

HIGH COURT OF ANDHRA PRADESH

* * * *

WRIT PETITION No.439 of 2026

Between:

Pangi Mangamma

.....PETITIONER

AND

The State of Andhra Pradesh and 4 others

.....RESPONDENTS

DATE OF JUDGMENT RESERVED : 01.10.2026

DATE OF JUDGMENT PRONOUNCED : .10.2026

DATE OF JUDGMENT UPLOADED : .10.2026

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE SRI JUSTICE PURUSHOTTAM KUMAR CHINTALAPUDI**

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|---|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. Whether Your Lordships wish to see the fair copy of the Judgment? | Yes/No |

RAVI NATH TILHARI, J

PURUSHOTTAM KUMAR CHINTALAPUDI, J

APHC010006112026



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

* THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
* THE HON'BLE SRI JUSTICE PURUSHOTTAM KUMAR CHINTALAPUDI
+ WRIT PETITION No.439 of 2026

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Between:

Pangi Mangamma

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.....RESPONDENTS

! Counsel for the Petitioner : Sri D.Purna Chandra Reddy

Counsel for the Respondents : Sri Keerthi Teja Kondaveeti,
learned Government Pleader

< Gist :

> Head Note:

? Cases Referred:

1. (1995) 4 SCC 51
2. (2002) 6 SCC 735
3. (2012) 2 SCC 72
4. (2025) 4 SCC 476
5. W.P.No.33545 of 2025 APHC decided on 22.06.2026
6. (1990) 2 SCC 1
7. SLP(crl.) No.8439 of 2026 SC decided on 28.07.2026

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
THE HONOURABLE SRI JUSTICE PURUSHOTTAM KUMAR
CHINTALAPUDI

WRIT PETITION NO: 439 OF 2026

ORDER: *(per Ravi Nath Tilhari, J)*

Heard Sri D.Purna Chandra Reddy, learned counsel for the petitioner and Sri Keerthi Teja Kondaveeti, learned Government Pleader for the respondents.

2. The petitioner has filed this writ petition for writ of Habeas Corpus under Article 226 of Constitution of India also challenging the order of detention of the detenu namely Pangi Krishna Rao, presently detained in Central Prison, Visakhapatnam.

3. With respect to the detenu an order of preventive detention vide G.O.Rt.No.1258 Revenue (EXCISE.II) Department dated 14.10.2025 was passed by the Principal Secretary to Government under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (PIT NDPS ACT, 1988). The same was confirmed vide G.O.Rt.No.1671 Revenue (EXCISE.II) Department dated 31.12.2025.

4. The preventive detention order was passed on the following criminal cases:

i) Cr.No.28 of 2016 under Section 20(B) (1) of NDPS Act – 1985 of Paderu Police Station.

ii) Cr.No.10 of 2023 under Section 20(b) (ii) (C), 25 r/w 8(c) of NDPS Act – 1985 of G.Madugula Police Station.

iii) Cr.No.24 of 2023 under Section 20(b) (ii) (C), r/w 8(c) of NDPS Act, 1985 of Pedabayalu Police Station.

iv) Cr.No.103 of 2023 under Section 20(b) (ii) (C), r/w 8(c) of NDPS Act, 1985 of Kovvuru Town Police Station.

v) Cr.No.95 of 2024 under Section 20(b) (ii) (B), 25 r/w 8(c) of NDPS Act, 1985 of Paderu Police Station.

5. Learned counsel for the petitioner submitted that the detenu was granted bail in all 5 cases but with respect to ground Nos. 1, 4 & 5, those bail orders were not placed by the sponsoring authority before the detaining authority. There is non-consideration of relevant material vitiating the subjective satisfaction of the detaining authority.

6. He further submitted that the copy of the bail orders in Ground Nos. 1, 4 & 5, were also not supplied to the detenu which affected the right of the detenu to submit the representation against the order of detention.

7. Learned counsel for the petitioner further submitted that the detenu was in judicial custody at the time of passing of the order of preventive detention in connection with other crime i.e., Crime No.127/2025 dated 09.06.2025 under Sections 20(b)(ii)(C) r/w. 8(c) NDPS Act of Annavaram Police Station. The said fact of Crime No.127/2025 was not brought to the notice of the detaining authority by the sponsoring authority. Consequently, the satisfaction of the detaining authority stands vitiated. If the said fact had been brought to the notice of the detaining authority then certainly the detaining authority had to consider the necessity of passing the order of preventive detention, when the detenu was already in judicial custody.

8. With respect to ground Nos.2 & 3, the bail orders were taken into consideration and the copy of the bail orders were also supplied, but, the order of preventive detention cannot stand on ground Nos. 2 & 3 as well, for non consideration of crime No.127/2025, and also that the detenu was not informed of his right to file the representation against the order of detention to all the competent authorities and in particular the State and the Central Government.

9. Learned counsel for the petitioner submitted that the detenu shall also have a right to file representation before the Central Government but that was not informed. Learned counsel placed reliance in ***Kamleshkumar Ishwardas Patel v. Union of India***¹ to contend that right to make the representation is a valuable right and whether the detention order has been made under Section 3 of COFEPOSA Act and PIT NDPS Act by an officer specially empowered for that purpose either by the Central Government or by the State Government, the person detained has to be informed his right to make a representation to the said officer and the said officer is obliged to consider the said representation. He submitted that the right of the detenu to make representation to the Central Government has been taken away, as the same was not informed to him.

10. Learned Government Pleader submitted that the Crime No.127/2025 in which the detenu was in judicial custody was registered after the date of submission of the proposal dated 21.05.2025. The said crime was registered on 09.06.2025 and consequently while submitting the proposal, the same could not be communicated to the detaining authority.

¹ (1995) 4 SCC 51

11. Learned Government Pleader further submitted that the bail orders were taken into consideration in ground Nos.2 & 3 criminal cases, and even if the bail orders in ground Nos.1, 4 & 5 were not taken into consideration by the detaining authority, the satisfaction recorded by the detaining authority would not be vitiated. He submitted that it is not mandatory for the detaining authority in all the cases to consider the bail orders. He placed reliance in the case of ***K.Varadharaj v. State of T.N***².

12. Learned Government Pleader further submitted that, so far as the representation is concerned, the detenu did not make any representation. He was duly informed that he had a right to make the representation to the detaining authority and to the advisory board. The detaining authority and the confirming authority under PIT NDPS is the Principal Secretary to the Government i.e., the same authority. Consequently there is no violation of the right of the detenu to make representation. He however did not make any representation even to the authorities which were informed. The bail orders in ground Nos. 2 & 3 and the material were supplied to the detenu.

13. We have considered the aforesaid submissions and perused the material on record.

² (2002) 6 SCC 735

14. In the present case it is not in dispute that the detenu was in judicial custody in Crime No.127/2025. Though that case was not made the basis of the order of preventive detention but the same was also not communicated or brought to the notice of the detaining authority. If the detenu is already in judicial custody in a case then the factum of the detenu being in judicial custody, shall have an impact on consideration of the material before the detaining authority to arrive at subjective satisfaction, if the order of preventive detention is still required, keeping in view that the detenu is already in judicial custody. It is when the fact of judicial custody is known to the detaining authority, on satisfaction of the triple test, the detaining authority has to take decision on the subjective satisfaction based on the available material. That criminal case or the detenu's judicial custody was not brought to the notice of the detaining authority, has not been disputed. The said fact in Crime No.127 of 2025 was relevant material. The submission of the learned Government Pleader is that the said criminal case was registered after submission of the proposal. We find from record that the said case was registered on 09.06.2025 and the order of preventive detention was passed on 14.10.2025 almost after 4 months. So, the said material aspect could also have been communicated and brought to the notice of the detaining authority at any time before passing of the order of preventive detention but it was not so done.

15. It is well settled in law that if the detenue is in the judicial custody in a criminal case, the order of detention can validly be passed taking into account that criminal case, but that is subject to the satisfaction of the triple requirements as laid down in ***Champion R.Sangma Vs. State of Meghalaya and others***, in which the Hon'ble Apex Court held as follows:-

“9. Coming to the ground on which we intend to allow this appeal, we may point out that even if the appellant is in jail in connection with some criminal case(s) there is no prohibition in law to pass the detention order. Law on this aspect is well settled and stands crystalized by plethora of judgments of this Court. However, a reading of those very judgments also clarifies that there are certain aspects which have to be borne in mind by the detaining authority and satisfaction on those aspects is to be arrived at while passing the detention order.

10. There are three such factors which were re-stated in ***Kamarunnissa vs. Union of India & Anr.*** Reported in 1991 (1) SCC 128 (pa.13).

“13. *From the catena of decisions referred to above it seems clear to us that even in the case of a person in custody a detention order can validly be passed (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 so doing. If the authority passes an order after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition, to question it before a higher court. What this Court stated in the case of Ramesh Yadav was that ordinarily a detention order should not be passed merely to pre-empt or circumvent enlargement on bail in cases which are essentially criminal in nature and can be dealt with under the ordinary law. It seems to us well settled that even in a case where a person is in custody, if the facts and circumstances of the case so demand, resort can be had to the law of preventive detention. This*

seems to be quite clear from the case law discussed above and there is no need to refer to the High Court decisions to which our attention was drawn since they do not hold otherwise. We, therefore, find it difficult to accept the contention of the counsel for the petitioners that there was no valid and compelling reason for passing the impugned orders of detention because the detenus were in custody.”

11. The aforesaid dicta is reiterated in subsequent judgments as well. Some of which are as under:

- (i) T.V.Sravan v. State {(2006) 2 SCC 664}
- (ii) K.K.Saravana Babu v. State of T.N. {(2008) 9 SCC 89}
- (iii) Huidrom Konungjao Singh v. State of Manipur. {(2012) 7 SCC 181}”

16. In the present case, in all the five cases, based on which the order of preventive detention has been passed, the detenu had been granted bail, the bail was granted subject to the conditions. The fact that the detenu was in judicial custody in another criminal case was not placed before the detaining authority. Consequently, the detaining authority was required to consider the bail orders in all the cases and not merely the bail orders in ground Nos. 2 & 3, with conditions of the bail, to arrive at subjective satisfaction required under the Act, 1988. We are of the considered view that non consideration of the bail orders and the bail conditions, certainly vitiated the order of preventive detention.

17. The law is well settled with respect of the consideration of the bail orders that those are relevant material and must be considered to arrive at subjective satisfaction.

18. In ***Rushikesh Tanaji Bhoite v. State of Maharashtra***³ the Hon'ble Apex Court held that the order of detention passed without considering the bail orders i.e., consideration ignoring the material/relevant material could not be sustained. Para Nos.8 to 12 in *Rushikesh Tanaji Bhoite* (supra) read as under:

“8. It would be, thus, seen that the order releasing the detenu on bail in the crime registered on 14-8-2010 and the order relaxing the bail condition were passed by the Judicial Magistrate, First Class, Dharangaon much before the issuance of the detention order dated 10-1-2011. However, the detention order or the grounds supplied to the detenu do not show that the detaining authority was aware of the bail order granted in favour of the detenu on 15-8-2010.

9. In a case where the detenu is released on bail and is enjoying his freedom under the order of the court at the time of passing the order of detention, then such order of bail, in our opinion, must be placed before the detaining authority to enable him to reach at the proper satisfaction.

10. In the present case, since the order of bail dated 15-8-2010 was neither placed before the detaining authority at the time of passing the order of detention nor the detaining authority was aware of the order of bail, in our view, the detention order is rendered invalid. We cannot attempt to assess in what manner and to what extent consideration of the order granting bail to the detenu would have effected the satisfaction of the detaining authority but suffice it to say that non-placing and non-consideration of the material as vital as the bail order has vitiated the subjective decision of the detaining authority.

11. A three-Judge Bench of this Court in *Rekha v. State of T.N.* [(2011) 5 SCC 244 : (2011) 2 SCC (Cri) 596] decided recently held as under: (SCC p. 254, para 25)

³ (2012) 2 SCC 72

“25. In this connection, it may be noted that there is nothing on the record to indicate whether the detaining authority was aware of the fact that the bail application of the accused was pending on the date when the detention order was passed on 8-4-2010. On the other hand, in Para 4 of the grounds of detention it is mentioned that ‘Thiru. Ramakrishnan is in remand in Crime No. 132 of 2010 and he has not moved any bail application so far’. Thus, the detaining authority was not even aware whether a bail application of the accused was pending when he passed the detention order, rather the detaining authority passed the detention order under the impression that no bail application of the accused was pending but in similar cases bail had been granted by the courts. We have already stated above that no details of the alleged similar cases has been given. Hence, the detention order in question cannot be sustained.”

12. In *Rekha* [(2011) 5 SCC 244 : (2011) 2 SCC (Cri) 596] , the detention order was held to be bad as the detaining authority was not aware of the fact that the bail application of the detenu was pending on the date when the detention order was passed. In the present case, the detenu was already released on bail but the detaining authority was not aware of the fact of grant of bail to the detenu.”

19. In *Joyi Kitty Joseph v. Union of India*⁴, the Hon’ble Apex Court held that the bail was granted by the jurisdictional court, that too on conditions, the detaining authority ought to have examined whether they were sufficient to curb the evil of further indulgence in identical activities; which is the very basis of the preventive detention order. In the said case the detention order was silent on that aspect. The Hon’ble Apex court interfered with the detention order only on the ground that the detaining authority did not look into the conditions imposed by the Magistrate while granting bail for the very same offence to enter a

⁴ (2025) 4 SCC 476

satisfaction as to whether those conditions were sufficient or not to restrain the detenu from indulging in further like activities of smuggling.

Para Nos.32 to 35 in **Joyi Kitty Joseph** (supra) are reproduced as under:

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

33. *Ameena Begum* [*Ameena Begum v. State of Telangana*, (2023) 9 SCC 587 : (2023) 3 SCC (Cri) 754] , noticed with approval *Vijay Narain Singh v. State of Bihar* [*Vijay Narain Singh v. State of Bihar*, (1984) 3 SCC 14 : 1984 SCC (Cri) 361] and extracted para 32 from the same (*Vijay Narain Singh* [*Vijay Narain Singh v. State of Bihar*, (1984) 3 SCC 14 : 1984 SCC (Cri) 361]) : (SCC pp. 35-36)

“32. ... It is well settled that the law of preventive detention is a hard law and therefore it should be strictly construed. *Care should be taken that the liberty of a person is not jeopardised unless his case falls squarely within ... not be used merely to clip the wings of an accused who is involved in a criminal prosecution.* It is not intended for the purpose of keeping a man under detention when under ordinary criminal law it may not be possible to resist the issue of orders of bail, unless the material available is such as would satisfy the requirements of the legal provisions authorising such detention. ***When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinising the validity of an order of preventive detention which is***

based on the very same charge which is to be tried by the criminal court.”

(emphasis supplied)

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

35. The detention order being silent on that aspect, we interfere with the detention order only on the ground of the detaining authority having not looked into the conditions imposed by the Magistrate while granting bail for the very same offence; the allegations in which also have led to the preventive detention, assailed herein, to enter a satisfaction as to whether those conditions are sufficient or not to restrain the detenu from indulging in further like activities of smuggling.

20. In ***Buddiga Dhana Lakshmi v. State of Andhra Pradesh***⁵, on consideration of various pronouncements this Court held that the bail order and the conditions of the bail are relevant material to be considered to arrive at the subjective satisfaction if the order of detention is yet to be passed. There was no consideration of the bail orders in the order of detention. The impugned order of detention was set aside on that ground. Para Nos.14 to 16 in ***Buddiga Dhana Lakshmi*** (supra) read as under:

⁵ W.P.No.33545 of 2025 APHC decided on 22.06.2026

“14. In **Ponnada Geetha (supra)**, a Coordinate Bench of this Court has held that when the detenu was already released on bail in a crime and when it was made basis for passing the order of preventive detention and when such order of bail was not placed before the detention authority, it vitiates the order of preventive detention. Paragraph Nos.(9) to (12) of **Ponnada Geetha (supra)** read as under:

“9. However, as per the settled law, the very fact that the order of bail granted to the detenu in Crime No.219 of 2024 of Gopalapatnam Police Station for the offence under NDPS Act, was not placed before the detaining authority, while passing the impugned order of detention, by itself, is sufficient to hold that it vitiates the impugned order of detention. The legal position in this regard is fairly well settled.

*10. The Division Bench of the common High Court for the State of Telangana and the State of Andhra Pradesh had an occasion to elaborately deal with the said legal position in the case of **Vasanthu Sumalatha v. State of Andhra Pradesh**(2016) 1 ALT 738 (DB). At paragraph 44 of the said judgment, it is held as follows:*

“44. When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinizing the validity of an order of preventive detention, which is based on the very same charge which is to be tried by the criminal court. (Vijay Narain Singh v. State of Bihar [(1984) 3 SCC 14]; Jotha Viswanadh v. Chief Secretary, Govt. of A.P. [Judgment in W.P.No.10018 of 2012, dated 29.06.2012 (APHC) (DB)]. Where the detenu is released on bail, and is enjoying his freedom under the order of the court, the order of bail must be placed before the detaining authority, when the order of detention is passed, to enable him to reach a proper satisfaction. (Rushikesh Tanaji Bhoite v. State of Maharashtra [(2012) 2 SCC 72]. If the detaining authority was unaware of the order of bail, the detention order is rendered invalid as the Court cannot attempt to assess in what manner, and to what extent, consideration of the order granting bail to the detenu would have effected the satisfaction of the detaining authority in passing the

order of preventive detention (Rushikesh Tanaji Bhoite (42 supra); Rekha (5 supra); Jotha Viswanadh (44 supra)."

11. *At paragraph 42 of the said judgment, it is also held by the Division Bench of the common High Court that it is incumbent that all vital materials are placed before the detaining authority to enable him to arrive at the subjective satisfaction as to the necessity for passing an order of detention, as decided in **M. Ahamedkutty v. Union of India ((1990) 2 SCC 1** and **State of U.P. v. Kamal Kishore Saini(1988 (1) SCC 287)**. Therefore, it is held that the bail order is a vital material for consideration and if it is not considered, the satisfaction of the detaining authority would be impaired.*

12. *Thus, it is obvious from the analogy and the legal position decided in the aforesaid judgment of the Division Bench of the common High Court, which is binding on this Court, that when the detenu was already released on bail in a crime and when it was made basis for passing the order of preventive detention and when the said order of bail was not placed before the detaining authority, it vitiates the impugned order of preventive detention. Therefore, in view of the law enunciated in the above judgment, as the order of bail is admittedly not placed before the 2nd respondent when he has passed the impugned order of preventive detention, the impugned order of preventive detention is vitiated and, therefore, cannot be sustained."*

15. The aforesaid is the settled position in law. The bail order and the conditions of bail are relevant material to be considered to arrive at the satisfaction if the order of detention is yet to be passed.

16. Admittedly, there is no consideration of all the bail orders in the order of detention though in five cases the bail was granted prior to passing of the order of detention and even in the order of approval and confirmation by the State there is no consideration whereas by that time in all seven cases bail (s) had been granted."

21. In ***K.Varadaraj*** (supra), the Hon'ble Apex Court observed, after referring to the judgment in ***M.Ahamedkutty v. union of India***⁶ that the ***Ahamedkutty*** (supra) cannot be read that, in every case where there is an application for bail and an order made thereon, the detaining authority must as a rule be made aware of the said application and order made thereon, but it would arise on the contents of those documents. If the documents do contain some material which on facts of that case would have some bearing on the subjective satisfaction of the detaining authority then like any other vital material even this document may have to be placed before the detaining authority. The Hon'ble Apex Court further observed that, the judgment in ***Ahamedkutty*** (supra) does not lay down a mandatory principle in law that in every case the application for bail and the order made thereon should be placed before the court.

Para Nos. 5 & 6 in ***K. Varadharaj*** (supra) read as under:

“5. We have considered the argument advanced on behalf of the parties as also perused the records. The issue that arises for our consideration in this case is not really res integra. In the case of *Ahamedkutty* [(1990) 2 SCC 1 : 1990 SCC (Cri) 258] this Court held: (SCC p. 16, para 27)

Considering the facts the bail application and the bail order were vital materials for consideration. If those were not considered the satisfaction of the detaining authority itself would have been impaired,

It is based on this observation of the Court that learned counsel for the appellant argued that non-consideration of the bail application and order made

⁶ (1990) 2 SCC 1

thereon would vitiate the order of detention. But we should notice that the said observation of this Court was made on facts of that case, therefore, we cannot read into that observation of this Court that in every case where there is an application for bail and an order made thereon, the detaining authority must as a rule be made aware of the said application and order made thereon. In our opinion the need of placing such application and order before the detaining authority would arise on the contents of those documents. If the documents do contain some material which on facts of that case would have some bearing on the subjective satisfaction of the detaining authority then like any other vital material even this document may have to be placed before the detaining authority. In our opinion, the judgment of this Court in *Ahamedkutty* [(1990) 2 SCC 1 : 1990 SCC (Cri) 258] does not lay down a mandatory principle in law that in every case the application for bail and the order made thereon should be placed before the court. We are supported in this view of ours by the judgment relied on by the State in *Abdul Sathar* [(1992) 1 SCC 1 : 1992 SCC (Cri) 1] . In the said case considering the earlier judgment in *Ahamedkutty* [(1990) 2 SCC 1 : 1990 SCC (Cri) 258] and explaining the observation quoted by us in the said judgment of *Ahamedkutty* [(1990) 2 SCC 1 : 1990 SCC (Cri) 258] this Court held: (SCC pp. 12-13, para 8)

“We are satisfied that the above observations made by the Division Bench of this Court do not lay down such legal principle in general and a careful examination of the entire discussion would go to show that these observations were made while rejecting the contention that the bail application and the order granting bail though referred to in the grounds were not relied upon and therefore need not be supplied. The case is distinguishable for the reason that the Division Bench has particularly taken care to mention that ‘*considering the facts ... the bail application and the bail order were vital materials*’. In that view these observations were made. Further that was a case where the detenu was released on bail and was not in custody. This was a vital circumstance which the authority had to consider and rely upon before passing the detention order and therefore they had to be supplied.”

6. From the above observations, it is clear that placing of the application for bail and the order made thereon are not always mandatory and such

requirement would depend upon the facts of each case. We are in respectful agreement with the view expressed by the above said two judgments which in our opinion are not conflicting.”

22. The Hon’ble Apex Court in ***K.Varadharaj*** (supra) recorded that the grant of bail in the said case contained a material fact which ought to have been taken into consideration by the detaining authority. Para No.7 in ***K.Varadharaj*** (supra) reads as under:

“7. We will now consider the question whether in the instant case the facts required the detaining authority to be aware of the contents of the bail application as also the order of the court thereon. From the facts of this case, we must note that the fact that the detenu was in custody was taken note of by the detaining authority by reference to his remand order therefore that is a vital fact which is taken note of by the court. The contents of the bail application also in our opinion do not contain any vital material notice of which the detaining authority had to take. However, in our opinion there was a vital fact in the order of the court notice of which ought to have been taken by the detaining authority. The said fact is that the court specifically noted in the bail order that the Public Prosecutor had no objection for grant of bail therefore the court was inclined to grant bail to the appellant. This is a circumstance, in our opinion, which ought to have been noticed by the detaining authority because the counsel representing the State in express terms said that he, which would also mean his client which is the State, did not have any objection to the grant of bail. Therefore, in our opinion this is a vital fact notice of which the detaining authority ought to have taken. We do not say that merely because a concession was made by a counsel for the State in a bail application that would be binding on the detaining authority but it is necessary that such opinion expressed by a counsel for the State ought to have been taken note of and since this is a vital fact, non-consideration of this fact in our opinion vitiates the order of detention.

23. We are of the view that ***K.Varadharaj*** (supra) it has not been laid down that the bail order is not to be considered by the detaining authority where the detenu is already in judicial custody in some other case. It has also not been laid down that if the bail order contains some vital facts, the same has not to be taken into consideration by the detaining authority. In the facts of each case it is to be seen if the bail order contains vital fact. The bail conditions, in our view, are such vital fact for consideration to arrive at subjective satisfaction.

24. So far as the contention with respect to the representation is concerned that, the detenu was not informed of his right to make the representation to the Central Government, under PIT NDPS Act, in ***Kamleshkumar Ishwardas patel*** (supra), the Hon'ble Apex Court held as under:

“14. Article 22(5) must, therefore, be construed to mean that the person detained has a right to make a representation against the order of detention which can be made not only to the Advisory Board but also to the detaining authority, i.e., the authority that has made the order of detention or the order for continuance of such detention, which is competent to give immediate relief by revoking the said order as well as to any other authority which is competent under law to revoke the order for detention and thereby give relief to the person detained. The right to make a representation carries within it a corresponding obligation on the authority making the order of detention to inform the person detained of his right to make a representation against the order of detention to the authorities who are required to consider such a representation.

* * * *

18. Section 3 of the PIT NDPS Act is on the same lines as Section 3 of the COFEPOSA Act. There is slight difference in sub-section (1) but sub-sections (2) and (3) are identical. Section 12 of the PIT NDPS Act makes provision for revocation of detention orders and is in the same terms as Section 11 of the COFEPOSA Act.

19. The provisions in the COFEPOSA Act and PIT NDPS Act differ from those contained in the National Security Act, 1980 as well as earlier preventive detention laws, namely, the Preventive Detention Act, 1950 and the Maintenance of Internal Security Act, 1971 in some respects. Under sub-section (3) of Section 3 of the National Security Act, power has been conferred on the District Magistrate as well as the Commissioner of Police to make an order of detention, and sub-section (4) of Section 3 prescribes that the officer shall forthwith report the fact of making the order to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and that no such order shall remain in force for more than twelve days after the making thereof unless, in the meantime, it has been approved by the State Government. In Section 8(1) of the National Security Act it is prescribed that the authority making the order shall afford the person detained the earliest opportunity of making a representation against the order to the appropriate Government. Similar provisions were contained in the Preventive Detention Act, 1950 and the Maintenance of Internal Security Act, 1971. The COFEPOSA Act and the PIT NDPS Act do not provide for approval by the appropriate Government of the orders passed by the officer specially empowered to pass such an order under Section 3. The said Acts also do not lay down that the authority making the order shall afford an opportunity to make a representation to the appropriate Government.

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21. In view of Section 21 of the General Clauses Act the authority which has made the order of detention would be competent to revoke the said order. Section 11 of the COFEPOSA Act and Section 12 of the PIT NDPS Act provide for revocation of such an order by authorities other than the authority which has

made the order. Under clause (a) of sub-section (1) of both these sections an order made by an officer specially empowered by the State Government can be revoked by the State Government as well as by the Central Government and under clause (b) of sub-section (1) an order made by an officer specially empowered by the Central Government or an order made by the State Government can be revoked by the Central Government. This means that the Central Government has the power to revoke orders made by —

(i) the State Government;

(ii) an officer specially empowered by the State Government; and

(iii) an officer specially empowered by the Central Government.

22. Similarly, the State Government has the power to revoke an order made by an officer specially empowered by the State Government. In other words, an order made by the officer specially empowered by the State Government can be revoked by the State Government as well as by the Central Government, an order made by the State Government can be revoked by the Central Government and an order made by the officer specially empowered by the Central Government can be revoked by the Central Government. The conferment of this power on the Central Government and the State Government does not, however, detract from the power that is available to the authority that has made the order of detention to revoke it. The power of revocation that is conferred on the Central Government and the State Government under clauses (a) and (b) of sub-section (1) of Section 11 of the COFEPOSA Act and Section 12 of the PIT NDPS Act is in addition to the power of revocation that is available to the authority that has made the order of detention. This is ensured by the words “without prejudice to the provisions of Section 21 of the General Clauses Act, 1897 (10 of 1897)” in sub-section (1) of both the provisions.

23. If the power of revocation is to be treated as the criterion for ascertaining the authority to whom representation can be made, then the representation against an order of detention made by an officer specially empowered by the State Government can be made to the officer who has made the order as well as to the State Government and the Central Government who are competent to

revoke the order. Similarly, the representation against an order made by the State Government can be made to the State Government as well as to the Central Government and the representation against an order made by an officer specially empowered by the Central Government can be made to the officer who has made the order as well as to the Central Government.

* * * * *

38. Having regard to the provisions of Article 22(5) of the Constitution and the provisions of the COFEPOSA Act and the PIT NDPS Act the question posed is thus answered: Where the detention order has been made under Section 3 of the COFEPOSA Act and the PIT NDPS Act by an officer specially empowered for that purpose either by the Central Government or the State Government the person detained has a right to make a representation to the said officer and the said officer is obliged to consider the said representation and the failure on his part to do so results in denial of the right conferred on the person detained to make a representation against the order of detention. This right of the detenu is in addition to his right to make the representation to the State Government and the Central Government where the detention order has been made by an officer specially authorised by a State Government and to the Central Government where the detention order has been made by an officer specially empowered by the Central Government, and to have the same duly considered. This right to make a representation necessarily implies that the person detained must be informed of his right to make a representation to the authority that has made the order of detention at the time when he is served with the grounds of detention so as to enable him to make such a representation and the failure to do so results in denial of the right of the person detained to make a representation."

25. So, in the case of Kamleshkumar Ishwardas patel (supra), the Hon'ble Apex Court clearly held that under PITNDPS Act, the detenu has a right to make representation to the Central Government as well, where the detention order has been made by an officer specially authorised by a State Government. In the present case, the order of

preventive detention was passed by an officer specially empowered by the State Government. Consequently, the detenu must have been informed of his right to make the representation to the Central Government as well, which was not done.

26. In ***Alfiya.A v. State of Kerala***⁷, the Hon'ble Supreme Court while considering the right of detenu to make representation and its consideration observed and held that the fact that the detenu addressed one of his representations to the detaining authority cannot cure the failure to inform him of that constitutional right to make representation to the detaining authority. Para-18 in ***Alfiya.A*** (supra) reads as under:

“18. In the present case, the order of detention was made by the Detaining Authority in exercise of the power conferred upon an officer specially empowered under Section 3(1) of the PITNDPS Act. The detenu was informed that he could make representations to the State Government, the Advisory Board and the Central Government. He was not separately informed that he was entitled to make a representation to the officer who had made the order of detention in exercise of the specially conferred statutory power. The omission is evident from the detention order itself. The fact that the detenu nevertheless addressed one of his representations to the Detaining Authority cannot cure the failure to inform him of that constitutional right. The obligation was upon the authority to communicate the right and could not depend upon whether the detenu independently became aware of it.”

27. In the present case the bail orders in all the cases, except in two cases, were not considered by the detaining authority. The same were

⁷ SLP(crl.) No.8439 of 2026 SC decided on 28.07.2026

even not placed before the detaining authority by the sponsoring authority. The detenu was in judicial custody in Crime No.127/2025 but that fact was not placed and the detenu was also not informed of his right to make representation to the Central Government.

28. The writ petition is allowed. The order of preventive detention dated 14.10.2025 and the order of confirmation dated 31.12.2025 are set aside.

29. The Detenu shall be set at liberty immediately, if he is not in detention in any other pending case.

No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

RAVI NATH TILHARI,J

PURUSHOTTAM KUMAR CHINTALAPUDI,J

Dated: .10.2026

Note:

L.R. copy to be marked

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THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
THE HONOURABLE SRI JUSTICE PURUSHOTTAM KUMAR
CHINTALAPUDI

WRIT PETITION NO: 439 OF 2026

Dated: .10.2026

Note:

L.R. copy to be marked

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