the party to contend that the detenu will not come within the statutory parameters of the KAAP Act.

19. After hearing both sides, we are not in a position to concede to the abovesaid plea of the petitioner for reasons more than one. It has to be noted that, it is well settled, as enunciated by the Full Bench of this Court in para 15 of ***Stenny Aleyamma Saju's*** case supra *[2017 (3) KLT 676 (FB)]* that, the acquittal or discharge of the detenu by the criminal court concerned, is not a ground to enable him to contend that, he cannot be roped within the parameters of the KAAP Act and that hence, such acquittal or discharge may not be relevant in the decision making process. The further aspect of the matter is that, Ext.P-2 detention order has been issued on 28.4.2022 which has been confirmed by the Government on 6.7.2022, pursuant to the Advisory Board's report. It is thereafter that the detenu has been acquitted of the third case as per Ext.P-6 judment rendered on 18.6.2022. So, in other words, the acquittal judgement was never in existence at the time when the detention order was passed, etc. Further, the legal position in that regard has also been reiterated in other decisions of this Court as in ***Nafeesa v. State of Kerala & Ors.*** *[2015 (4) KHC 848, para 6]* and in ***Fazaludin v. State of Kerala & Ors.*** *[2014 (1) KHC 14, paras 12 & 13]*. Therefore, the acquittal or discharge of the detenu cannot be the basis for interdicting the decision making process in the detention orders passed under the KAAP Act, by recourse to judicial review

jurisdiction. Hence, the said plea of the petitioner will also stand rejected.

Contention C:

20. The third contention is that the materials did not disclose that the impugned detention order has been issued for the purpose of preventing the detenu from committing acts which are prejudicial to public order, etc. Then, in that regard, reliance has been placed by the counsel for the petitioner on decisions of the Apex Court in the celebrated case in ***Ram Manohar Lohia v. The State of Bihar*** *[AIR 1966 SC 740, paras 51 & 52]* as well as the recent decision of the Apex Court in ***Mallada K.Sri Ram v. State of Telangana & Ors.*** in Crl.Appeal No. 561/2022 arising out of SLP(Crl.) No. 1788/2022 rendered on 4-4-2022, etc. reported in *2022 SCC Online SC 424* etc.

21. This contention has been strongly opposed by Sri. K. A. Anas, learned Prosecutor. The learned Prosecutor would point out that the very objective of the KAAP Act is for prevention and control of certain kinds of anti-social activities in the State of Kerala, as provided in the Act, as can be seen from a reading of the Preamble of the Act. Further that, Sec.3(1) would mandate that the detention should be of a detenu, who should fulfil the definition of "Known Goonda" or "Known Rowdy", as defined therein and with a view to

prevent such a person committing any anti-social activity within the State of Kerala, and that the term anti-social activity, appearing in Sec.3(1), has to be understood within the contours of the specific definition contained in Sec.2(a) of the Act, which deals with anti-social activity, whereas the decision of the Apex Court in ***Ram Manohar Lohia's*** case was pertaining to the Defence of India Rules, framed under the Defence of India Act, 1971, and the objective of the Defence of India Act was to meet this emergent situation of external aggression, and to prevent prejudicial activities in relation to the defence of India and the civil defence of the country, and that Rule 30(1) of the Defence of India Rules was for detention of the detenu for preventing him from committing acts which are prejudicial vis-a-vis the specific parameters envisaged in that Rule, one of which was public order.

22. That, in the facts of ***Ram Manohar Lohia's*** case, the detention order was issued by the District Magistrate by citing the ground of law and order, and therein it was held by the Apex Court that detention for preventing the detenu from committing acts, which are prejudicial to law and order, would not suffice, and the detention order can be justified only if it is for preventing the detenu from committing any of the activities which are enumerated in the said Rule, including activities which are prejudicial to public order,

and that public order and law and order cannot be equated to have the same gravity, and it is in that regard that the judgment has been rendered. Further that, a reading of the decision of the Apex Court in ***Mallada K.Sri Ram's*** case supra would clearly indicate that the said case involved the preventive detention law, provided as per the Telangana Act mentioned in that case and Sec.2(a) of the said Telangana Act specifically provided that the activities should be one which would adversely affect or are likely to adversely affect, the maintenance of public order. Further that, Sec.3(1), regarding the power to make orders of detention, also specifically mandated that the detention order should be with a view to prevent the detenu from acting in any manner prejudicial to the maintenance of public order, etc. That, the parameters in the KAAP Act, deals with anti-social activities and the parameters involved in the Defence of India Rules and the abovesaid Telagana Act, which are the subject matter of the afore cited decisions of the Apex Court, is in the matter of preventing activities, which are prejudicial to public order and that the subjective satisfaction of the detaining authority will have to be adjudged from the parameters in the Act concerned. That, in the instant case, there is no dispute regarding the classification of the detenu as “known rowdy” as per Sec.2(p)(iii) read with Sec.2(t) and that anti-social activities will have to be understood vis-a-vis the

specific definition pointed as per Sec.2(a) of the KAAP Act. Therefore, the dictum laid down by the Apex Court in the afore cited decisions, which are involved in preventive detention laws for preventing activities which are prejudicial to public order, etc. will have to be understood with reference to the legal parameters in those statutory enactments concerned.

23. After hearing both sides, we are of the view that the issue in regard to this last contention is covered against the detenu by the dictum laid down by the Divsion Bench of this Court in paras 28, 29 & 30 of the decision in ***Uma*** *v.* ***State of Kerala*** [2010 (4) KLT 511] which read as follows:-

> *"28. The learned counsel for the petitioner raises the next contention that even if cases Sl.Nos.1 to 6 were taken into consideration and, at any rate, if cases Sl.Nos.1 and 2 alone are taken into consideration, it cannot be concluded that the activities of the alleged detenu pose any threat to public order. At worst, there is only violation of the provisions of the Abkari Act and by no stretch of imagination can it be held to be posing any threat to public order. We find no merit in this contention.*
>
> *29. Before us, in this writ petition, the constitutional validity of the KAAPA is not challenged. "Anti-social activity" is defined in Sec.2(a) of the KAAPA. A person indulging in anti- social activity is defined to be a goonda under Sec.2(j). A goonda answering the descriptions given in Sec.2(o) is a known goonda. Such a known goonda if he poses a threat of committing anti- social activity again in future can be ordered to be detained under Sec.3 of the KAAPA. We find that in the absence of a challenge to the constitutional validity of the KAAPA the petitioner cannot be heard to contend that anti-social activity as defined under Sec.2 of the KAAPA does not amount to any threat to public order. Sec.3 authorises the preventive detention of a detenu if such detention is necessary "with a view to preventing such person from committing any anti-social activity within the State of Kerala". So reckoned the question to be considered is whether the prediction or inference drawn by the detailing authority that the detenu is likely to indulge in anti-social activity which as per the definition under Sec.2(a) includes the activity of bootlegging.*

> *30. We have gone through the nature of allegations raised in Crimes Sl.Nos.1 and 2 as also Sl.Nos.3 to 6. By no stretch of imagination can it be held that the activities alleged in Crimes Sl.Nos.1 and 2 do not amount to anti-social activity. In these circumstances, we take the view that there is no merit in the contention that crimes Sl.Nos.1 and 2 taken separately or when taken along with Crimes Sl.Nos.3 to 6 do not reveal any threat to public order. Threat of the detenu committing anti-social activity is clearly revealed from crimes Sl.Nos.1 and 2 by themselves. Needless to say, Crimes Sl.Nos.3 to 6 also reveal that threat of the detenu indulging in anti-social activity - bootlegging particularly. The contention raised under Ground No.2 that the apprehended threat is not really a threat to public order is, in these circumstances, found to be without any merit."*

So, the petitioner cannot succeed on this contention.

Contention D:

24. The last contention raised by the petitioner is that, going by the facts of the case, particularly taking into account that the first case alone was the one involving non bailable offences, and both the second and third cases are cases involving only bailable offences, etc., the aspect regarding the option of bail cancellation, in respect of the first case, was a highly relevant and crucial aspect of the matter. That, in the instant case, the detaining authority has not considered the option as to whether the plea for bail cancellation, in respect of the first case, in which bail order was granted as per Ext.P-5, should be sought for, instead of directly going for an extreme measure of preventive detention, and that the non consideration of the said option of bail cancellation, in the facts of the case, would amount to non consideration of a highly crucial and relevant aspect of the matter. Therefore, the same vitiates the decision making process,

which led to the impugned detention order.

25. Per contra, the learned Prosecutor would point out that, in the admitted factual matrix, the detenue was granted Ext.P-5 bail order by the criminal court concerned, in respect of his involvement in the first case, which is the one with non bailable offences, and later the petitioner has contemptuously involved in the second and third cases, which may be bailable offences and therefore, the aspect as to whether the option of bail cancellation should be sought for, etc. is a matter within the sole discretion of the detaining authority, and going by the nature of the facts of these cases, the mere non consideration of said option cannot be said to be fatal. Further that, the option of bail cancellation is a time consuming process and when there is an imminent threat, the insistence for seeking the option for bail cancellation would be onerous and may not be conducive for the proper enforcement of the Act.

26. After hearing both sides, we see that the only case involving non bailable offences is the first case, which has been committed on 14.2.2019. Therein, the detenue has been granted bail, as per Ext.P-5 bail order dated 9.4.2019. The second and third cases are both bailable offences. The second case has been committed on 23.12.2019. The third crime, which also involves bailable offences, is said to have been committed on 7.3.2022. Going by the nature of the

three cases, more particularly the second and third cases, it can be seen that the aspects regarding consideration of the option of bail cancellation of the first case is certainly relevant, in the facts and circumstances of this case. This is all the more so, since this is the first detention order involved in the detenu's case and only 3 cases are alleged against the detenu, in which the last 2 are bailable offences. Hence, in the light of the facts and circumstances of this case, we are of the view that the detaining authority should have, atleast, considered as to the viability and feasibility of the option of bail cancellation, in respect of the bail granted in the first case, and considered as to whether recourse to such ordinary process of criminal law would have been sufficient to meet the scenario in hand, instead of proceeding with the extreme measure of preventive detention. We are only saying that, in the facts of this case, the consideration of such an option was highly relevant and crucial, and the detaining authority should have pointedly considered the said option, and if, after due consideration, the detaining authority had come with the same conclusion, as the one now urged before us by the learned Prosecutor, and had held that the said option was not feasible at all to meet with the objective of preventing the detenu from committing further prejudicial acts, then, certainly, the scenario would have been entirely different. Since, consideration of

such an option was relevant and crucial, in the facts and circumstances of a case of this nature, for the abovesaid reasons, and as the said aspect has not been considered at all, we are of the view that non consideration of such a crucial and relevant aspect has to be held as fatal to the decision making process, which has led to the impugned Ext.P-2 detention order.

27. The scenario would have been entirely different if the detaining authority had considered these aspects of feasibility and viability of the option of bail cancellation, and after such pointed consideration, the detaining authority had come to the present conclusion that, such an option was not feasible and viable to meet with the imperatives of the situation, then the matter would have been, certainly, beyond the province of judicial review interdiction. Such is not the instant case. We are not, for a moment, saying that in all cases, such option should necessarily be mechanically pursued. All what we are saying is that, going by the material particulars of the present facts before us, which we have delineated above, consideration of such an option was highly crucial and relevant, and total non consideration of that aspect would disclose a non application of mind in that crucial area, which was, as far as the present case is concerned, fatal and therefore, the decision making process, which led to Ext.P-1 detention order, has to be held as being

vitiated.

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

29. The upshot of the above discussion is that in view of the abovesaid finding made by us regarding the third contention of the petitioner, the impugned detention order is to be held as illegal and *ultra vires* and the same is liable for interdiction and quashment.

30. Accordingly, it is ordered that the impugned Ext.P-2 detention order dated 28.4.2022 will stand quashed, and consequently, Ext.P-4 confirmation order passed by the State Government on 6.7.2022 will also stand quashed. Further, it is ordered that the respondent authorities and the jail authorities concerned (Superintendent, Central Jail, Viyyur, Thrissur), where the detenu is detained, shall immediately release the detenu from jail and set him at liberty.

31. The Secretary to the office of the Advocate General will immediately communicate a copy of this order to the respondents herein and to the Superintendent, Central Jail, Viyyur, Thrissur, for necessary information and immediate compliance.

With these observations and directions, the above Writ Petition (Criminal) will stand finally disposed of.

Sd/-

ALEXANDER THOMAS,
JUDGE

Sd/-

SOPHY THOMAS,
JUDGE

Skk
MMG

APPENDIX OF WP(CRL.) 720/2022

PETITIONER'S EXHIBITS:-

EXHIBIT P1	THE PHOTOCOPY OF THE PROPOSAL NO.248/SBKNRL/TDR/22 DATED 06/04/2022 SUBMITTED BY THE 4TH RESPONDENT.
EXHIBIT P2	THE PHOTOCOPY OF THE ORDER NO.DCKNR/4232/2022/SSI DATED 28/04/2022.
EXHIBIT P3	THE PHOTOCOPY OF THE GROUNDS OF DETENTION ISSUED BY THE 3RD RESPONDENT.
EXHIBIT P4	THE PHOTOCOPY OF THE ORDER G.O.(RT) NO.1874/2022/HOME DATED 06/07/2022.
EXHIBIT P5	THE TRUE COPY OF THE ORDER DATED 09/04/2019 IN CRL.M.C 714/2019 ON THE FILES OF SESSION'S COURT, THALASSERY.
EXHIBIT P6	THE CERTIFIED COPY OF THE JUDGMENT DATED 18/06/2022 IN CC 325/2022 ON THE FILES OF JUDICIAL FIRST CLASS MAGISTRATE, MATTANNUR ARISING FROM CRIME 221/2022 OF IRITTY POLICE STATION.

RESPONDENTS' EXHIBITS:- NIL