



2026:KER:18316

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

MONDAY, THE 2ND DAY OF MARCH 2026 / 11TH PHALGUNA, 1947

WP(CRL.) NO. 305 OF 2026

PETITIONER:

JAYALEKSHMI L
AGED 58 YEARS
W/O. ASHOKAN, KRISHNAKRIPA HOUSE NEAR POWER LIFE
GYM, ANAPPAD DESOM MALAYINKEEZHU VILLAGE,
KATTAKKADA TALUK THIRUVANANTHAPURAM, PIN - 695571

BY ADVS.
SRI.IEANS.C.CHAMAKKALA
SRI.BINU B.SAMUEL
SHRI.AADHAL THANKACHAN
SHRI.EJAZ AZHUR

RESPONDENTS:

- 1 STATE OF KERALA
THE CHIEF SECRETARY, SECRETARIAT
THIRUVANANTHAPURAM, PIN-695001 REPRESENTED THROUGH
THE PUBLIC PROSECUTOR HIGH COURT OF KERALA,
ERNAKULAM, PIN - 682031
- 2 THE ADDITIONAL CHIEF SECRETARY
TO GOVERNMENT OF KERALA (HOME DEPARTMENT),
SECRETARIAT THIRUVANANTHAPURAM, PIN -695001
REPRESENTED THROUGH THE PUBLIC PROSECUTOR HIGH
COURT OF KERALA, ERNAKULAM, PIN - 682031
- 3 THE EXCISE COMMISSIONER
KERALA EXCISE HEADQUARTERS BAKERY JUNCTION ROAD
NANDAVANAM, PALAYAM THIRUVANANTHAPURAM, PIN- 695
034 REPRESENTED THROUGH THE PUBLIC PROSECUTOR HIGH
COURT OF KERALA, ERNAKULAM, PIN - 682031



- 4 THE DEPUTY EXCISE COMMISSIONER
EXCISE DIVISION OFFICE, FORT ATTAKKULANGARA P.O
THIRUVANANTHAPURAM DISTRICT, PIN -695 023
REPRESENTED THROUGH THE PUBLIC PROSECUTOR HIGH
COURT OF KERALA, ERNAKULAM, PIN - 682031

- 5 THE SUPERINTENDENT
CENTRAL PRISON, POOJAPPURA, THIRUVANATHAPURAM,
PIN -695012 REPRESENTED THROUGH THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM,
PIN - 682031

- 6 MINISTRY OF HOME AFFAIRS
UNION OF INDIA, REPRESENTED BY THE SECRETARY,
MINISTRY OF HOME AFFAIRS, GOVERNMENT OF INDIA,
NEW DELHI, PIN - 110001

BY ADVS.
SRI.K.A.ANAS, G. P.

THIS WRIT PETITION (CRIMINAL) HAVING BEEN COME UP FOR
HEARING ON 02.03.2026, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:



J U D G M E N T

Jobin Sebastian, J.

This writ petition is directed against a detention order passed under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances ('PITNDPS Act' for brevity) against one Arjun ('detenu' for the sake of brevity). The petitioner herein is the mother of the detenu. The said detention order stands confirmed by the Government, vide order dated 13.11.2025, and the detenu has been ordered to be detained for a period of one year with effect from the date of detention.

2. As evident from the records, it was on the basis of a proposal dated 31.05.2025, forwarded by the Deputy Excise Commissioner, Thiruvananthapuram, that the jurisdictional authority initiated proceedings against the detenu under Section 3(1) of the PITNDPS Act. Altogether, two cases in which the detenu got involved have been considered by the jurisdictional authority for passing the detention order. Out of the said cases, the case registered against the detenu with respect to the last prejudicial activity is Crime No.27/2025 of the Excise Range Office, Neyyattinkara, alleging commission of offences punishable under Sections 8(c), 22(c) and 20(b)(ii)A of the NDPS Act.



3. We heard Sri. Ieans C. Chamakkala, the learned counsel appearing for the petitioner, and Sri. K. A. Anas, the learned Government Pleader.

4. The learned counsel for the petitioner submitted that Ext.P6 order was issued without proper consideration of the relevant facts and without due application of mind. Placing reliance on the decision of the Supreme Court in **Kamarunnissa v. Union of India**, [1991 (1) SCC 128], the counsel argued that, where a detenu is already in judicial custody, an order of preventive detention can be validly passed only upon satisfaction of the triple test laid down in the said judgment. It was contended that, since the impugned order was passed while the detenu was in judicial custody in connection with the case registered against him, the jurisdictional authority was bound to satisfy itself, on the basis of reliable material placed before it, that there existed a real possibility of the detenu being released on bail and that, upon such release, he would in all likelihood engage in prejudicial activities. According to the learned counsel, although Ext.P6 order records that the detenu was in judicial custody, it does not state anywhere that there was a real likelihood of his being released on bail in the said case. It was further submitted that while passing Ext.P6 order, the jurisdictional authority failed to take note of the fact that there was a time gap of around two years between the last prejudicial activity and the last but one case registered against the detenu, and the



said time gap itself shows that the detenu is not a person having the propensity to be involved in criminal activities repeatedly. The learned counsel further contended that, although the detenu was apprehended in connection with the last prejudicial activity involving intermediate quantity of Methamphetamine, the jurisdictional authority proceeded on an erroneous assumption that the quantity involved constituted commercial quantity and, on that incorrect premise, passed the detention order. Likewise, in the last but one case, although the quantity of contraband seized was only small quantity, the jurisdictional authority passed the detention order under the mistaken belief that the seized contraband constituted intermediate quantity. According to the learned counsel, therefore, it is clear that there is non-application of mind on the part of the jurisdictional authority while passing the detention order, and hence, the detention order is liable to be set aside.

5. In response, the learned Government Pleader submitted that Ext.P6 detention order was passed by the jurisdictional authority after complying with all the procedural formalities and after arriving at the requisite objective as well as subjective satisfaction. According to the learned Government Pleader, the said order was passed by the jurisdictional authority after being satisfied that a detention order under Section 3(1) of the PITNDPS Act is the only remedy to deter the detenu from repeating criminal activities. It was further contended that the jurisdictional authority was fully aware of the fact that the detenu



was in judicial custody, and it was only on being satisfied that there is every chance that the detenu be released on bail, and if so released, he would in all probability indulge in criminal activities further, that the detention order was passed. According to the learned Government Pleader, therefore, the detention order will legally sustain irrespective of the fact that the detenu was under judicial custody while the same was passed.

6. From the rival contentions raised, it is gatherable that the main question that revolves around this writ petition is whether a detention order under Section 3(1) of the PITNDPS Act can be validly passed against a person who is under judicial custody. 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 a detention order against a person who is under judicial custody. However, an order of detention against a person who is under judicial custody cannot be passed in a casual manner. Undisputedly, a detention order under the PITNDPS Act is a drastic measure against a citizen as it heavily impacts their personal as well as their fundamental rights. When an effective and alternative remedy exists to prevent a person from repeating criminal activities, resorting to preventive detention is neither warranted nor permissible. When a detenu is in jail, 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 authority concerned must satisfy itself that there is a real possibility of the detenu being released on bail, and further, if released on bail, the material on record reveals that he will indulge in prejudicial activity if not detained. The circumstances that necessitate the passing of such an order must be reflected 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 material 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 all probability indulge in prejudicial activity and (3) if it is felt 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. The 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, 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 and considered by the authority to pass the detention order is crime No.27/2025 of the Excise Range Office, Neyyattinkara, alleging commission of offences punishable under Sections 8(c), 22(c) and 20(b)(ii)A of the NDPS Act. In the said case, the detenu was caught red-handed with the contraband on 21.03.2025, and since then, he has been under judicial custody. It was on 31.05.2025, while the detenu was under judicial custody, that the proposal for proceedings under the PITNDPS Act was initiated. Later, on 26.08.2025, the detention order was passed. The sequence of events narrated above clearly shows that there is no unreasonable delay either in mooted the proposal or in passing the impugned order of detention.

11. In Ext.P6 order, the fact that at the time of passing the said order, the detenu was under custody is specifically adverted to. Moreover, in the order, it is further stated that the detenu had already applied for bail in the last case registered against him. In the impugned order, it is further recorded that, considering the detenu's criminal



activities, it is evident that even if he is released on bail with conditions, he may likely to violate those conditions and there is a high propensity that the detenu will indulge in drug peddling activities in future. However, in the order, the jurisdictional authority has not specifically recorded that “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: - (i) that the detenu is in custody; (ii) that the bail application filed by the detenues have been rejected by the Court. Of course, in the detention orders, 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 “detenue'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 antecedent of the detenues and its satisfaction that detenues Happy Dhakad and Nisar Aliyar have the high propensity to commit such offences in 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. However, in the order, it is stated that the detenu is trying for bail and considering his criminal antecedents, it is evident that bail conditions are not sufficient to curb his narcotic criminal activities. The satisfaction of the jurisdictional 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 activities, is the subjective satisfaction of the jurisdictional authority arrived on the materials available and normally, the said subjective satisfaction is not to be interfered with by a court of law. The detention order reflects that there is a proper application of mind and, based on the materials available on record, the jurisdictional authority subjectively satisfied that there is a reason to believe that there is a real possibility of the detenu being released on bail and that, if so released, the detenu will in all probability indulge in prejudicial activities. Therefore, merely because of the reason that the jurisdictional authority has not specifically recorded that “the detenu is likely to be released on bail”, it cannot be said that the impugned order lacks satisfaction of the jurisdictional authority regarding the chance of the detenu being released on bail.

14. Another contention taken by the learned counsel for the petitioner is that the jurisdictional authority failed to take note of the fact that there was a time gap of around two years between the last prejudicial activity and the last but one case registered against the



detenu, and therefore, the subjective satisfaction arrived at by the jurisdictional authority is vitiated. It is true that the incident that led to the registration of the last case against the detenu occurred on 21.03.2025, whereas the date of occurrence of the penultimate case registered against him (crime No. 345/2023) is on 23.03.2023. Thus, there is indeed a gap of around two years between the two incidents. However, it cannot be overlooked that the involvement of a person, even in a single case registered under the NDPS Act, is sufficient to pass a detention order under the PITNDPS Act. Therefore, the time gap between the two cases highlighted by the learned counsel for the petitioner is of little consequence in the context of the impugned order.

15. Another contention raised by the learned counsel for the petitioner is that, although the detenu was apprehended in connection with the last prejudicial activity, involving an intermediate quantity of Methamphetamine, the jurisdictional authority proceeded on the erroneous presumption that the quantity involved constituted commercial quantity and, on that basis, passed the detention order. Likewise, in the last but one case, although the quantity of contraband seized was only a small quantity, the jurisdictional authority passed the detention order under the mistaken assumption that intermediate quantity of contraband had been seized in that case. According to the learned counsel, therefore, it is evident that there was non-application of mind on the part of the jurisdictional authority while passing the



detention order.

16. While considering the said contention, it is to be noted that in the FSL examination of the samples, it was revealed that the contraband seized in the case relating to the last prejudicial activity was indeed intermediate quantity, whereas in the last but one case, the contraband seized was small quantity. However, the jurisdictional authority, acting on the proposal submitted by the sponsoring authority, passed the detention order under the assumption that the contraband involved in those cases constituted commercial and intermediate quantities, respectively. As already stated, it was on the basis of the proposal submitted by the sponsoring authority that the jurisdictional authority arrived at such a conclusion. Further, it was only upon receipt of the FSL report that it was revealed that the contraband seized was Methamphetamine and not MDMA. In such circumstances, it cannot be contended that there was any non-application of mind on the part of the jurisdictional authority while passing the detention order.

17. Moreover, the mere fact that the jurisdictional authority operated under a mistaken assumption regarding the quantity of contraband is, by itself, insufficient to conclude that the detenu suffered any prejudice. This is particularly so as the quantity of contraband has no determinative relevance in deciding whether a detention order under the PITNDPS Act should be passed. Under the provisions of the



PITNDPS Act, the requirement is that the jurisdictional authority must be satisfied that the detenu is a person engaging in illicit traffic in narcotic drugs and psychotropic substances. The definition of 'illicit traffic' under Section 2(e) of the PITNDPS Act makes it clear that mere possession of narcotic drugs or psychotropic substances, other than those permitted under the NDPS Act, is sufficient to constitute illicit traffic. There is no statutory requirement that a specific quantity of narcotic drugs or psychotropic substances must be possessed to establish illicit traffic.

18. Therefore, irrespective of the quantity of narcotic drugs or psychotropic substances involved, a person may be detained under Section 3(1) of the PITNDPS Act if it is necessary to prevent him from engaging in illicit traffic. Consequently, even if the jurisdictional authority operated under an erroneous assumption regarding the quantity of contraband seized from the detenu while passing a detention order under the Act, such an error is of minimal consequence, particularly when no prejudice to the detenu has been demonstrated. It follows that the validity of the detention order cannot be challenged solely on the ground of an incorrect assumption regarding the quantity of contraband, provided the jurisdictional authority was otherwise satisfied that the detenu was likely to engage in illicit trafficking in narcotic drugs or psychotropic substances. The focus of the statutory scheme is on the potential for engagement in illicit traffic, and not on



the exact quantity of the substance involved. Therefore, it cannot be held that the subjective satisfaction arrived at by the jurisdictional authority is vitiated in any manner.

In view of the discussion above, we hold that the petitioner has not made out any case for interference. Hence, the writ petition fails and accordingly stands dismissed.

Sd/-
DR.A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
JOBIN SEBASTIAN
JUDGE

ANS



APPENDIX OF WP(CRL.) NO. 305 OF 2026

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE PROPOSAL DATED 20-06-2025 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
- Exhibit P2 TRUE COPY OF THE PROPOSAL DATED 06.06.2025 BY THE ADDITIONAL EXCISE COMMISSIONER
- Exhibit P3 THE PROPOSAL FROM THE JOINT EXCISE COMMISSIONER TO THE 2ND RESPONDENT DATED 05-06-2025
- Exhibit P4 THE PROPOSAL INITIATED BY THE 4TH RESPONDENT TO THE JOINT EXCISE COMMISSIONER DATED 31-05-25
- Exhibit P5 PROPOSAL INITIATED BY THE 4TH RESPONDENT TO THE 2ND RESPONDENT DATED 31-05-2025
- Exhibit P6 THE ORDER PASSED BY THE ADDITIONAL CHIEF SECRETARY HOME DEPARTMENT DATED 26-08-2025