IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

TUESDAY, THE 2ND DAY OF DECEMBER 2025 / 11TH AGRAHAYANA, 1947

WP(CRL.) NO. 1601 OF 2025

PETITIONER/S:

RAJU K.K
AGED 71 YEARS
S/O.KARUNAKARAN, KANNANTHARAYIL HOUSE, NJARAKKADU KARA, KADAVOOR VILLAGE, KOTHAMANGALAM, ERNAKULAM DISTRICT., PIN - 686671

BY ADVS.
SRI.NIREESH MATHEW
SRI.VIVEK VENUGOPAL
SRI.BABU JOSE
SHRI.GAJENDRA SINGH RAJPUROHIT
SHRI.AKHIL GEORGE
SHRI.ATHUL POULOSE

RESPONDENT/S:

1 STATE OF KERALA
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT, HOME DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM., PIN - 682031

2 THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT OF KERALA
(HOME DEPARTMENT), SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001

3 THE DISTRICT POLICE CHIEF
ERNAKULAM RURAL, OPP. POWER HOUSE, MUNNAR ROAD, ALUVA, PIN - 683101

4 THE SUPERINTENDENT
CENTRAL PRISON, POOJAPPURA, THIRUVANATHAPURAM DISTRICT, PIN - 695012

BY ADVS. SRI.K.A.ANAS, GP.

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON 02.12.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R.

J U D G M E N T

Jobin Sebastian, J.

This writ petition is directed against the order of detention dated 17.07.2025, passed against one Abhi Raju (hereinafter referred to as 'the detenu') under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (‘PITNDPS Act’ for brevity). The petitioner is the father of the detenu. After considering the opinion of the Advisory Board, the said detention order was confirmed by the Government vide order dated 16.10.2025, and the detenu has been directed to be detained for a period of one year with effect from the date of his detention.

2. The records reveal that a proposal was submitted on 01.04.2025 by the District Police Chief, Ernakulam Rural, seeking initiation of proceedings against the detenu under the PITNDPS Act before the jurisdictional authority, the 2nd respondent. Altogether, two cases in which the detenu was involved were considered by the jurisdictional authority for passing the detention order. Of these, the case relating to the most recent prejudicial activity is Crime No. 1199/2024 of Kalady Police Station, alleging the commission of offences punishable under Sections 8(c), 22(c), and 29 of the NDPS Act.

3. We heard Sri. Athul Poulose, the learned counsel appearing for the petitioner, and Sri. K.A. Anas, the learned Government Pleader.

4. Relying on the decision in **Kamarunnissa v. Union of India and another**, [1991 (1) SCC 128], the learned counsel for the petitioner contended that in cases wherein the detenu is in judicial custody, in connection with the last prejudicial activity, a detention order under preventive detention laws can be validly passed only on satisfaction of the triple test mentioned in the said decision by the Supreme Court. According to the counsel, as the impugned order was passed while the detenu was in judicial custody in connection with the last prejudicial activity, it was incumbent upon the authority to satisfy itself that it has reason to believe, on the basis of reliable material placed before it that, there is a real possibility of the detenu being released on bail and that on being so released he would in all probability indulge in prejudicial activity. According to the counsel, though in the Ext.P2 order, it is mentioned that the detenu was undergoing judicial custody in connection with the last prejudicial activity, it is nowhere mentioned that there is a real possibility of the detenu being released on bail in the case registered in connection with the last prejudicial activity. The learned counsel submitted that there is an unreasonable delay in mooting the proposal for initiation

of proceedings under the PITNDPS Act as well as in passing the impugned order of detention, and the said delay will certainly snap the live link between the last prejudicial activity and the purpose of detention. The learned counsel further contended that, since the alternative remedy of seeking cancellation of bail was available to prevent the detenu from engaging in further criminal activities, the drastic measure of preventive detention was wholly unwarranted. On these premises, it was argued that Ext. P2 order is vitiated and liable to be set aside.

5. In response, the learned Government Pleader submitted that Ext. P2 detention order was passed by the jurisdictional authority after complying with all procedural formalities and after arriving at the requisite objective as well as subjective satisfaction. According to the Government Pleader, the detention order was issued only after the jurisdictional authority was satisfied that invoking Section 3(1) of the PITNDPS Act was the sole effective measure to prevent the detenu from engaging in further criminal activities. It was further contended that the jurisdictional authority was fully aware that the detenu was in judicial custody in connection with the most recent prejudicial activity, and that the detention order was passed upon being satisfied that there was every likelihood of the detenu being released on bail and, if released, he would, in all probability, indulge in similar criminal activities. The learned

Government Pleader therefore argued that the detention order would legally sustain, notwithstanding the fact that the detenu was in judicial custody when the impugned order was issued. It was further submitted that there was no unreasonable delay in passing the detention order, and hence, no interference with the impugned order is warranted.

6. From the rival contentions raised, it is gatherable that the main question that revolves around this petition is whether a detention order under Section 3(1) of the PINDPS Act can be validly passed against a person who is under judicial custody in connection with the last prejudicial activity. While answering the said question, it is to be noted that, through a series of judicial pronouncements rendered by the Apex Court as well as by this Court, it is well settled that there is no legal impediment in passing an order of detention against a person who is under judicial custody in connection with the last prejudicial activity. However, an order of detention against a person who is in judicial custody in connection with the last prejudicial activity cannot be passed in a mechanical manner. Undisputedly, an order of detention under the PITNDPS Act is a drastic measure against a citizen as it heavily impacts his personal as well as his fundamental rights. When the ordinary laws are sufficient to prevent a person from repeating criminal activities, resorting to preventive detention is neither warranted nor permissible. When a

detenu is in jail in connection with the last prejudicial activity, obviously, there is no imminent possibility of being involved in criminal activities. Therefore, before passing a detention order in respect of a person who is in jail, the concerned authority must satisfy itself that there is a real possibility that the detenu might be enlarged on bail, and further, if released on bail, the material on record reveals that he will in all likelihood indulge in prejudicial activities. The circumstances that necessitate the passing of such an order must be indicated in the order itself.

7. In **Kamarunnissa's** case (cited supra), the Supreme Court made it clear that a detention order under preventive detention laws can be validly passed even in the case of a person in custody (1) if the authority passing the order is aware of the fact that he is actually in custody (2) if he has reason to believe on the basis of reliable materials placed before him (a) that there is a real possibility of his being released on bail and (b) that on being so released he would in probability indulge in prejudicial activity and (3) if it is essential to detain him to prevent him from doing so. If the authority passes an order after recording its satisfaction in this regard, such an order would be valid.

8. A similar view has been taken by the Supreme Court in **Veeramani v. State of Tamil Nadu** [1994 (2) SCC 337] and in

Union of India v. Paul Manickam [2003 (8) SCC 342].

9. In view of the said decisions, in cases wherein the detenu is in judicial custody in connection with the last prejudicial activity, a detention order under preventive detention laws can be validly passed only on satisfaction of the triple test mentioned in the said decisions by the Supreme Court.

10. Keeping in mind the above proposition of law laid down by the Supreme Court, while reverting to the facts in the present case, it can be seen that the case registered against the detenu with respect to the last prejudicial activity is crime No.1199/2024 of Kalady Police Station, alleging the commission of offenses punishable under Sections 8(c), 22(c) and 29 of the NDPS Act. The detenu was arrested in the said case on 28.10.2024, and since then, he has been under judicial custody. It was on 01.04.2025, while the detenu was under judicial custody, that the proposal for initiation of proceedings under the PITNDPS Act was forwarded by the sponsoring authority. Later, it was on 17.07.2025, the impugned order was passed.

11. In Ext.P2 impugned order, the fact that at the time of passing the said order, the detenu was under judicial custody in connection with the case registered with respect to the last

prejudicial activity is specifically adverted to. Likewise, in the impugned order, it is recorded that from the past criminal activities of the detenu, it is evident that even if he is released on bail with conditions, he may likely violate those conditions, and there is a high propensity that the detenu will indulge in drug peddling activities in the future. The order further states that it is absolutely imperative to detain the detenu in order to prevent him from engaging in similar activities in the event of his release on bail. However, we agree that the detaining authority has not specifically recorded that the detenu is "likely to be released on bail."

12. Dealing with a similar situation, the Supreme Court in **Union of India and another vs. Dimple Happy Dhakad** (2019 KHC 6662), after considering the dictum laid down in **Kamarunissa** (cited supra) in paragraph 35 of the judgment, observed as follows;

> "in the light of the well settled principles, we have to see, in the present case, whether there was awareness in the mind of the detaining authority that detenu is in custody and he had reason to believe that detenu is likely to be released on bail and if so released, he would continue to indulge in prejudicial activities. In the present case, the detention orders dated 17.05.2019 record the awareness of the detaining authority that (i) the detenu is in custody, (ii) that the bail application filed by the detenus have been rejected by the court. Of course, in the detention order, the detaining authority has not specifically recorded that the "detenu is likely to be released. It cannot be said that the detaining authority has not applied its mind merely on the ground that in the detention

> orders, it is not expressly stated as to the "detenu's likelihood of being released on bail" and "if so released, he is likely to indulge in the same prejudicial activities". But the detaining authority has clearly recorded the antecedents of the detenu and its satisfaction that the detenus, Happy Dhakad and Nisar Aliyar, have the high propensity to commit such offences in the future."

13. Keeping in mind the above principles laid down by the Supreme Court while reverting to the case at hand, it can be seen that, in the impugned order, it is not specifically recorded that the detenu is likely to be released on bail. Moreover, in the order, it is stated that if the detenu is released on bail, there is every possibility of him indulging in criminal activities again. The satisfaction of the detaining authority that the detenu is already in custody and he is likely to be released on bail, and on being so released, he is likely to indulge in prejudicial activity, is the subjective satisfaction of the detaining authority, and normally, the subjective satisfaction is not to be interfered with. The impugned order reflects that there is a proper application of mind and, based on the materials available on record, the detaining authority was subjectively satisfied and had reason to believe that there was a real possibility of the detenu being released on bail and that, on being so released, the detenu would in all probability indulge in prejudicial activities. Therefore, merely because the detaining authority had not specifically recorded that "the detenu is likely to be released on bail", it cannot be said that the

impugned order suffers from a non-application of mind by the detaining authority to the possibility of the detenu being released on bail.

14. Now, coming to the contention raised by the learned counsel for the petitioner regarding the delay in mooting the proposal as well as in passing the detention order, it is first to be noted that the detenu was arrested in connection with the last prejudicial activity on 28.10.2024, the very date on which the crime occurred. As already stated, the sponsoring authority initiated the proposal for action under the PITNDPS Act only on 01.04.2025. Thereafter, the detention order was passed on 17.07.2025. Evidently, both the forwarding of the proposal and the passing of the detention order occurred while the detenu was in judicial custody. Since the detenu was in jail, there was no basis for any apprehension of an imminent repetition of criminal activities during the intervening period. Therefore, the minimum delay that occurred in initiating the proposal and in issuing the detention order is liable to be disregarded, and it cannot be said that such delay snapped the live link between the last prejudicial activity and the purpose of detention.

15. Another contention raised by the learned counsel for the petitioner is that, since the alternative remedy of seeking

cancellation of bail was available to deter the detenu from repeating criminal activities, resorting to the drastic measure of preventive detention was wholly unnecessary. We are mindful of the fact that when ordinary laws are sufficient to prevent a person from engaging in further criminal activities, recourse to preventive detention laws is ordinarily unwarranted. However, merely because the remedy of bail cancellation exists, it cannot be contended that an order of detention under the PITNDPS Act cannot be passed. This is because the purpose and scope of bail cancellation proceedings and preventive detention are fundamentally different. Moreover, the process of securing cancellation of bail, in practical terms, is time-consuming, and there is no assurance that such cancellation would be obtained before the person concerned engages in further criminal activity. Preventive detention laws are enacted to address precisely such exigencies. It is for these reasons that the courts have consistently held that the authorities under preventive detention laws are not required to wait for the outcome of a bail cancellation application before passing an order of detention. If it were to be held that the availability of bail cancellation precludes the issuance of a detention order, the very object of preventive detention laws would be defeated. Furthermore, even after cancellation of bail, there is no legal impediment to the grant of bail at a subsequent stage. Therefore, even where the remedy of bail cancellation is available, there is no illegality in passing a detention order if the circumstances

justify such action.

In the result, we have no hesitation in holding that the petitioner has not made out any ground for interference. Hence, the writ petition fails and is accordingly dismissed.

SD/-

DR.A.K.JAYASANKARAN NAMBIAR
JUDGE

SD/-
sab **JOBIN SEBASTIAN**
JUDGE

APPENDIX OF WP(CRL.) NO. 1601 OF 2025

PETITIONER EXHIBITS

Exhibit P1	**TRUE COPY OF THE PROPOSAL SUBMITTED BY RESPONDENT NO.3 TO INITIATE ACTION UNDER SECTION 3(1) OF PREVENTION OF ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1988 BEFORE RESPONDENT NO. 2 DATED 01.04.2025**
Exhibit P2	**TRUE COPY OF THE DETENTION ORDER DATED 17.07.2025 PASSED BY THE RESPONDENT NO.2**
Exhibit P3	**TRUE PHOTOCOPY OF THE ORDER DATED 16.10.2025 PASSED BY THE 1ST RESPONDENT**