

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN

&

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

WP(Crl.).No. 195 of 2015 (S)

PETITIONER(S):

ABDUL RAZACK A.A. AGED 29 YEARS
S/O. A.B.ABDULKHADER(LATE), ADAKKAPARAMBIL HOUSE
MUTTICHOOR, PADIYAM P.O., THRISSUR DISTRICT-680 641.

BY ADVS.SRI.B.KUMAR (SR)
SRI.JOSE ANTONY
SRI.O.V.MANIPRASAD

RESPONDENT(S):

1. STATE OF KERALA
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT
HOME DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695 001.

2. THE DISTRICT COLLECTOR AND DISTRICT MAGISTRATE
THRISSUR-680 001.

3. THE DISTRICT POLICE CHIEF
THRISSUR CITY, THRISSUR DISTRICT-680 545.

4. THE CIRCLE INSPECTOR OF POLICE
PERAMANGALAM, PERAMANGALAM P.O.
THRISSUR DISTRICT-680 545.

5. THE SUPERINTENDENT OF CENTRAL PRISON
KANNUR, PALLIKUNNU P.O., KANNUR-670 004.

R1,R 2 BY GOVERNMENT PLEADER SMT.KOCHUMOL KODUVATH
R3 BY DIRECTOR GENERAL OF PROSECUTION

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON
13-07-2015, THE COURT ON 30.7.2015 DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS

P1 : COPY OF THE DETENTION ORDER DTD.9.3.2015 OF THE 2ND
RESPONDENT.

P2 : COPY OF THE GROUNDS OF DETENTION DTD.9.3.2015.

P3 : COPY OF THE REPORT DTD.2.3.2015, OF THE 3RD RESPONDENT.

P4 : COPY OF THE REPORT DTD.4.3.2015 OF THE 3RD RESPONDENT.

P5 : COPY OF THE REPORT DTD.9.3.2015 OF THE 3RD RESPONDENT.

P6 : COPY OF THE ORDER DTD.18.2.2015 IN CRL.MC NO.272/2015 OF COURT
OF SESSION, THRISSUR.

P7 : COPY OF THE ORDER DTD.7.3.2015 IN CRL.MC NO.487/2015 OF THE
COURT OF SESSION, THRISSUR.

P8 : COPY OF THE REPORT APPEARED IN MATHRUBHUMI DAILY
DTD.31.1.2015.

P9 : COPY OF THE NEWS ITEM PUBLISHED IN MATHRUBHUMI DAILY
DTD.24.2.2015.

P10 : COPY OF THE NEWS ITEMS APPEARED IN MATHRUBHUMI DAILY
DTD.6.3.2015.

P11 : COPY OF THE NEWS ITEM PUBLISHED IN MATHRUBHUMI DAILY ON
7.3.2015.

P12 : COPY OF THE NEWS ITEM PUBLISHED IN MATHRUBHUMI DAILY ON
9.3.2015.

P13 : COPY OF THE NEWS PAPER REPORTS APPEARED IN MATHRUBHUMI DAILY
ON 4.3.2015.

P14 : COPY OF THE NEWS PAPER REPORTS APPEARED IN MATHRUBHUMI DAILY
ON 10.3.2015.

P15 : COPY OF THE FIR IN CRIME NO.553/2013 OF PERAMANGALAM POLICE
STATION.

P16 : COPY OF THE CHARGE SHEET IN FIR NO.553/2013 OF PERAMANGALAM
POLICE STATION.

P17 : COPY OF THE FIR AND THE FI STATEMENT IN CRIME NO.950/2013 OF
THRISSUR EAST POLICE STATION.

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P18 : COPY OF THE ORDER DTD.8.10.2013 IN CRL.MC NO.4474/2013 BY THIS HON'BLE COURT.

P19 : COPY OF THE FIR AND FI STATEMENT IN CRIME NO.1254/2013 OF THRISSUR EAST POLICE STATION.

P20 : COPY OF THE REPRESENTATION DTD.27.3.2015 FORWARDED TO THE 1ST RESPONDENT THROUGH THE 5TH RESPONDENT.

P21 : COPY OF THE REPRESENTATION DTD.27.3.2015 TO THE ADVISORY BOARD CONSTITUTED UNDER THE ACT THROUGH THE 5TH RESPONDENT.

P22 : COPY OF THE ORDER GO(RT)NO.984/2015/HOME DTD.23.4.2015.

P23 : TRUE COPY OF THE PETITION FILED BY THE DETENU BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KUNNAMKULAM (COMMITTAL COURT)

P24 : TRUE COPY OF THE PETITION FILED BEFORE THE COURT OF SESSION, THRISSUR

P25 : TRUE COPIES OF THE WOUND CERTIFICATE AND TREATMENT RECORDS OF THE DETENUE.

/TRUE COPY/

P.S TO JUDGE

V.K.MOHANAN & RAJA VIJAYARAGHAVAN.V, JJ

W.P(Crl.).195 of 2015

Dated 30th July, 2015

JUDGMENT

“CR”

Raja Vijayaraghavan.J.

1. This petition is filed under Art.226 of the Constitution of India, by the petitioner, praying for issuance of a writ of habeas corpus to direct release of his brother, Mohammed Nisham, son of A.B.Abdul Khader (late) (hereinafter referred to as “the detenu”), who is detained as per order dated 9.3.2015 passed by the 2nd respondent u/s 3 of the Kerala Anti Social Activities (Prevention) Act, 2007 (hereinafter referred to as “Act 34 of 2007”).

2. The impugned detention order which is produced as Ext.P1 was passed by the 2nd respondent on the basis of three reports which are produced as Ext.P3, P4 and P5 dated 2.3.2015, 4.3.2015 and 9.3.2015 respectively,

submitted by the 3rd respondent to the 2nd respondent u/s 3 (1) of the Act 34 of 2007. It is revealed from Ext.P3 that a report dated 28.2.2015 was submitted by the Circle Inspector of Police, Peramangalam, the subordinate Officer of the 3rd respondent, requesting for initiation of action against the detenu under the Act. When Ext.P1 order dated 9.3.2015 was passed by the 2nd respondent, the detenu was in judicial custody in Crime No.173 of 2015 of Peramangalam police station as he was arrested in the said case on 29.1.2015. Ext.P1 detention order was served on the detenu while he was in judicial custody. The order of approval was passed on 19.3.2015 u/s 3(3) of the Act and Ext.P23 order of confirmation was passed on 23.4.2015.

3. Initiation of proceedings against the detenu is on the basis that he is a "known rowdy", as defined under S. 2(p) of the Act 34 of 2007. As per Ext.P1 detention order, the sponsoring and detaining authority placed reliance on seven crimes committed by the petitioner. The details are as under:-

Sl.No.	Crime No. With police station	Offences	Date of Occurrence	Date of Charge sheet	Current Status of the case.
1	Crime No.254 of 2014 of Pulikeshi Nagar police station	U/ss. 506, 504, 323, 324, 354, 376, 420 IPC & 66 (A) of IT Act	24.07.2014	15.12.2014	Pending trial
2	Crime No.147 of 2015 of Thrissur East police station	U/s 506(i) IPC & 118 (d) KP Act	8.1.2015 & 9.1.2015	28.2.2015	Pending trial
3	Crime No.677 of 2012 of Viyyur police station	U/s 452, 323, 324, 326, 308, 506(ii) r/w 34 IPC	28.6.2012	28.7.2012	Quashed by the High Court
4	Crime No.950 of 2013 of Thrissur East police station	U/s 354(i) (ii) IPC & 66(A) & (B) of IT Act	06/05/13	20.9.2013	Quashed by the High Court
5	Crime No.245 of 2012 of Viyyur police station	U/s 338 IPC	04/02/12	30.4.2012	Pleaded guilty
6	Crime No.1254 of 2013 of Thrissur East police station	U/s 353, 354, 506 (ii), 294(b), 279 IPC & 185 MV Act	13.6.2013	21.6.2013	Pending trial
7	Crime No.173 of 2015 of Peramangalam police station	U/s 341, 294(b), 323, 324, 326 506(i) 302 IPC	29.1.2015		Pending investigation

8	Crime No.94/2015 of Cubbon Park, police station, Bangalore	U/s 279, 323, 506, 307 IPC	21.12.2014		Pending Investigation
9	Crime No.688 of 2013 of Peramangalam police station	U/s 23JJ (Care & Protection of Children) Act r/w 180 MV Act	10/04/13		Pending trial

4. Out of the above, cases numbered as Sl. Nos. 1 to 7 were considered for arriving at the subjective satisfaction by the 2nd respondent . The crimes numbered as Sl No's 8 and 9 were not reckoned for arriving at the objective satisfaction .

5. We have heard the learned Senior counsel appearing for the petitioner Sri.B. Kumar, as instructed by Sri.O.V.Maniprasad , for the petitioner and the learned Director General of Prosecution, Sri.Asaf Ali , for the respondents.

6. The learned Senior counsel, at the outset itself,

submitted that the petitioner is not challenging his classification as a “known rowdy”. Apparently, the crimes which were pending as against the petitioner on the date of issuance of Ext.P1 were sufficient enough to bring the petitioner within the sweep of the expression “known rowdy” as defined in S 2 (p) of Act 34 of 2007.

7. The learned Senior counsel, attacked the impugned order and characterized it as unconstitutional and unsustainable under law on the following grounds:

(i). Irrespective of the fact whether the acts committed by the detenu will bring him within the scope of the term “rowdy” or “known rowdy” , the detaining authority was bound to subjectively satisfy itself as to whether the acts alleged of the detenu do threaten the public order to pass a valid order of detention.

(ii). As the detaining authority has failed to satisfy itself that the acts of the detenu has affected, public order, Public health or public safety, the issuance of the order under S. 3 of the Act stands vitiated.

(iii). The various crimes alleged to have been committed by the petitioner are directed against individuals and those crimes, which include a solitary case of murder, cannot be held sufficient to hold that the even tempo of the society was disturbed and consequently the public order.

(iv). The ordinary law of land was sufficient to deal with the cases in which the detenu was involved and therefore the order of detention curtailing the freedom of the detenu should not have been issued.

(v). Non application of mind of the detaining authority is writ large as the detention order was passed when the detenu was in Jail with no prospects of being released in the near future.

(vi). Ext.P1 detention order is vitiated as materials on record would reveal that the same was passed on the dictates of the higher ups and authorities in the official hierarchy and thus the detaining authority has abdicated her responsibility in passing the order.

(vii). Necessary and vital materials have been

suppressed by the sponsoring authority before the detaining authority, which materials, if supplied would have influenced the mind of the authority to refrain from issuing Exhibit P1.

(viii). The failure of the detaining authority to inform the detenu that he has a right of representation before the detaining authority , is a constitutional requirement flowing from Article 22(5) of the Constitution of India , and failure to comply with the same will vitiate the order.

8. The learned Director General of Prosecution would support the order of detention and argued in terms of the counter affidavits filed. It was submitted that the detention was passed strictly in accordance with the provisions of Act 34 of 2007 and the Constitution of India after careful scrutiny of the reports of the sponsoring authority and thoughtful consideration of the entire aspects of the case. Much emphasis was placed on Crime No 173 of 2015 of the Peramangalam Police Station , involving offence under

S. 302 of the IPC , and it was submitted that the same has shocked the collective conscience of the community. It was submitted that the requisite satisfaction drawing the inference that the detenu be detained immediately, was arrived for safeguarding public safety, peace and tranquillity of the society. It was assiduously argued , that the order of detention is a precautionary measure and is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of surroundings instances. It was contended that the detenu, as an antisocial element, with immense wealth, was creating havoc in the community. It was a dangerous precedent, according to him, and the intention of the legislature behind enacting Act 34 of 2007 has to be construed in such a manner that it does not endanger social defence or the defence of the community while safeguarding the individual liberty of the citizens.

9. It was pointed out that as early as on 24.6.2013, a rowdy history sheet was opened as against the detenu in

the Peramangalam police station, and his activities were closely monitored by the police. As a preventive measure, security proceedings u/s 107 of the Code of Criminal Procedure also was initiated against the detenu as crime No.1008 of 2013 of Viyur police station and bail bond was executed on 12.9.2013 as M.C.No.545 of 2013 of the Sub Divisional Magistrate Court, Thrissur. Due to his money and might, the petitioner has been able to stifle the complainants in several cases and escape from punishment. His acts are a threat to the society and law and order, it is submitted. Even thereafter, he continued to involve in a series of crimes creating serious problems to public order unmindful of the legal action initiated against him by the Sub Divisional Magistrate. Thus, the sponsoring authority was justified in submitting the proposal for the preventive detention of the order as intended under the Act. All the legal submissions made by the learned Senior counsel were ably countered by the learned Director General of Prosecution and the contentions and precedents relied on by the respective counsels will be adverted when

the respective grounds are analyzed .

Ground No (i) to (iv).

10. According to the learned Senior counsel, the only crime of grave nature allegedly committed by the detenu is Crime No 173 of 2015 of the Peramangalam Police station which relates to the murder of a security personnel of Shoba City, the residential apartment where the detenu resided with his family. According to the learned Senior Counsel, the said incident through gruesome, was nothing but an “ordinary murder”. It was asserted that the mere fact that a person has been classified as a known rowdy will not enable the detaining authority to pass an order of detention, unless the said authority is satisfied that the antisocial activity committed by the detenu has affected public order. According to the learned Senior counsel, if the crimes committed by the detenu are ordinary crimes, he can very well be proceeded against under the ordinary law. To advance the above contention, the learned Senior Counsel has adverted to the

Statement of objects and reasons which prompted the Kerala Legislature to pass the Act 34 of 2007 and submitted that it was for the purpose of curtailing organized criminal activity which had become a threat to both the economic and physical security of the State and Citizen. The initiation of proceedings is to be limited to organised criminal activity, submits the learned Senior counsel.

11. The Counsel further contends that the definition of 'antisocial activity' in Section 2(a) and the definition of rowdy in Section 2(t) must assume importance and significance in this context and it was submitted that a true interpretation of the provision would exclude mere infractions of law and order.

12. The learned Counsel for the petitioner points out that Act 34 of 2007 has been enacted by the Kerala Legislature in exercise of its legislative competence as per Entry 3 of List III of Schedule 7 of the Constitution of India, and

contented that the Act will fall foul if it travels out of the limitations prescribed. According to the learned counsel, preventive detention can be justified only if the acts are prejudicial to the security of a State, the maintenance of public order, or the maintenance of supplies and services essential to the community.

13. Expatiating further, the learned Senior counsel submitted that 'Maintenance of public order' is the only ground on which the legislative competence to order detention of the detenu can be justified. It is pointed out by the learned Senior counsel by taking us exhaustively through the crimes committed by the detenu that none of these cases reveal any organized criminal activity or of affecting public order as such .

14. The learned Senior counsel referring to the Crime No. 254 of 2014 of Pulikeshi Police Station registered on 24.7.14 for offenses punishable under S. 506, 504, 323, 324, 354, 376, 420 IPC and 66 (A) of IT Act, submitted

that the said crime was registered at the instance of a lady by name 'Karen Alex' with whom the detenu was having a relationship and was residing with him for the past several years. It was submitted that the attempt of the said woman was to extract money from the detenu. It was also pointed out that a crime had been registered against the de facto complainant in the said case and non-bailable warrants were pending as against her. According to the learned senior counsel no threat to public order was made out insofar as this crime is concerned.

15. Referring to Crime No 147 of 2015, registered on 8.1.2015 for offence punishable under S.506(1) of the IPC and S. 118(d) of the Police Act, 2011, it was submitted that the said case relates to a dispute in connection with a money transaction between the de facto complainant and the detenu and by no stretch of imagination could have been a foundation for initiating any proceedings under Act 34 of 2007. Though the allegations in the final report reveal that the de facto complainant had sustained a

fracture to the nasal bone, it was merely an infraction of law and order. It was further submitted that the charge sheet was laid in the said crime after the arrest of the detenu.

16. Referring to crime No. 677 of 2012 of Viyyur Police Station registered on 28.6.2012 for offences punishable under S. 452, 323, 324, 326, 506 (ii) r/w S. 34 of the IPC, it was submitted that the ordinary law of the land was enough to deal with the offender and did not warrant the passing of exhibit P1 order on its basis. It was submitted that proceedings as against the petitioner was quashed by this Court in a proceeding u/s 482 of the Code of Criminal Procedure accepting the terms of settlement entered into between the complainant and the accused.

17. Referring to Crime No. 950 of 2013 of Thrissur East police station, registered on 6. 5. 2013 under S. 354 (i)(ii) IPC and S. 66 (A) & (B) of the IT Act, it is submitted that the brother of the detenu, (the petitioner in this writ

petition) had set the law in motion when the detenu had posted some remarks in a social media website and pursuant to the filing of the charge sheet the said case was also quashed by exercising the inherent powers under S. 482 by this Court.

18. Referring to Crime No. 245 of 2012 of the Viyyur Police Station registered on 4.2.2012, for offence punishable under S. 338 of the IPC, it was submitted that the crime was registered when the advertising hoarding of one of the establishments of the detenu had fallen on the body of a motorcyclist. It was submitted that the detenu had pleaded guilty before the trial Court as it was a technical offence involving no mens rea.

19. Referring to Crime No. 1254 of 2013 of Thrissur East police station registered on 13.6. 2013, under sections 354, 353, 506 (ii), 294 (b), 279 IPC and section 185 of the Motor Vehicles Act, it was submitted that it was a case which was registered by a lady Sub Inspector

discharging traffic duty, who claimed that she was deterred from performing her official duty and was assaulted by the detenu. It was submitted that the said crime ought not have been considered for any purpose as it was a complaint initiated by a police officer and falling within the statutory inhibition in section 2 (P) (iii).

20. Referring to crime No. 173 of 2015 of Peramangalam police station registered on 29.1.2015 u/s 341, 294(b), 323, 324, 326, 506(1) and S.302 of the IPC, it was submitted that this was an incident which occurred at 3 am, outside his residential apartment at Thrissur, involving a security staff. It was contended that the injured had died after 19 days of treatment and the detenu had also sustained serious injuries. It was submitted that there were no eyewitnesses to the incident and as it had occurred in the dead of night and it could not have effected the even tempo of the society. According to the learned senior counsel, this was just another "ordinary murder" which could have been dealt with the ordinary laws of the land. It

was also submitted by the learned Senior counsel that the sponsoring authority had suppressed vital materials before the detaining authority with a view to make the attack on the victim appear ferocious. According to the learned Senior counsel, this was not a very uncommon occurrence and the police authorities cannot utilize this incident to clip the wings of the detenu.

21. In essence, the submission of the learned Senior counsel is that the said crimes were mere infractions of law and order and by no stretch of imagination could it be held that the same had the reach and magnitude to disturb public order.

22. Our attention was also drawn to a slew of binding precedents on this point to highlight the fact that there was no justification for holding that the activities of the petitioner would affect public order and consequently to lead to passing of Exhibit P1 order. It is the submission of the learned Senior counsel that the crimes against the

detenu are all insignificant and are routine crimes on individuals with no impact on the even tempo of the society and none of these crimes ought to have been taken into consideration for entertaining the latter subjective satisfaction and to arrive at a decision as to whether the detenu deserves to be detained to prevent him from indulging in anti-social activities.

23. On the other hand, the learned Director General of prosecution took us through the allegations in the individual crimes and submitted that the crimes committed by the detenu are coming under Chapters XVI (offences affecting human body), XVII (offences against property) and XXII (criminal intimidation) of the IPC and falling under section 2 (t) of Act 34 of 2007 which are necessary for classifying the detenu as a 'known rowdy' under section 2 (p) of the Act. It was submitted that the offences committed by the detenu are not stray acts affecting law and order but they have created panic in the locality. According to the learned Director General of Prosecution,

the act committed by the detenu range from brutally injuring persons by trespassing into their residential homes, assaulting police women in public while they are on duty, deterring public servants from performing their duty, which finally culminated in the murder of a security guard of his own apartment building in the presence of other security men. It was pointed out that the incident involving the murder had commenced from the public road and the allegations would reveal that he had used the expensive car owned by him to mow down the security personnel in the presence of several others in a blatant display of money power and might. It was submitted by the learned Director General of prosecution that it was for desisting such persons from committing such blatant acts of rowdyism that Act 34 of 2007 was enacted by the Kerala legislature in exercise of the powers conferred on them. Inviting our attention to the definition of "anti social activity" in 2(a) of Act 34 of 2007, it was pointed out that, even an act endangering the safety of the individuals is brought within the sweep of the Act. Reliance was placed

on **Vijayamma V State of Kerala and Others (2014 (4) KLT 563)** to bring home the proposition that the termination of proceedings under S. 482 of the Code, should not be allowed to torpedo any order of preventive detention and such acts of the detenu should be viewed as an interference with the administration of justice .Reliance was also placed on **Shruthi V State of Kerala and others (2009 (4) KLT 893), Ashraf V Inspector General of Police Kochi Range 2014 (3) KLT 772 ,** and **Shaji V State of Kerala and others (2014 Crl L J 2029)**, to convince us that this Court has held in appropriate cases that though the acts of the detenu are primarily against individuals, its reach was such as to be a threat to public order and not limited to infraction of law and order.

24. In order to enlighten us that the acts committed by the petitioner will not tantamount to affecting the public order and tranquillity or the even tempo of the society, a multitude of binding precedents were cited by the learned

Senior counsel appearing for the petitioner. The learned DGP on the other hand, produced precedents to convince us that the potentiality of the acts committed by the detenu were of such a nature so as to disturb the public order and cannot be regarded as transgressions on individuals. We deem it fit to glance at the wealth of precedents on this point, which are relied on by the learned Senior Counsel for the petitioner and also the learned Director General of Prosecution to have a clear understanding of the principles.

25. In **Ram Manohar Lohiya (Dr.) v. State of Bihar and another (AIR 1966 SC 740) = (1966 Crl.L.J 608)**, it has been laid down by the Apex Court as follows:

“It will thus appear that just as ‘public order’ in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting ‘security of State’, ‘law and order’ also comprehends disorders of less gravity than those affecting ‘public order’. One has to imagine three concentric circles. Law and order represents the largest circle

within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State. But using the expression 'maintenance of law and order' the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules."

26. In **Arun Ghosh vs. State of W.B.**, (1970 (1) SCC **98**), it has been held thus :

"3...."Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. Take for instance, a man stabs another. People may be shocked and even

disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications are deeper and it affects the even tempo of life and public order is jeopardised because the repercussions of the act embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Take the case of assault on girls. A guest at a hotel may kiss or make advances to half a dozen chamber maids. He may annoy them and also the management but he does not cause disturbance of public order. He may even have a fracas with the friends of one of the girls but even then it would be a case of breach of law and order only. Take another case of a man who molests women in lonely places. As a result of his activities girls going to colleges and schools are in constant danger and fear. Women going for their ordinary business are afraid of being waylaid and assaulted. The activity of this man in its essential quality is not different

from the act of the other man but in its potentiality and in its affect upon the public tranquillity there is a vast difference. The act of the man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may be taken note of by the criminal prosecution agencies. It means therefore that the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society."

27. In **T.Devaki vs. Government of Tamil Nadu and others, (1990 (2) SCC 456)**, it was held as follows:-

[18]. The question which falls for consideration is whether single incident of murderous assault by the detenu and his associates on the Minister at the Seminar held at Dry Chilly Merchants' Association Kalai Arangam Hall was prejudicial to the maintenance of public order. Any

disorderly behaviour of a person in the public or commission of a criminal offence is bound to some extent affect the peace prevailing in the locality and it may also affect law and order problem but the same need not affect maintenance of public order. There is basic difference between law and order' and 'public order', this aspect has been considered by this Court in a number of decisions, see: Dr. Ram Manohar Lohia v. State of Bihar, [1966] 1 SCR 709; Pushkar Mukherjee & Ors. v. The State of West Bengal, [1969] 2 SCR 635 and Shymal Chakraborty v. Commissioner of Police Calcutta & Anr., [1970] 1 SCR 762. In these cases, it was emphasised that an act disturbing public order is directed against individuals which does not disturb the society to the extent of causing a general disturbance of public peace and tranquillity. It is the degree of disturbance and its effect upon the life of the community in the locality which determines the nature and character of breach of public order. In Arun Ghosh v. State of West Bengal, [1970] 3 SCR 288 the Court held that the question whether a man has only committed a breach of law and order, or has acted in a manner likely to cause disturbance of the public order, is a question of degree and the extent of the reach of the act upon the society. This view was reiterated in Nagendra Nath Mondal v. State of West Bengal, [1972] 1 SCC 498; Sudhir Kumar Saha v.

Commissioner of Police, Calcutta, [1970] 3 SCR 360; S.K. Kedar v. State of West Bengal, [1972] 3 SCC 816; Kanu Biswas v. State of West Bengal, [1972] 3 SCC 831; Kishori Mohan v. State of West Bengal, [1972] 3 SCC 845 and Amiya Kumar Karmakar v. State of West Bengal, [1972] 2 SCC 672.

[19].....It is alleged that the attempted murderous assault on Thiru Durai Murugan created scare and a feeling of insecurity in the minds of the persons present in the hall and the detenu's action interrupted the "proceedings of the Seminar for a while" (emphasis supplied). This shows that the detenu's activity disturbed the proceedings of the Seminar for a while but the Seminar appears to have continued later on. The incident did not and could not affect public peace and tranquillity nor it had potential to create a sense of alarm and insecurity in the locality. How could a single murderous assault on the Minister concerned at the Seminar could prejudicially affect the even tempo of the life of the community? No doubt, in paragraph 4 of the grounds the detaining authority has stated that by committing this grave offence in public, in broad day light, the detenu created a sense of alarm, scare and a feeling of insecurity in the minds of the public of the area and there by acted in a manner prejudicial to the maintenance of public order which affected even tempo of life of the community. Repetition

of these words in the ground are not sufficient to inject the requisite degree of quality and potentiality in the incident in question. A solitary assault on one individual can hardly be said to disturb public peace or place public order in jeopardy so much as to bring the case within the purview of the Act. Such a solitary incident can only raise a law and order problem and no more. Moreover, there is no material on record to show that the reach and potentiality of the aforesaid incident was so great as to disturb the normal life of the community in the locality or it disturbed general peace and tranquillity. In the absence of such material it is not possible to hold that the incident at the seminar was prejudicial to the maintenance of public order.

28. A Constitution Bench of the Apex Court in **Madhu Limaye v. Ved Murti, [1970] 3 SCC 739** has laid down as follows :

[21]. In dealing with the phrase 'maintenance of public order' in the context of preventive detention, we confined the expression in the relevant Act to what was included in the second circle and left out that which was in the largest circle. But that consideration need not always apply because small local

disturbances of the even tempo of life, may in a sense be said to affect 'public order' in a different sense, namely, in the sense of a state of law-abidingness vis-a-vis the safety of others. In our judgment the expression 'in the interest of public order' in the Constitution is capable of taking within itself not only those acts which disturb the security of the State or are within ordre publique as described but also certain acts which disturb public tranquillity or are breaches of the peace. It is not necessary to give to the expression a narrow meaning because, as has been observed, the expression 'in the interest of public order' is very wide. Whatever may be said of 'maintenance of public order' in the context of special laws entailing detention of persons without a trial on the pure subjective determination of the Executive cannot be said in other circumstances. In the former case this Court confined the meaning to graver episodes not involving cases of law and order which are not disturbances of public tranquillity but of ordre publique.

29. In **Manu Bhusan Roy Prodhan v. State of West Bengal & Ors., [1973] 3 SCC 663** it was held as follows:

8..... This kind of a solitary assault on one individual, which may well be equated with an ordinary murder which is not an uncommon occurrence, can hardly be said to disturb public peace or place public order in jeopardy, so as to bring the case within the purview of the Act. It can only raise a law and order problem and no more and its impact on the society as a whole cannot be considered to be so extensive, widespread and forceful as to disturb the normal life of the community, thereby rudely shaking the balanced tempo of the orderly life of the general public.

30. In **Dipak Bose v. State of W.B. (1973) 4 SCC 43**), a three-Judge Bench of the Apex Court has held as follows :

[4].....Every assault in a public place like a public road and terminating in the death of a victim is likely to cause horror and even panic and terror in those who are the spectators. But that does not mean that all of such incidents do necessarily cause disturbance or dislocation of the community life of the localities in which they are committed. There is nothing in the two incidents set out in the grounds in the present

case to suggest that either of them was of that kind and gravity which would jeopardise the maintenance of public order. No doubt bombs were said to have been carried by those who are alleged to have committed the two acts stated in the grounds. Possibly that was done to terrify the respective victims and prevent them from offering resistance. But it is not alleged in the grounds that they were exploded to cause terror in the locality so that those living there would be prevented from following their usual avocations of life. The two incidents alleged against the petitioner, thus, pertained to specific individuals, and therefore, related to and fell within the area of law and order. In respect of such acts the drastic provisions of the Act are not contemplated to be resorted to and the ordinary provisions of our penal laws would be sufficient to cope with them.

31. In **Subhash Bhandari v. District Magistrate, Lucknow, ([1987] 4 SCC, 685)**, it was held as follows:

"A solitary act of omission or commission can be taken into consideration for being subjectively satisfied, by the detaining authority to pass an order of detention if the reach, effect and potentiality of the act is such

that it disturbs public tranquility by creating terror and panic in the society or a considerable number of the people in a specified locality where the act is alleged to have been committed. Thus it is the degree and extent of the reach of the act upon the society which is vital for considering the question whether a man has committed only a breach of law and order or has acted in a manner likely to cause disturbance to public order."

32. In **Commissioner of Police v. C.Anita (2004) 7 SCC 467**), it was observed by the Apex Court as follows:

"7. The crucial issue is whether the activities of the detenu were prejudicial to public order. While the expression 'law and order' is wider in scope inasmuch as contravention of law always affects order, 'public order', has a narrower ambit, and public order could be affected by only such contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of 'law and order' and 'public order' is one of the degree and extent of the reach of the act in question on

society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of the public, it could raise problem of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting 'public order' from that concerning 'law and order'. The question to ask is: 'Does it lead to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed?'

33. In **Saravana Babu K.K. v. State of Tamil Nadu and Another (2008 (9) SCC 89)**, the Apex Court discussed the case law dealing with the question of “law and order” and “public order” right from the case of **Romesh Thapar v. State of Madras (1950 SCR 594)** to **R.Kalavathi v. State of Tamil Nadu (2006 (6) SCC 14)** and held that the crystallised legal position is that the case is affecting the public order are those which have great

potentiality to disturb peace and tranquillity of a particular locality or in the words of Hidayatullah, J. disturb the even tempo of the life of the community of that specified locality.

34. In **Shaji v State of Kerala and Others (2014 Crl L J 2029)**, a Division Bench of this Court after analysing numerous Apex Court Decisions had held as follows :

[11]. Principles laid down in the aforesaid judgment shows that “public order” is distinct and different from “law and order” and the Apex Court has consciously observed that “public order” may well be paraphrased in the context of legislations such as the Act as “public tranquillity”. Therefore, any act, which adversely affects the public tranquillity of an area is an act affecting public order of the area. Insofar as this case is concerned, the facts narrated in Ext. P1 order itself would show that various crimes have been allegedly committed by the detenu, in public places and in day light and as a result, the people in the locality are terrorized and that because of these acts, tranquillity in the area is affected. This certainly shows that the acts allegedly

committed by the detenu, irrespective of its gravity, are those, which disturbed the even tempo of life of the community, which undoubtedly are acts prejudicial to the maintenance of the public order, the maintenance of which, is essential for the orderly life in the society. Therefore, we are unable to agree with the learned counsel for the petitioner that the offences alleged against the detenu are not those which threatened the public order to invite an order of preventive detention.

35. The wealth of legal precedents cited by either sides gives a clear enunciation of the law on the subject. As noticed above, it follows that it is the degree and extent of reach of the objectionable activity which is vital for considering the question whether a man has committed only a breach of 'law and order' or has acted in a manner likely to cause disturbance to 'public order'. Even a single act which has the propensity of effecting the even tempo of life and public tranquillity would be sufficient for ordering detention. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of 'public order'.

In other words, an order of detention under the Act would be valid if the activities of a detenu affect 'public order' but would not be so where the same affect only the maintenance of 'law and order'.

36. The Court exercising judicial review is not to consider objectively as to how imminent is the likelihood of the detenu, indulging in activities prejudicial to the maintenance of the public order. It also has to be borne in mind that the subjective satisfaction entertained by the detaining authority is not justiciable. This Court cannot sit in appeal in proceedings under Article 226 of the Constitution of India over the decisions taken by the detaining authority on the basis of the materials placed before the detaining authority as to whether the preventive detention is necessary or warranted. The short area of jurisdiction is to ascertain whether the subjective satisfaction is entertained properly on the basis of materials placed before the detaining authority. No roving enquiry or investigation can be carried out by the Court to

examine the sufficiency of the material available with the detaining authority for the purpose of arriving at the subjective satisfaction. If the entertainment of the latter subjective satisfaction is vitiated by mala fides or total absence of materials or by materials that are to be legally eschewed, certainly the powers of judicial review vested in this Court can be invoked and the order of detention on the basis of such subjective satisfaction can be set aside. But if there are materials before the detaining authority, it is not open to this Court to sit in appeal over the subjective satisfaction entertained by the detaining authority.

37. We have thoughtfully considered the contention of the learned Director General of Prosecution, that the objectionable activities of the detenu have to be judged in the light of the socio economic and cultural perspective of the civil society and it has to be ascertained as to whether the totality of the circumstances have had any prejudicial effect on the society as a whole. It was also submitted by the learned Director General of Prosecution that if the

detaining authority after appraisal of the facts and circumstances come to the conclusion that the activities of the detenu are prejudicial to the maintenance of public order and not merely prejudicial to the law and order, this Court will not be justified in interfering with the said satisfaction. It was also submitted that a 100 percent literate society of Kerala can ill afford the highly objectionable activities of a person such as the detenu, whose anti social activities affecting the public order, continued unabated, in spite of the law enforcement machinery exhausting all the ordinary remedies available under law.

38. Maintaining respect for law is one of the most coveted principles and the State has to strive to discourage inveterate criminals who have no regard to public order. It can be seen that the activities of the detenu was sought to be prevented initially by including him in the rowdy history sheet on 24.6.2013. Later, as a preventive measure proceedings under S.107 Cr.P.C was also initiated against

him. Even thereafter he continued to involve himself in a series of crimes creating serious problems to public order. Crime 677 of 2012 committed on 28.6.2012 was a case in which the detenu had trespassed into the house of one Shamsudeen and assaulted him resulting in a fracture of nasal bone. After the charge sheet was laid, the detenu has settled the matter with the de facto complainant and got the proceedings quashed. There is also an instance of the petitioner assaulting a lady police inspector on duty in a public place. Peramangalam police station crime No.173 of 2015 registered for offence inter alia u/s 302 of the IPC on 29.1.2015 is a case wherein the detenu had brutally manhandled a security guard owing to his failure to open the gate of the apartment premises where the detenu was residing with his family. The incident commenced from the public road and the records reveal that the security staff was brutally manhandled in the presence of several other security personnel. It is from prior events showing tendencies or inclination of a man that an inference is drawn whether he is likely in the future to act in a manner

prejudicial to the maintenance of public order. Of course, such prejudicial conduct or antecedent history should ordinarily be proximate in point of time and should have a rational connection with the conclusion that the detention of the person is necessary. The District Magistrate has expressed unequivocally that he was satisfied on the materials placed before him, that the detention of the detenu was necessary with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. The District Magistrate has also recorded that he passed the order after considering all the relevant factors and with due circumspection as he found that his activities had become unmanageable and were creating serious public disorder. It is trite that the order of detention is a precautionary measure and is based on a reasonable prognosis of the future behaviour of the person based on his past conduct and judged in the light of the circumstances prevailing on the date of passing of the detention order.

39. The compulsions of the primordial need to maintain order in society, without which enjoyment of all rights, including the right of personal liberty would lose all their meanings, are the true justifications for the laws of preventive detention. This jurisdiction has been described as a "jurisdiction of suspicion", and the compulsions to preserve the values of freedom of a democratic society and social order sometimes merit the curtailment of the individual liberty. (See **Ayya alias Ayub v. State of U.P. and Anr: (1989(Cri.L.J) 991**).

40. In **Naresh Kumar Goyal v. Union of India, 2005 (8) SCC 276**, the Apex Court has held ;

"It is trite law that an order of detention is not a curative or reformatory or punitive action, but a preventive action, avowed object of which being to prevent the anti social and subversive elements from imperilling the welfare of the country or the security of the nation or from disturbing the public tranquillity or from indulging in smuggling activities or from engaging in illicit traffic in narcotic drugs and psychotropic substances etc. Preventive detention is devised to afford protection to society.

The authorities on the subject have consistently taken the view that preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it, and to prevent him from doing so. It, therefore, becomes imperative on the part of the detaining authority as well as the executing authority to be very vigilant and keep their eyes skinned but not to turn a blind eye in securing the detenu and executing the detention order because any indifferent attitude on the part of the detaining authority or executing authority will defeat the very purpose of preventive action and turn the detention order as a dead letter and frustrate the entire proceedings. Inordinate delay, for which no adequate explanation is furnished, led to the assumption that the live and proximate link between the grounds of detention and the purpose of detention is snapped".

41. In view of the above discussion, we hold that there were ample materials before the detaining authority to conclude, on the basis of materials produced, that the acts committed by the detenu are prejudicial to public order and that that was every likelihood and potentiality of the detenu in committing offences, disregarding the actions taken by the state to curtail him. The satisfaction

arrived at by the detaining authority that the reach of the acts of the detenu, its degree, extent and magnitude has caused disturbance to the even tempo of life of the community so as to amount to disturbance of the public order cannot be doubted or faulted. We hold that the challenge raised by the detenu that his acts merely amount to violation of law and order cannot be sustained. Consequently the contention that the crimes committed by the detenu has not disturbed the even tempo of the society and thus to disturb the public order has to fail. Ground No (i) to (iv) are found against the detenu.

Ground No. (v).

42. The next contention raised by the learned counsel is that Ext.P1 order of detention was passed by the 2nd respondent on 9.3.2015 on which day, the detenu was under judicial custody. He was arrested on 29.1.2015 in connection with Crime No.173 of 2015 of Peramangalam police station. According to the learned Senior counsel,

the detention order is vitiated as the detaining authority has not satisfied herself as to whether there was any possibility of the detenu being enlarged on bail. Reliance is placed on Ext.P6 and P7 bail orders as per which the Court of Session, Thrissur had dismissed the application for bail filed by the detenu. According to the learned Senior counsel, a perusal of Exts.P6 and P7 would reveal that the detenu was not likely to be enlarged on bail in the near future. There were no material before the detaining authority to conclude that the detenu even contemplated approaching the higher Court for bail. There were no materials or facts available with the detaining authority showing the possibility of immediate release of the detenu. It was contended that the satisfaction arrived at by the detaining authority that there was every possibility of the detenu being released on bail is without any basis and material and hence unsustainable. The learned Senior counsel relied on the decision of the Apex Court, in **Rekha v. State of Tamilnadu (2011 (5) SCC 244)**, wherein, it has been held that, where a detention order is passed

against a person already in custody, there should be a real possibility of his release on bail, if he has moved a bail application, and if it is pending. It follows, logically, that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence, the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused, whose case stands on the same footing, had been granted bail. In such cases, the Detaining Authority can reasonably conclude that there is a likelihood of the detenu being released on bail, even though no bail application was pending, since, most courts, normally, grant bail on this ground. However, details of such alleged similar cases must be given, without which, the bald statement of the authority cannot be believed.

43. The learned Director General of Prosecution controverted the said contention raised by the learned Senior counsel and submitted that a perusal of Exts.P6 and P7 orders would reveal that the learned Sessions

Judge had taken into account that the investigation was at a nascent stage and the learned Sessions Judge had rejected the bail application on that ground. It was pointed out that in Ext.P7 the learned Sessions Judge had categorised the stage of investigation as infancy stage and in Ext.P8 it was pointed out that there was chances for the detenu to interfere in the investigation if he was released at that stage. It was contended that the orders dismissing the bail application of the detenu were deliberated while passing the detention order and the detaining authority had applied her mind to all the facts and circumstances before passing the order. It was also contended that the orders passed by the learned Sessions Judge furnished relevant material to suggest that the detenu had the propensity and potentiality to again indulge in prejudicial activities in case he was enlarged on bail. According to the learned Director General of Prosecution there was material before the detaining authority to come to the conclusion that there was every likelihood for the detenu to get himself released on bail and that in that event, he would

again indulge in anti social activities. It was pointed out that the settled law is that the detaining authority was only required to be aware that the detenu was in custody though no bail application was in fact filed and there was likelihood of the detenu being released on bail. The learned Director General of Prosecution has relied on **Abdul Sathar Ibrahim Malik V Union of India (AIR 1981 SC 2261)** to substantiate his contentions .

44. A perusal of Ext.P1 order would reveal that the detaining authority was aware of the fact that the detenu had preferred application for bail before the Sessions Court, Thrissur. Reference is also made to the filing and dismissal of Crl.M.C.No.272 of 2015 and Crl.M.C.487 of 2015 which were dismissed on 18.2.2015 and 7.3.2015 respectively. The Crime No. 173 of 2015 was registered on 29.1.2015. It is stated in Ext.P1 order that the detenu is financially very well off and there is every likelihood of the detenu approaching the High Court or the Apex Court for the purpose of his release on bail. It is also stated that they

have received reliable information about the preparations made by the detenu to approach the higher Courts. It is also stated in Ext.P1 that there is every chance that the detenu may be enlarged on bail from the Sessions Court itself or from the higher Courts and that if released, the detenu who is from the topmost strata of the society is likely to influence witnesses and tamper with the evidence. It is also stated in Ext.P1 order, with reference to the penchant of the accused in settling crimes by using money power, that there is every likelihood of the detenu threatening the eye witnesses himself or through hired goondas. The possibility of the detenu involving in other crimes is also made mention of in Ext.P1 order based on the antecedents of the detenu.

45. When the detaining authority has considered the possibility of the detenu being released on bail, taking note of common course of events and when reference is made to the contents of Ext.P6 and P7 bail orders to conclude that there was every likelihood of the detenu being released

on bail, the same cannot be discarded by holding that the detaining authority has taken a pre-determined stand on the issue. Evidently , Exhibit P 7 order was passed on the 37th day of commission of the crime and as rightly contended by the learned Director General of Prosecution , there was ample justification in the authority deducing that there was every likelihood of the detenue being released on bail . If the detaining authority had passed the order without considering the relevant materials as regards the possibility of release on bail, it could have been said that the subjective satisfaction was not exercised in a proper manner. On the other hand, when all the relevant materials are considered and after taking note of the common course of events including the umpteen possibilities of grant of bail, and concludes that there is every likelihood of the detenu being released, it cannot be said that the inference drawn by the detaining authority is extraneous. When the object of Act 34 of 2007 is to prevent a classified “known rowdy” like the detenu herein, from indulging in antisocial activities which are

prejudicial to the maintenance of public order, the standards applied to test the relevancy of subjective satisfaction should be that of a reasonable person. It cannot be said that the conclusion arrived at by the detaining authority was unreasonable or irrelevant or without materials. Subjective satisfaction being a condition precedent for the exercise of the power of preventive detention conferred on the executive, the Court can always examine whether the requisite satisfaction is arrived at by the authority; if it is not, the condition precedent to the exercise of the power would not be fulfilled and the exercise of the power would be bad. A Court cannot go into correctness or otherwise of the facts stated or allegations levelled in the grounds in support of detention. A Court of Law is 'the last appropriate tribunal to investigate into circumstances of suspicion on which such anticipatory action must be largely based. That, however, does not mean that the subjective satisfaction of Detaining Authority is wholly immune from judicial reviewability. By judicial decisions, courts have carved out areas, though

limited, within which the validity of subjective satisfaction can be tested judicially. The Apex Court has reiterated in a catena of cases that the Courts have to carefully avoid substituting their own views about what is enough for subjective satisfaction of the detaining authorities with which inference could be justified only if it is clear that no reasonable person could be possibly be satisfied about the need to detain on the grounds given in which case the detention would be in excess of the power to detain. (see **Ram Bali Rajbhar v. Stat of West Bengal (1975 (4) SCC 47)**).

46. In **Union of India v. Paul Manickam and Another (2003 (8) SCC 342)** the Apex Court has held as follows:

[12]. So far as this question relating to procedure to be adopted in case the detenu is already in custody is concerned, the matter has been dealt with in several cases. Where detention orders are passed in relation to persons who are already in Jail under some other laws, the detaining authorities should apply their mind and show their awareness in

this regard in the grounds of detention, the chances of release of such persons on bail. The necessity of keeping such persons in detention under the preventive detention laws has to be clearly indicated. Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention, and decision in this regard must depend on the facts of the particular case. Preventive detention being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order or economic stability, etc. ordinarily, it is not needed when detenu is already in custody. The detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order. If the detaining authority is reasonably satisfied on cogent materials that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time, he must be detained in order to prevent him from indulging such prejudicial activities the detention order can be validly made. Where the detention order in respect of a person already in custody does not indicate that the detenu was likely to be released on bail, the order would be vitiated. (See *N. Meera Rani v. Govt. of Tamil Nadu*: [1989]3SCR901 : *Dharmendra Suganchand v. Union of India*: : 1990CriLJ1232). The point was gone into detail

in **Kamarunnissa v. Union of India : 1991 CriLJ 2058** . The principles were set out as follows. Even in the case of a person in custody, a detention order can be validly 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 release on bail, and (b) that on being released, he would in all probability indulge in prejudicial activities, and (3) if it is felt essential to detain him to prevent him from so doing. If an order is passed after recording satisfaction in that regard, the order would be valid. In the case at hand the order of detention and grounds of detention show awareness of custody and/or possibility of release on bail.

47. In Ahmad Nassar V State of Tamil Nadu and Others (AIR 1999 SC 3897) it was observed as follows:

[46].Thus in spite of rejection of the bail application by a court, it is open to the detaining authority to come to his own satisfaction based on the contents of the bail application keeping in mind the circumstances that there is likelihood of the detenu being released on bail. Merely because no bail application was then pending is no premise to hold that there was

no likelihood of his being released on bail. The words "likely to be released" connote chances of being bailed out, in case there be pending bail application or in case if it is moved in future is decided. The word "likely" shows it can be either way. So without taking any such risk if on the facts and circumstances of each case, the type of crime to be dealt with under the criminal law, including contents of the bail application, each separately or all this compositely, all would constitute to be relevant material for arriving at any conclusion. As the contents of bail application would vary from one case to the other, coupled with the different set of circumstances in each case, it may be legitimately possible in a given case for a detaining authority to draw an inference that there is likelihood of the detenu released on bail

48. In **Rekha** (Supra), the detention order in question only contained mere ipse dixit regarding the alleged imminent possibility of the accused coming out on bail and there was no reliable material to this effect. It was in the said circumstances that the Apex Court had held that the detention order could not be sustained. In the instant case,

all the aspects including the tenor of the order passed by the learned Sessions Judge was considered in detail by the detaining authority and apprehension was expressed as to the imminent possibility of the accused being released on bail either by the Sessions Court or the higher Courts. Moreover in the case on hand the detaining authority had also considered the antecedents of the detenu. The various crimes in which the detenu was involved earlier which was later compounded were also taken note of. The authority has raised an apprehension that the composition of the offences was obtained by threatening the de facto complainants. It has also come out that the detenu has been habitually and continuously committing heinous crimes. The detaining authority has taken note of the fact that the detenu is an extremely wealthy person with no regard for law or the law enforcement agencies and he is in the habit of committing crimes and could have approached any forum for grant of bail to effectuate his purpose. The detenu is not a person who got involved in a solitary crime. Having regard to the antecedents, previous

history, predilections of the detenu to indulge in crimes affecting public order, the nature and conditions of bail order passed and the possibilities of imminent release on bail , it cannot be said that the subjective satisfaction of the detaining authority was not exercised in the proper manner. We are therefore of the opinion that the challenge raised in respect of ground No 5 also has to fail .

Ground No. (vi)

49. The next contention raised by the learned senior counsel appearing for the petitioner is that exhibit P1 detention order is vitiated as the said order was passed as per the dictates of the higher authorities for extraneous purpose and with malicious intention. According to the learned counsel crime number 173/2015 of the police station is just another ordinary crime but for some extraneous reasons undue publicity was given to divert the attention of the people from more pressing matters. The Chief Minister of the State, Ministers including the Home Minister, the Opposition leader etc had visited the home of

the deceased and had given public statements. Relying on exhibit P8 and P9 newspaper clippings it was contended that the home Minister of the State had visited the house of the deceased and had given a press statement that the government has decided to impose an order under Act 34 of 2007 against the detenu and the collector has already been directed to impose the same. According to the learned Senior counsel, the detaining authority cannot abdicate his or her power in favour of the highest authority in the hierarchy. It was contended that, when the subjective satisfaction of the detaining authority is influenced by extraneous reasons or directions or dictates from higher or other authority the subjective satisfaction cannot be said to be properly exercised and order becomes bad in law. Inviting the attention of this court to exhibits P10 to P12, which are paper clippings which appeared in the print media it was pointed out various authorities tried to interfere in the course of investigation of Crime No. 173/2015 of Peramagalam Police Station which vitiated the whole proceedings.

50. The learned Director General of Prosecution countered the contentions raised by the learned senior counsel and submitted that a perusal of the order will reveal that the order of detention was issued by the detaining authority in exercise of powers vested under section 3 of the Act 34 of 2007 without any extraneous pressure, considerations or political interferences as alleged. It was also argued that the stories published by the media are the figments of their own imagination and they are only to be ignored in toto. The learned Director General of Prosecution has also pointed out that the detenu is an immensely wealthy person and contended that no sanctity can be given to a paper clipping as the stories appearing therein can become distorted as a result of various considerations.

51. We are of the considered opinion that the newspaper clippings produced by the petitioner as Exts.P8 to P12 cannot be given much value. As regards nature and

admissibility of a newspaper report the Apex Court in **Lakmi Raj Shetty and another V State of Tamil Nadu (1988 (3) SCC 319)** had observed thus:

"... We cannot take judicial notice of the facts stated in a news item being in the nature of hearsay secondary evidence, unless proved by evidence aliunde. A report in a newspaper is only hearsay evidence. A newspaper is not one of the documents referred to in section 78 (2) of the evidence act, 1872 by which an allegation of fact can be proved. The presumption of genuineness attached under section 81 of the evidence act to a newspaper report cannot be treated as proved of the facts reported therein".

52. Similar observation was also passed by the Supreme Court in **Dr. B Singh V Union of India and others (2004 (3) SCC 363)** wherein it was held that, information of fact found in a newspaper, Journal or Magazine or any other form of communication cannot be regarded as gospel truth. It was held that newspaper reports per se do not constitute legally acceptable evidence. After going through exhibit P1 detention order, we do not think that the

detaining authority has abdicated its responsibility. The contention of the petitioner has to fail on this ground as well.

Ground No. (vii)

53. The next ground urged by the learned Senior counsel appearing for behalf of the petitioner is that the sponsoring authority had had suppressed vital materials which were in favour of the detenu regarding the incident leading to crime No 173/2015 in which the security staff had met with his death allegedly at the hands of the detenu. According to the learned Senior counsel, the sponsoring authority have placed before the detaining authority a lopsided version and the fact that the detenu had also sustained injuries in the course of the incident was suppressed by the sponsoring authority before the detaining authority. Exts.P23 to P25 were produced before Court along with the reply statement to convince us that there are suppression of relevant and important materials

and therefore, the detention order is vitiated. We have gone through Ext.P25 the accident register-cum wound-certificate prepared on 29.1.2015. It appears that the detenu was taken to the hospital for the purpose of issuing medical certificate as requested by the Circle inspector of police. All that is found are very minor and trivial abrasions and very minor contusions and muscle pain. The allegations would reveal that the detenu has assaulted the security staff in the presence of the other security men and there is no case that any person including the deceased had even an occasion to resist the acts of the detenu. It is a one sided assault by the detenu on the security person on his failure to open the gate. The assault on the security staff commenced from the public road and went on inside the apartment complex. It does not appear to us that the said document can be said to be so vital so as to have any relevance in the facts and circumstances of the instant case. Moreover, it is not the law that every document or material in the possession of the the sponsoring authority must necessarily be placed by him before the detaining

authority and in every case where any such document is not placed by the sponsoring authority before the detaining authority, the formation of opinion and the subjective satisfaction will get vitiated. (**See Vinod K. Chawla V Union of India AIR 2006 SC 2864**). Only when the said document is likely to affect the formation of opinion and the satisfaction of the detaining authority can it be said that it is a vital document. In the facts of the instant case, it does not appear to us that the wound certificate would have influenced the formation of opinion. The contention raised on this count also has to necessarily fail.

Ground No (viii)

54. This is the most interesting and novel ground raised by the learned Senior Counsel appearing for the petitioner. According to the learned counsel, when a detention order has been made under Section 3 of the Act 34 of 2007 by the District Magistrate under S. 3 (2) of Act 34 of 2007, the person detained has a right to make a representation

before the said authority and the said authority 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 Advisory Board. According to the learned Senior Counsel, the right to make a representation necessarily implies that the person detained must be informed of his right to make a representation to the District Magistrate, who has made the order of detention, at the time when he is served with the grounds of detention. Failure to inform the detenu of this right so as to enable him to make such a representation results in denial of the right of the person detained to make a representation. This would vitiate the entire detention order, is the submission. Reliance was placed on the Constitution Bench decision of the Apex Court in **Kamaleshkumar Iswardas Patel and Others V State of Kerala (1995 SCC (Cri) 643)** to substantiate the said

contention.

55. It was submitted by the learned Senior counsel that the Constitution, while permitting Parliament and the State Legislatures to enact a law providing for preventive detention, prescribes certain safeguards in Article 22 for the protection of the persons so detained. One such protection is contained in sub-clause (a) of Clause (4) of Article 22 which required that no law providing for preventive detention shall authorise the detention of a person for a period longer than three months unless an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as Judges of a High Court has reported before the expiration of the said period of three months that there is, in its opinion, sufficient cause for detention. The other safeguard is contained in Clause (5) of Article 22 which provides as under:

When any person is detained in pursuance of an order made under any law providing for Preventive Detention, the authority making the

order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

56. It was submitted based on Article 22(5) that the Constitution imposes a dual obligation on the authority making the order of preventive detention: (i) to communicate to the person detained as soon as may be the grounds on which the order of detention has been made; and (ii) to afford the person detained the earliest opportunity of making a representation against the order of detention. Article 22(5) thus proceeds on the basis that the person detained has a right to make a representation against the order of detention and the aforementioned two obligations are imposed on the authority making the order of detention, with a view to ensure that right of the person detained to make a representation is a real right and he is able to take steps for redress of a wrong, which he thinks has been committed. Article 22(5) does not, however, indicate the authority to whom the representation is to be

made. Since the object and purpose of the representation that is to be made by the person detained is to enable him to obtain relief at the earliest opportunity, the said representation has to be made to the authority which can grant such relief, i.e., the authority which can revoke the order of detention and set him at liberty. The authority that has made the order of detention can also revoke it, is the submission raised by the learned Senior Counsel. This right is inherent in the power to make the order. It is submitted that the said right is recognised by Section 21 of the General Clauses Act, 1897, though it does not flow from it. On these premises, it is contended that Article 22 (5) postulates that the person detained has a right to make a representation against the order of detention to the authority making the order. In addition, such a representation can be made to any other authority who is empowered by law to revoke the order of detention. This aspect, according to the learned Senior counsel, was considered by the Constitution bench in **Kamaleshkumar Iswardas Patel (supra)** and the question was answered

as follows :

Having regard to the provisions of Article 22(5) of the Constitution and the provisions of the **COFEPOSA Act and the PIT Narcotic Drugs & Psychotropic Substances Act** the question posed is thus answered : Where the detention order has been made under Section 3 of the **COFEPOSA Act and the PIT Narcotic Drugs & Psychotropic Substances 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.

57. The learned Senior Counsel has also brought to our notice the pari materia provisions contained in the COFEPOSA Act and also the Prevention of Illicit Traffic in the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as the PIT NDPS Act) . We have anxiously considered the relevant provisions in the light of the Constitution Bench Decision .

58. We note that the provisions of the COFEPOSA Act and the PIT NDPS Act which was dealt with in **Kamleshkumar Ishwardas Patel** (supra) differs from that of other Preventive Detention laws, namely the National Security Act, 1980, the Maintenance of Internal Security Act, 1971 and the Preventive Detention Act, 1950.

The provisions of Act 34 of 2007 enacted by the Kerala legislature is in tune with the National Security Act, 1980 and the other earlier laws enumerated above.

59. After going through the relevant provisions of the COFEPOSA Act, PIT in Narcotic Drugs & Psychotropic Substances Act, National Security Act, 1980 as well as earlier preventive detention laws, namely, the Preventive Detention Act, 1950, the Maintenance of Internal Security Act, 1971, we have come across some interesting aspects, which would reveal that the contention on this count raised by the Senior counsel is merit less.

60. Let us consider S.3 of the National Security Act, 1980.

[3] - Power to make orders detaining certain persons

(1) The Central Government or the State Government may,--

(a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, or the security of India, or

(b) -----.

(2) -----.

Explanation.-----.

(3) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct, that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (2), exercise the powers conferred by the said sub-section:

Provided that the period specified in an order made by the State Government under this sub-section shall not, in the first instance, exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(4) When any order is made under this section by an officer mentioned in sub-section (3), he shall forthwith report the fact 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 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:

Provided that where under section 8 the grounds of detention are communicated by the officer making the order after five days but not later than ten days from the date of detentions, this sub-section shall apply subject to the modification, that, for the words "twelve days", the words "fifteen days" shall be substituted.

(5) When any order is made or approved by the

State Government under this section, the State Government shall, within seven days, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as, in the opinion of the State Government, have a bearing on the necessity for the order.

As can be seen from the above, under subsection (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 are contained in the Preventive Detention Act, 1950 and the Maintenance of Internal Security Act, 1971.

61. 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.

62. On the other hand, Act 34 of 2007 operates in the same manner as the National Security Act, 1980 .S. 3 of Act 34 of 2007 reads as follows :-

[3] - Power to make orders for detaining Known Goondas and Known Rowdies

(1)

(2)

(3) When any order is made under this section by the authorised officer under sub-section (2), he shall forthwith report the fact to the Government and the Director General of Police, Kerala, together with a copy of the order and supporting records which, in his opinion, have a bearing on the matter and no such order shall

remain in force for more than 12 days,
excluding public holidays, from the date of
detention of such Known Goonda or Known
Rowdy, unless, in the meantime, it has been
approved by the Government or by the
Secretary, Home Department if generally so
authorised in this regard by the Government.
(emphasis supplied by us)

63. A proper appraisal of the scheme of Act 34 of 2007 would reveal that as and when an order is passed under section 3 of the Act by the authorised officer under subsection (2), he is bound to forthwith report the fact to the Government and the Director General of Police, Kerala, together with a copy of the order and supporting records which in his opinion have a bearing on the matter and no such order shall remain in force for more than 12 days excluding public holidays from the date of detention of the “known goonda” or “known rowdy”, unless, in the meantime, it has been approved by the Government or by the secretary, Home Department if generally so authorised in this regard by the Government .

64. Section 7 of Act 34 of 2007 reads as follows :

[7] - Grounds of order of detention to be disclosed

(1). When a person is arrested in pursuance of a detention order, the officer arresting him shall read out the detention order to him and give him a copy of such order.

(2). The grounds of detention, specifying the instances of offences, with copies of relevant documents, as far as practicable, on the basis of which he is considered as a "known goonda" or "known rowdy" and giving such materials relating to his activities on the basis of which his detention has been found necessary, shall be furnished to him as soon as possible nevertheless, in any case, within five days of detention and he shall also be informed in writing, under acknowledgement, of his right to represent to the Government and before the Advisory Board against his detention:

(3). The Superintendent of the Jail where such person is detained shall afford him reasonable opportunity to consult a lawyer and reasonable assistance in making a representation against the detention order to the Government or to the Advisory Board.

65. Section 7 of Act 34 of 2007 mandates that when a

person is arrested in pursuance of a detention order, the officer arresting him shall read out the detention order to him and give a copy of such order. As per section 7(2), the grounds of detention specifying the instances of offences, with copies of relevant documents, as far as practicable on the basis of which he is considered as a “known goonda” or “known rowdy” shall be furnished to him as soon as possible, nevertheless in any case, within five days of detention and he shall also be informed in writing under acknowledgement of his right to represent to the Government and before Advisory board against his detention. Section 7(3) provides that it is the duty of the Superintendent of jail where the detenu is housed to afford reasonable opportunity/assistance in making a representation against the detention order to the Government or to the Advisory board.

66. Section 13 of Act 34 of 2007 reads as under:

[13]. Revocation of detention order

(1) A detention order may, at any time, be revoked or modified by the Government.

Section 13 of Act 34 of 2007 stipulates that a detention order may, at any time, be revoked or modified by the Government .

67. All these provisions are extracted by us to bring out the fact that Act 34 of 2007 is more in tune with the National Security act 1980, the Maintenance of Internal Security Act 1971 and the Preventive Detention Act, 1950.

68. There is specific provision in Act 34 of 2007 that in respect of orders made by the authorised officer under section 3 (2) to forthwith report the fact to the Government to which he is subordinate. Section 3(3) also provides that no order shall remain in force for more than 12 days after the making thereof unless in the meantime it has been approved by the Government or by the Secretary, Home Department if generally so authorised in this regard by the Government. This would show that it is the approval of the State Government which gives further life to the order

which would diffuse on its own on the expiry of 12 days after its making. It is also the requirement of the said provision that the report furnished by the authorised officer to the Government and the Director General of Police should be accompanied with a copy of the order and supporting records which has a bearing on the matter. This provision would mean that the State Government has to take into consideration the grounds and the said material while giving its approval to the order of detention. The effect of the approval by the State Government is that from the date of such approval, the detention is authorised by the order of the State Government approving the order of detention and the State Government is the detaining authority from the date of order of approval. It is for the said purpose that section 7(2) of Act 34 of 2007 envisages that the representation against the order of detention is to be made before the Government and also the Advisory Board as the case may be, against his detention.

69. Interestingly the COFEPOSA Act and the PIT NDPS

Act do not require the approval of an order made by the officer specially empowered by the State Government or by the Central government. S. 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, reads as follows :

[3] - Power to make orders detaining certain persons

(1) The Central Government or the State Government or any officer of the Central Government, not below the rank of a Joint Secretary to that Government, specially empowered for the purposes of this section by that Government, or any officer of the State Government, not below the rank of a Secretary to that Government, specially empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person (including a foreigner), that, with a view to preventing him from acting in any manner prejudicial to the conservation or augmentation of foreign exchange or with a view to preventing him from--

- (i) smuggling goods, or
- (ii) abetting the smuggling of goods, or
- (iii) engaging in transporting or concealing or keeping smuggled goods, or
- (iv) dealing in smuggled goods otherwise than

by engaging in transporting or concealing or keeping smuggled goods, or

(v) harbouring persons engaged in smuggling goods or in abetting the smuggling of goods, it is necessary so to do, make an order directing that such person be detained:

1. [Provided that no order of detention shall be made on any of the grounds specified in this sub-section on which an order of detention may be made under section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 or under section 3 of the Jammu and Kashmir Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Ordinance, 1988 [J & K Ordinance, 1 of 1988).]

(2). When any order of detention is made by a State Government or by an officer empowered by a State Government, the State Government shall, within ten days, forward to the Central Government a report in respect of the order.

(3). For the purposes of clause (5) of article 22 of the Constitution, the communication to a person detained in pursuance of a detention order of the grounds on which the order has been made shall be made as soon as may be after the detention, but ordinarily not later than five days, and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days, from the date of detention.

70. It can be seen from the above that the order passed by the Specially Empowered Officer under the COFEPOSA Act operates on its own. All that is required by section 3 (2) of the COFEPOSA act and the PIT NDPS Act is that the State Government should forward to the Central government within 10 days a report in respect of an order that is made by the State Government or an officer specially empowered by the State Government. Unlike section 3 (3) of Act 34 of 2007, there is no requirement in the COFEPOSA Act and the PIT NDPS Act , which stipulates that the officer specially empowered for the purpose of making an order of detention must forthwith send to the Government concerned, the grounds and the supporting material on the basis of which the order of detention has been made. It is not prescribed in the said enactments that after the order of detention has been made by the officer specially empowered for that purpose, the government concerned is required to apply its mind to the grounds and the supporting material on the basis of which the order of detention was made. The only

circumstance from which an inference about deemed approval is sought to be drawn is that the order is made by the Officer specially empowered for that purpose by the Government concerned. By virtue of section 3 (2) of the COFEPOSA Act and the PIT NDPS Act the Central Government or the State Government, confers an independent power on the said officer to make an order of detention after arriving at his own satisfaction about the activities of the person sought to be detained. Since the detention of the person detained draws its legal sanction from the order passed by such officer , the officer is the detaining authority in respect of the said person. He continues to be the detaining authority so long as the order of detention remains operative. The said officer ceases to be the detaining authority only when the order of detention ceases to operate. This would be on the expiry of the period of detention as prescribed by law or on the order being revoked by the officer himself or by the authority mentioned in section 11 of the COFEPOSA Act and section 12 of the PIT NDPS act. In other words the

officer does not go out of the picture after he has passed the order of detention. It is on the strength of the aforesaid provisions that **Kamaleshkumar Ishwardas Patel** (supra) laid down that the officer specially empowered for that purpose continues to be the detaining authority and is not displaced by the government concerned after he has made the order of detention. It was therefore, held in the Constitution bench decision that by virtue of him being the detaining authority he is required to consider the representation of the person detained against the order of detention.

71. We deem it apposite to extract the paragraph 34 of the Judgement in **Kamaleshkumar Eashwardas Patel** (supra) for a clear understanding of the legal position. In this cardinal paragraph of the Judgement, the Constitution Bench of the Apex Court discusses the reason for holding that the officer empowered by the Government must inform the person detained 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 detenu.

[34]. The COFEPOSA Act and the PIT Narcotic Drugs & Psychotropic Substances Act do not require the approval of an order made by the officer specially empowered by the State Government or by the Central Government. The order passed by such an officer operates on its own force. All that is required by Section 3(2) of COFEPOSA Act and PIT Narcotic Drugs & Psychotropic Substances Act is that the State Government shall within 10 days forward to the Central Government a report in respect of an order that is made by the State Government or an officer specially empowered by the State Government. An order made by the officer specially empowered by the State Government is placed on the same footing as an order made by the State Government because the report has to be forwarded to the Central Government in respect of both such orders. No such report is required to be forwarded to the Central Government in respect of an order made by an officer specially

empowered by the Central Government. Requirement regarding forwarding of the report contained in Section 3(2) of the COFEPOSA Act and the PIT Narcotic Drugs & Psychotropic Substances Act cannot, therefore, afford the basis for holding that an order made by an officer specially empowered by the central Government or the State Government acquires deemed approval of that government from the date of its issue. Approval, actual or deemed, postulates application of mind to the action being approved by the authority given approval. Approval of an order of detention would require consideration by the approving authority of the grounds and the supporting material on the basis of which the officer making the order had arrived at the requisite satisfaction for the purpose of making the order of detention. Unlike Section 3(4) of the National Security Act there is no requirement in the COFEPOSA Act and the PIT Narcotic Drugs & Psychotropic Substances Act that the officer specially empowered for the purpose of making of an order of detention must forthwith send to the concerned government the grounds and the supporting material on the basis of which the order of detention has been made. Nor is it prescribed in the said enactments that after

the order of detention has been made by the officer specially empowered for that purpose the concerned government is required to apply its mind to the grounds and the supporting material on the basis of which the order of detention was made. The only circumstance from which inference about deemed approval is sought to be drawn is that the order is made by the officer specially empowered for that purpose by the concerned government. Merely because the order of detention has been made by the officer who has been specially empowered for that purpose would not, in our opinion, justify the inference that the said order acquires deemed approval of the government that has so empowered him, from the date of the issue of the order so as to make the said government the detaining authority. By specially empowering a particular officer under Section 3(2) of the COFEPOSA Act and the PIT Narcotic Drugs & Psychotropic Substances Act the Central Government or the State Government confers an independent power on the said officer to make an order of detention after arriving at his own satisfaction about the activities of the person sought to be detained. Since the detention of the person detained draws its legal sanction from the order passed by

such officer, the officer is the detaining authority in respect of the said person. He continues to be the detaining authority so long as the order of detention remains operative. He ceases to be the detaining authority only when the order of detention ceases to operate. This would be on the expiry of the period of detention as prescribed by law or on the order being revoked by the officer himself or by the authority mentioned in Section 11 of the COFEPOSA Act and Section 12 of the PIT Narcotic Drugs & Psychotropic Substances Act. There is nothing in the provisions of these enactments to show that the role of the officer comes to an end after he has made the order of detention and that thereafter he ceases to be the detaining authority and the concerned government which had empowered him assumes the role of the detaining authority. We are unable to construe the provisions of the said enactment as providing for such a limited entrustment of power on the officer who is specially empowered to pass the order. An indication to the contrary is given in Section 11 of the COFEPOSA Act and Section 12 of the PIT Narcotic Drugs & Psychotropic Substances Act which preserve the power of such officer to revoke the order that was made by him. This means that the officer

does not go out of the picture after he has passed the order of detention. It must, therefore, be held that the officer specially empowered for that purpose continues to be the detaining authority and is not displaced by the concerned government after he has made the order of detention. Therefore, by virtue of his being the detaining authority he is required to consider the representation of the person detained against the order of detention.

72. As is seen from the above extract of the judgment , the Apex Court took note of the fact that the COFEPOSA Act and the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act do not require the approval of an order made by the Officer specially empowered by the State Government or by the Central Government. It was noted that the order passed by such officer operates on its own force. All that was required by S.3(2) of COFEPOSA Act and PIT NDPS Act was for the State Government to forward a report to the Central Government within ten days in respect of the order that is made by the State Government or the Officer specially

empowered by the State Government. Further more, it was held that the requirement regarding forwarding of the report contained in S.3(2) of the COFEPOSA Act and PIT NDPS Act cannot be the basis for holding that an order made by an Officer specially empowered by the Central Government or the State Government acquires deemed approval of that Government from the date of its issue. It was held in the above judgment that since the detention of the person detained draws its legal sanction from the order passed by such Officer, the Officer is the detaining authority in respect of the said person. He continues to be the detaining authority so long as the order of detention remains operative. He ceases to be the detaining authority only when the order of detention ceases to operate. This would be on the expiry of the period of detention or on the order being revoked by the Officer himself or by the authority mentioned in S.11 of the COFEPOSA Act and S.12 of the PIT NDPS Act. It was specifically observed that there was nothing in the provisions of these enactments to show that the role of the officer comes to an end after he

has made the order of detention and that thereafter, he ceases to be the detaining authority and the concerned Government which had empowered him assumes the role of the detaining authority. It was in the said circumstances that it was held by the Apex Court that the Officer specially empowered for that purpose continues to be the detaining authority and is not displaced by the concerned Government after he has made the order of detention and therefore, by virtue of his being the detaining authority, he is required to consider the representation of the person detained against the order of detention. The Apex Court also took note that the provisions of the COFEPOSA Act and PIT and NDPS Act differs from the National Security Act, 1980, the maintenance of Internal Security Act, 1971 and the Preventive Detention Act, 1950. According to us, the ratio of the judgement in **Kamaleshkumar Ishwardas Patel** (supra) can be applied only in Preventive detention cases involving the COFEPOSA Act or the PIT NDPS Act or similar Acts with analogous provisions.

73. In view of the above discussion, we hold that the responsibility or the burden cast upon the detaining authority, under Article 22(5) of the Constitution and S.7 (2) of the KAAPA, while passing orders for detaining “known goondas” or “known rowdies” under S. 3 of the Act, will stand discharged by affording an earliest opportunity to make a representation and communication of the availability of such opportunity/right to represent to the Government and before the Advisory Board against his detention. The detaining authority is not bound, as per the scheme of Act 34 of 2007, to inform the detenu of his right to represent before the detaining authority himself, as there exist no such right. The ratio of the judgment in **Kamaleshkumar Ishwardas Patel** (supra) can be applied only in detention orders passed under the COFEPOSA Act and also the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1974 or in Acts with analogous provisions. We further hold that in the instant case, the burden on the detaining authority must be held to be adequately discharged when the detenu is informed

of his right to make a representation at the earliest available opportunity. That has been successfully discharged in this case. The contention raised by the petitioner as ground No. (viii) also has to fail .

74. In the result, we are unable to accept the case of the petitioner that Ext. P1 order is vitiated on any one of the contentions raised by the learned counsel for the petitioner.

Resultantly, the Writ Petition will stand dismissed.

Sd/-

V.K.MOHANAN
Judge

Sd/-

RAJA VIJAYARAGHAVAN.V.
Judge

Mrcs

/True copy/

P.S to Judge