IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE MR. JUSTICE GOPINATH P.

&

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

&

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

Tuesday, the 31st day of March 2026 / 10th Chaithra, 1948

ICR (WP(CRL.)) NO. 20 OF 2025 & WP(CRL.) NO. 961 OF 2024(S)

PETITIONER:

AALIYA ASHRAF, AGED 28 YEARS, D/O ASHRAF, FATHIMAS, CHALAD P.O, PALLIKKUNNU, KANNUR, PIN - 670 104.

RESPONDENTS:

1. **STATE OF KERALA, REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT, HOME AND VIGILANCE DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695 001.**
2. **THE DISTRICT COLLECTOR & DISTRICT MAGISTRATE, KANNUR DISTRICT, PIN-670 002.**
3. **THE DISTRICT POLICE CHIEF, KANNUR CITY, PIN - 670 002.**
4. **THE CHAIRMAN, ADVISORY BOARD, KAAPA, SREENIVAS, PADAM ROAD, VIVEKANANDA NAGAR, ELAMAKKARA, ERNAKULAM DISTRICT, PIN - 682 026.**
5. **THE SUPERINTENDENT OF JAIL, CENTRAL VIYYUR, THRISSUR, PIN - 670 004.**

This Intra court reference (Writ petition (criminal)) having again come up for orders on 31/03/2026, this Court's order dated 11/02/2026 and upon hearing the arguments of M/S. M.H.HANIS, P.M.JINIMOL, T.N.LEKSHMI SHANKAR, RIA ELIZABETH T.J., NANCY MOL P., ANANDHU P.C., NEETHU.G.NADH, SINISHA JOSHY & ANN MARY ANSEL, Advocates for the petitioner, SRI.GRASHIOUS KURIAKOSE, ADDITIONAL DIRECTOR GENERAL OF PROSECUTION & SRI. C.K.SURESH, PUBLIC PROSECUTOR for R1 to R3 & R5 and of Advocates SRI.S.PRASUN, SMT.CHITHRA P.GEORGE, SRI.VIVEK A.V, SRI.MATHEWS P.GEORGE & SRI.K.A.ANAS, PUBLIC PROSECUTOR, the court on the same day passed the following:

P.T.O.

C.R.

DEVAN RAMACHANDRAN, J.

GOPINATH P, J.

A BADHARUDEEN, J.

M.B.SNEHALATHA, J.

&

JOBIN SEBASTIAN, J.

- -

I.C.R. W.P.(CRL.)NO.20/2025

&

W.P.(CRL.)NO.961/2024

- -

Dated this the 31st day of March, 2026

ORDER

Devan Ramachandran, J.

Before us for resolution, is a substantial question - wholly within the realm of the applicable statutes - riddled with a fair degree of forensic dilemma; and governed by apparently conflicting precedents.

2. This Bench has been convoked under the orders of the Hon'ble Chief Justice, consequent to a reference made by a learned Full Bench, doubting the correctness of the conclusions and holdings of another learned Full Bench of this Court in ***Suhana v. State of Kerala [2024 (7) KHC 212].*** The reference was, in fact, triggered by a doubt expressed by a learned Division Bench of this Court that ***Suhana*** has not laid down the

law correctly, when tested on the touchstone of the relevant statutes and provisions.

3. In ***Suhana,*** the essential question was, if a person found in possession of solely the statutorily defined 'Small Quantity' of a drug or psychotropic substance, under the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act' for short), would render him within the ambit of 'Goonda', under the Kerala Anti-Social Activities (Prevention) Act, 2007 ("KAAPA" for short); with a corollary question posed if such would render that person to be a 'Drug Offender', as again defined under the "KAAPA". The learned Full Bench concluded that it would not be so and hence that the rigour of the "KAAPA" would not apply to such a person.

4. It is singularly the above view that has been doubted by both the learned Division Bench and the Full Bench of this Court.

5. We will deal with the germane issues in detail, as we are enjoined to, after we indite the most unexpendable factual factors, relevant precedential declarations and applicable statutory provisions.

6. The path to this Bench, in fact, began in the year 2014, when a learned Division Bench delivered judgment in ***Ashraf v. Inspector General of Police [(2014) 3 KLT 722]***. The said judgment declared that,

possession of any prohibited drug or psychotropic substance by itself would render the person to be a 'drug offender' under the "KAAPA"; and consequently, amenable to the consequences under it. The observations of the said Bench is available in paragraph 3 of the judgment, extracted below for ease of reading:

> "The allegations against the petitioner in those cases, as rightly noted by the Advisory Board, fall squarely under Sections 2(i), 2(j) and consequently under Section 2(o) (ii) of KAAPA. Noticing the substance of the allegations of those cases, the plea of the petitioner that mere possession would not attract those provisions was rightly repelled by the Advisory Board. 'Possession' is necessarily an inseparable component of any or all of the activities of stocking, transportation, sale or distribution. Hence, the mere absence of the word 'possession' in the definition of the term 'drug-offender' in KAAPA is not decisive to exclude a person found to be in possession of any drug in contravention of the Narcotic Drugs and Psychotropic Substances Act or in contravention of any other law for the time being in force, from the ambit of 'drug-offender' as defined in Section 2(i) of KAAPA and therefore from the purview of the terms 'goonda' and 'known-goonda' defined respectively in clauses (j) and (o) of Section 2 of KAAPA. This is the law. The petitioner's plea that in the absence of the word 'possession' in those definition clauses, he cannot be covered by a restraint order under KAAPA has, therefore, been rightly repelled by the Advisory Board."

7. Thereafter, a few days later, another learned Bench delivered judgment in ***Devaki v. State of Kerala [2014 KHC 518];*** and the questions which, it took up for consideration, are available in paragraph 1 thereof, which are as under:

> "The questions involved in this Writ Petition are: (1) Can a drug-offender as defined in Section 2(i) be considered as a goonda under Section 2(j) so as to term him as a "known goonda" under Section 2(o) of the Kerala Anti-Social Activities (Prevention) Act, 2007 (hereinafter referred to as 'the KAAPA'), without proving that he is involved in any illegal activity which is harmful for the maintenance of public order? (2) Whether it is necessary to show that the activities of the person concerned are harmful to the maintenance of public order as mentioned in Section 2(j) of the KAAPA, if it is shown that he has been indulging in any anti-social activity as defined under Section 2(a) of the Act."

8. The learned Bench answered these questions in the following manner:

> "8. The detenu is involved in three cases where offences under the NDPS Act are allegedly committed by him. Sale or distribution of any drug in contravention of the NDPS Act by a person would make him a "drug-offender" as defined in Section 2(i) of the KAAPA. Therefore, he is a "drug-offender". A "drug-offender" would become a "goonda" under Section 2(j) of the KAAPA, going by the inclusive definition. The question is whether it is necessary to show that the activities of the "drug-offender" are harmful for the maintenance of public order. In this context, the definition of "anti-social activity" also assumes importance. The activities of a "drug-offender" would constitute anti-social activity under clause (a) of Section 2. If a person indulges in any anti-social activity, he would be a "goonda" as defined in Section 2(j) of the KAAPA. The expression "which are harmful for the maintenance of the public order" occurring in Section 2(j) of the KAAPA is applicable only to the expression "promotes or abets any illegal activity" and not to the expression "any anti-social activity". The word "or" occurring in between the expression "antisocial activity" and the expression "promotes or abets any illegal activity" would make it clear that the qualification, namely, "harmful for the maintenance of public order" would apply to only the last expression, namely, "promotes or abets any illegal activity" and not to the expression "anti-social activity", which is distinct and separate. Under Section 2(j), any of the following categories of persons would be a "goonda": (a) a person who indulges in any anti-social activity, (b) a person who promotes or abets any illegal activity which are harmful for the maintenance of the public order, (c) a bootlegger, (d) a counterfeiter, (e) a depredator of environment, (f) a digital data and copy right pirate, (g) a drug-offender, (h) a hawala racketeer, (i) a hired ruffian, (j) a rowdy, (k) an immoral traffic offender and (l) a loan shark or a property grabber. Only in respect of the category of persons who promote or abet any illegal

activity, the requirement of the same being "harmful for the maintenance of public order" is required. Indulging in any anti-social activity or being a bootlegger, a counterfeiter, a drug-offender etc. mentioned in Section 2(j) would by itself make him a "goonda", even without proof of his activities being harmful for the maintenance of public order. Going by the definition of "anti-social activity", it would be clear that the same by itself pertains to public order. No further proof of public order factor is required once it is shown that the person concerned is a drug offender or a person coming under any of the categories of persons mentioned in Section 2(j) of the KAAPA as bootlegger, counterfeiter etc.. The public order element would apply to only those illegal activities which are not included in the definition of "anti-social activity". Therefore, we are of the view that it is not necessary to show that the activities of the detenu were harmful for the maintenance of the public order, in order to consider him as a "known goonda".

9. In fact, the ratio in ***Ashraf*** was adopted by another learned Bench in ***Ansar.T.A. v. State of Kerala [(2017) 2 KLT 446],*** to hold *ut infra*:

"8.We take note of the fact that the detaining authority has relied on crimes detailed as 3 to 6 in the chart for arriving at the objective satisfaction that the detenu is a "known goonda". Those crimes are registered under the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the "NDPS Act" for brevity). In all these cases except one, the prosecution allegation is that the petitioner had possessed Ganja. In the solitary case registered under section 27 of the Arms Act, the allegation is that he was found consuming ganja in the open. We are unable to accept the contention of the counsel that the aforesaid crimes cannot be taken into account to characterize the petitioner as a "known goonda". The contention appears to be that possession of ganja is not included in Section 2 (i) of the KAAPA which defines a drug offender and in that view of the matter, he cannot be termed as a goonda. We are unable to agree. Section 2 (i) of the KAAPA clearly defines a "drug offender" as one who illegally cultivates, manufactures, stocks, transports, sells or distributes any drug in contravention of the NDPS Act, 1985 or in contravention of any other law for the time being in force, or who knowingly does anything by abetting or facilitating such activity. Being found in possession of a narcotic drug would definitely attract the vice of Section 2(i) of the

> KAAPA, as the definition is couched in such wide language. Even a person who acts in contravention of any other law relating to Narcotic Drug or a person who abets or facilitates activity in drugs will fall within the ambit of the term "drug offender" as defined. Further, each of the activity in section 2(i) of the KAAPA would take in possession of the Narcotic Substance as well. As held by this Court in Ashraf V Inspector General of Police [2014 (3) KHC 695], the mere absence of the word "possession" in the definition of the term "drug offender" in KAAPA is not decisive to exclude a person found to be in possession of any drug in contravention of the NDPS Act, 1985 or any other law for the time being in force. We are therefore not impressed with the said contention and the same is rejected."

10. As matters stood so, on 4th August 2024, a learned Bench delivered judgment in ***Luciya Francis v. State of Kerala [(2023) 6 KLT 337],*** making a departure from the afore position, relying primarily on the concepts of "public order" and its distinction with "law and order", to declare that a person in possession of a small quantity of drug for personal use cannot be seen to be a threat to public order; and resultantly that the provisions of KAAPA Act cannot be invoked against him. The findings of the court are available in paragraphs 11 and 12, which are reproduced:

> "11. The generalization of the crime and its impact on the society at large though may not be valid but will be relevant when it relates to a particular crime committed by the detenue. The sentences imposed have to be taken into account with reference to the particular nature of the crime committed by the detenue. If the individual cases highlighted do not disclose any relation to the 'public order' contemplated to be secured by such detention order, the detention will become illegal. Mere possession of a narcotic substance cannot be construed as part of stock unless it is manifested with evidence of intention to sell. One might have kept such substances for personal use. The word "stocks" occurring in section 2(i) must be in such a nature kept in possession not for personal use. If any element of commercial motive surfaces, no doubt such "stocks" shall be classified as acts affecting public order.

> The detaining authority is bound to examine the nature of offences in relation to the public order while passing detention orders. The sentence or the nature of the sentence suffered becomes decisive vis-a-vis the public order. Any aberration of an individual in the form of commission or omission may attract penal law which may also result in law and order but not necessarily action need to border on public order.
>
> 12. The preventive detention law cannot be used as a punitive measure and as a substitute of criminal trial. What cannot be achieved through a trial cannot be achieved through preventive detention. It can be invoked only for maintenance of public order when activities of a person become threat or adverse to the society. The detaining authority failed to address the issue keeping the perspective of the objectives to be secured under the KAA(P)A. In such circumstances, we order that the detention order is illegal and the detenue is set at liberty. He shall be released forthwith."

11. It is in the afore backdrop, noticing the apparent conflict, that a learned Division Bench indited an order - styling it as a reference, requesting the matter to be placed before a Full Bench, so as to evaluate which among the conflicting views - namely, that in ***Ansar and Ashraf,*** on the one hand; and that in ***Luciya Francis,*** on the other - is correct in law.

12. We will come back to the observations of the learned Division Bench in a while, after a glance at the statutory sweep of the legal provisions involved and the manner in which it has been noticed in ***Suhana***.

13. Sections 2(j) and 2(o) of the "KAAPA" defines the words 'goonda' and 'known goonda' in the following manner:

2(j) "goonda" means a person who indulges in any anti-social activity or promotes or abets any illegal activity which are harmful for the maintenance of the public order directly or indirectly and includes a bootlegger, a counterfeiter, a depredator of environment, a digital data and copyright pirate, a drug offender, a hawala racketeer, a hired ruffian, rowdy, an immoral traffic offender, a loan shark or a property grabber.

2(o) " known goonda " means a goonda who had been, for acts done within the previous seven years as calculated from the date of the order imposing any restriction or detention under this Act,--

(i) found guilty, by a competent court or authority at least once for an offence within the meaning of the term 'goonda' as defined in clause (j) of section 2; or

(ii) found in any investigation or enquiry by a competent police officer, or other authority or competent court on complaints initiated by persons other than police officers, in two separate instances not forming part of the same transaction, to have committed any act within the meaning of the term 'goonda' as defined in clause (j) of section 2.

Provided that an offence in respect of which a report was filed by a police officer before a lawful authority consequent to the seizure, in the presence of witnesses, of alcohol, spirit, counterfeit notes, sand, forest produce, articles violating copyright, narcotic drugs, psychotropic substances, or currency involved in hawala racketeering may be included for consideration though the report had resulted from an action initiated by a police officer.

Explanation:- An instance of an offence involving a person, which satisfies the conditions specified in the definition of known rowdy referred to in clause (p) of section 2 can also be taken into consideration as an instance, along with other cases, for deciding whether the person is a known goonda or not.

14. The phrase ‘anti-social activity’ is then defined under Section 2(a) of the “KAAPA” as under:

2(a) "anti-social activity" means acting in such manner as to cause or is likely to cause, directly or indirectly, any feeling of insecurity, danger or fear among the general public or any section thereof, or any danger to the safety of individuals, safety of public, public health or the ecological system or any loss or damage to public exchequer or to any public or private property or indulges in any

activities referred in clauses (c), (e), (g), (h), (i), (l), (m),(n),(q) and (s) of this section.

15. Further, a 'drug offender' in the "KAAPA", is defined in Section 2(i) thereof in the manner below:

> 2(i) "drug-offender" means a person who illegally cultivates, manufactures, stocks, transports, sells or distributes any drug in contravention of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Central Act 61 of 1985) or in contravention of any other law for the time being in force, or who knowingly does anything abetting or facilitating any such activity.

16. Turning to the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), Section 8 thereof reads as under:

> 8. Prohibition of certain operations.—No person shall—
>
> (a) cultivate any coca plant or gather any portion of coca plant; or
>
> (b) cultivate the opium poppy or any cannabis plant; or
>
> (c) produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance,
>
> except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder and in a case where any such provision, imposes any requirement by way of licence, permit or authorisation also in accordance with the terms and conditions of such licence, permit or authorisation:
>
> Provided that, and subject to the other provisions of this Act and the rules made thereunder, the prohibition against the cultivation of the cannabis plant for the production of ganja or the production, possession, use, consumption, purchase, sale, transport, warehousing, import inter-State and export inter-State of ganja for any purpose other than medical and scientific purpose shall take effect only from the date which the Central Government may, by notification in the Official Gazette, specify in this behalf:
>
> [Provided further that nothing in this section shall apply to the export of poppy straw for decorative purposes.]

17. The NDPS Act, thereafter, stipulates the punishment for contravention of Section 8, qua various drugs and narcotic substances. One of the prominent features of this Act is that, punishments are provided with reference to the quantity of the drugs and psychotropic substances - as being 'small quantity' and 'commercial quantity', as stipulated under Sections 2(xxiii-a) and 2(viia) thereof. These definitions surely would require a look; and hence are extracted *infra*:

> 2[(xxiiia) "small quantity"Section 2(o), in relation to narcotic drugs and psychotropic substances, means any quantity lesser than the quantity specified by the Central Government by notification in the Official Gazette;]
>
> 2[(viia) "commercial quantity", in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette;

18. In ***Suhana,*** the primary aspect for consideration was if mere possession of 'small quantities' of drugs or psychotropic substances - answering the definition above - would construe a person to be a 'goonda' under the "KAAPA"; consequently, to be declared as a 'known goonda' if multiple violations are detected, thus liable for detention under its statutory scheme.

19. The learned Full Bench, in ***Suhana***, took specific note of the definition of the word 'goonda', to hold that a person can be so declared, only if he indulges in any anti-social activity or promotes any illegal activity, which is harmful to the maintenance of public order; and should also be, inter alia, a 'drug offender'. It concluded that, in such scenario, before a person is declared to be a 'goonda', it has to be established that he has both indulged in anti-social activity/activity harmful to public order and is also, inter alia, a drug offender. In other words, the learned Bench opined that merely because a person indulges in anti-social activity, or acts contrary to public order, he cannot be declared as a 'goonda' unless he also satisfies the attributes of a 'drug offender' among others.

20. The learned Full Bench, thereupon, considered the definition of the word 'drug offender', to further hold, by an interpretative exercise employing the doctrine of *ejusdem generis* that, since it uses the words 'stocks' any drug, in contradistinction to the word 'possess' in Section 8 of the NDPS Act, it can only construed that the quantity of the drug or psychotropic substance must be such as would be amenable for commercial use and not for personal use. The learned Bench then reasoned that, with the word 'possess' being not part of the definition of

'drug offender' under the "KAAPA", mere possession of 'small quantity', without any evidence of its intended use for sale or commercial purpose, would not render a person a 'drug offender'. The learned Full Bench arrived at this opinion on the mentation that the other words used in Section 2(i) of the "KAAPA", to denote the activities of a 'drug offender', namely, 'cultivates', 'manufactures', 'transports', 'sells' or 'distributes', are all intented for sale or commercial use and not for personal consumption; and hence that the accompanying word 'stocks' would only construe such quantity which is not 'small quantity' under the NDPS Act.

21. In its final effect, ***Suhana*** holds the findings in ***Luciya Francis*** to be good law; axiomatically holding those in ***Ansar.T.A.*** to be bad; thus declaring that, merely if a person is found in possession of 'small quantities of drugs', as defined under the NDPS Act, even several times, it would not enable his/her detention under the "KAAPA" either as a 'goonda' or as a 'drug offender'.

22. It is the afore view which was doubted by a learned Division Bench aforementioned, observing that the declarations in ***Suhana*** would cause the very purpose of "KAAPA" redundant. It did so, adverting to the below extracted portions of ***Hira Singh v. Union Of India [(2020) 20***

SCC 272], in which the Hon'ble Supreme Court highlighted the problem of drug addiction as being a crime against society:

> "As per the preamble of NDPS Act, 1985, it is an Act to consolidate and amend the law relating to Narcotic Drugs, to make stringent provisions for the control and regulation of operation relating to Narcotic Drugs and Psychotropic Substances. To provide for forfeiture of the property derived from or use in illicit traffic in Narcotic Drugs and Psychotropic Substance. The Statement of objects and reasons and the preamble of the NDPS Act imply that the Act is required to act as a deterrent and the provisions must be stringent enough to ensure that the same Act as deterrents."

23. The matter, thereupon, was placed by the Hon'ble Chief Justice before another learned Full Bench of this Court, which then issued the following order of reference:

REFERENCE ORDER

> "This matter has been placed before us, consequent to a reference by a learned Division Bench of this Court on 02.06.2025, expressing an opinion that the ratio in Suhana v. State of Kerala (2024 (6) KLT 371) requires a re-look.
>
> 2. We have heard the learned counsel on both sides and have examined the Reference Order of the learned Division Bench intently.
>
> 3. We must say upfront that we are also guided to the opinion that Suhana (supra) requires a re-look, for the very same reasons as have been enumerated by the learned Division Bench in its reference order.
>
> 4. For ease of reading and reference, we extract the most relevant portions of the said order as under:
>
> > "11. Coming to Suhana, it is seen that it is following the dictum in Luciya Francis, it was found therein that the absence of the word 'possession' in the definition of 'drugoffender' as contained in Section 2(i) implies that mere possession of a drug in contravention of the provisions of

the Act would not satisfy the definition 'drug-offender' unless it is accompanied by evidence of intention to sell. We are unable to agree with this view. In general, stocking an article implies having the same in one's possession or control, often with the intention of using it or selling it. In other words, according to us, instead of using the word 'possession', the word 'stocks' is used in the Section to bring the activity of possessing a drug in contravention of the provisions of the Act for personal use as also for commercial use. In fact, it is noted by the Full Bench in Suhana itself that the term 'stocking' encompasses possession whereas 'possession' does not necessarily imply stocking. In other words, the expression 'stocks' used in the Section being a wider expression which takes within its scope 'possession' as well, it cannot be said that the expression 'possession' does not fall within the scope of 'stocks'. The view aforesaid, therefore, requires reconsideration. That apart, in the light of the decision in Devaki, the view taken by the Full Bench in Suhana that in order to satisfy the definition of 'goonda', the offending act must concurrently qualify both 'anti-social activity' and the activity of a 'drug-offender' may not be correct and the said view also requires reconsideration. As already indicated, if an activity does not fall within the scope of the definition 'drug-offender', it could still be an antisocial activity and if it is an anti-social activity, action can be taken against the person committing that activity under the Act, for, what is provided in Section 3(1) of the Act conferring power on the competent authority to detain a 'goonda' under the Act is that such power shall be exercised with a view to prevent such person from committing any anti-social activity.

12. It is observed by the Apex Court in **Hira Singh v. Union of India, (2020) 20 SCC 272** that the problem of drug addicts is international and that it is a crime against the society. In the light of the said observation, possessing a drug in contravention of the provisions of the Act for personal use also, according to us, is an antisocial activity falling within the scope of Section 2(a) of the Act, for the same is an activity which is likely to cause danger to public health. In other words, the view that such an activity is not intended to be brought under the purview of the Act is also, according to us, incorrect and requires reconsideration. Inasmuch as we entertain a serious doubt as to the correctness of the dictum in Suhana, we express our inability to consider the argument advanced by the learned

counsel for the petitioner based on the said decision. Needless to say, the matter needs to be considered by a larger Bench."

5. The controversy in issue, is on the fact that the Kerala Anti-Social Activities (Prevention) Act, 2007 (KAAPA Act), while defining the word "drug-offender" in Section 2(i) thereof, uses the word "stocks", inter alia with others; while, the Narcotic Drugs and Psychotropic Substances Act, 1985, brings it to its fold even possession of drugs to make it an offence.

6. As noticed by the learned Division Bench, the holding of the learned Full Bench in Suhana (supra) is that "stocking" would encompass possession; while "possession" cannot necessarily imply stocking.

7. Certainly, there are two possible views on the question whether "stocking" would construe only large quantities, as has been asserted by the learned counsel for the petitioner, particularly when Suhana (supra) itself says the term "stocking" encompasses possession.

8. Further, as also noticed by the learned Division Bench, the question whether the offending act must concurrently qualify the concepts of "anti-social activity" and "drug-offender" in order to satisfy the definition of "goonda" deserves reconsideration.

9. We are, therefore, of the firm opinion that the issue requires to be re-looked, and to be considered by a Bench of competent strength since we are unable to fully subscribe to the holdings in the said judgment.

10. To reiterate, we find substantial cause in the opinion of the learned Division Bench, which has made the reference order; and are consequently of the view that the opinion in **Suhana** (supra) requires to be appositely re-looked.

The Registry is, therefore, ordered to place this matter before the Hon'ble the Chief Justice for further action as per law."

24. The exigency and significance of the issues before us can ill afford to be not taken with the seriousness it deserves, in the tenebrous scenario of rampant drug addiction and inadequate enforcement -- which we see not merely in our country, but even internationally.

25. Drug abuse, even in small quantities, poses significant challenges to families and society, invariably resulting in catastrophic consequences. Within families, substance abuse can lead to emotional distress, financial strain, and the breakdown of trust and relationships. It has far more dangerous repercussions on the society, contributing to very high crime rates, breakdown in law and order, challenges to public safety, increasing healthcare costs and loss of productivity, among various other deleterious consequences. Individuals with dependence on drugs and other substances face severe constraints in social functioning and create a burden on the society. Drug use and abuse lead to severe psychiatric conditions, disability and even death as a result of accidents or diseases caused or worsened by them and even high rates of suicidality.

26. The costs associated with uncontrolled and unrestrained substance abuse is staggering, creating huge loads on the public healthcare system and consequent economic burden.

27. Even when we view as afore, it is not lost on us that, in many cases, addiction and drug abuse are not merely moral issues, but conditions with significant physiological and psychological ramifications. With continued use, an individual's nervous system becomes conditioned to the substance, leading to withdrawal symptoms, cravings, sleep

disruption, anxiety, depression, violent behavior, and impaired judgment, each of which has a deep societal impact and is not merely an individual concern. Recidivist tendencies – to say, a person repeatedly involving in offences - cannot be regarded as casual, even though the quantity involved in each instance may be small as per the statutory prescription. Rather, such conduct must be viewed as an indication requiring urgent intervention and decisive action.

28. The societal expression of the slightest amount of tolerance to use or abuse of drugs - even in small quantities and for personal use - would be catastrophic, particularly when such substances, seemingly appear to be rather freely available. The approach of the society to this menace requires to be one of zero tolerance and non-negotiability; and even a trace of acceptance would be to push societies into chasms of irreparable consequences.

29. The Hon'ble Supreme Court has spoken several times about the requirement to deal with drug menace with definite force - not merely physical but with sure denunciation. One of the latest of its judgments is ***Ankush Vipan Kapoor v. National Investigation Agency [(2025) 5 SCC C 155],*** wherein the ripple effects of illicit drug trade and drug abuse has been lucidly narrated in paragraph 9:

"The Ripple Effects of Illicit Drug Trade and Drug Abuse:

9. Before parting with these cases, although we are mindful that the present matter concerns cancellation of bail and challenge to the Central Government Orders directing the NIA to investigate certain offences under the provisions of NDPS Act against the petitioner here, we would like to record our earnest disquiet about the proliferation of substance abuse in India.

9.1 The ills of drug abuse seem to be shadowing the length and breadth of our country with the Central and every State Government fighting against the menace of substance abuse. The debilitating impact of drug trade and drug abuse is an immediate and serious concern for India. As the globe grapples with the menace of escalating Substance Use Disorders ("SUD") and an ever accessible drug market, the consequences leave a generational imprint on public health and even national security. Article 47 of the Constitution makes it a duty of the State to regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and in particular the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health. The State has a responsibility to address the root causes of this predicament and develop effective intervention strategies to ensure that India's younger population, which is particularly vulnerable to substance abuse, is protected and saved from such menace. This is particularly because substance abuse is linked to social problems and can contribute to child maltreatment, spousal violence, and even property crime in a family.

9.2 Despite the efforts of the State, an unprecedented scale of coordination and profit seeking has sustained this menace so hardhitting and multifaceted that it causes suffering cutting across age groups, communities, and regions. Worse than suffering and pain, is the endeavour to profit from it and use the proceeds thereof for the committing of other crimes against society and the State such as conspiracy against the State and funding terrorist activities. Profits from drug trafficking are increasingly used for funding terrorism and supporting violence.

9.3 From heroin and synthetic drugs to prescription medication abuse, India is grappling with an expanding drug trade and a rising addiction crisis. The Ministry of Social Justice and Empowerment's 2019 Report ("MoSJE 2019 Report") on 'Magnitude of Substance Use in India' revealed that nearly 2.26 crore people use opioids in India. It was also borne out that substance use exists in all the population groups; however, adult men bear the brunt of substance use disorders. After alcohol, cannabis and opioids are the next most commonly used substances in India. About 2.8% of the population (3.1 crore individuals) reported having used cannabis and its products, of which 1.2% (approximately 1.3 crore persons) was illegal cannabis and its products.

9.4 Alarmingly, the rate of opioid dependence is pacing at an alarming rate, partly due to the ongoing narcotic trade across the country's borders and their consequent ease of availability. According to the MoSJE 2019 Report, there are approximately 77 lakh problem opioid users – the Report defines "problem users" as those using the drug in harmful or dependent pattern in India. More than half of 77 Lakh problem opioid users in India are spread throughout the States of Uttar Pradesh, Punjab, Haryana, Maharashtra, Madhya Pradesh, Delhi, Andhra Pradesh, West Bengal, Rajasthan and Orissa.

9.5 Studies across the globe suggest that easy access to narcotic substances, peer pressure, and mental health challenges particularly in the context of academic pressure and family dysfunction could be significant contributors to this disturbing trend. Addiction at a young age can derail academic, professional and personal aims, leading to long-term socio-economic instability of almost an entire generation. The psychological impact of drug abuse, including depression, anxiety, and violent tendencies, further exacerbates the problem.

9.6 The reasons behind this rise in juvenile addiction are complex. Peer pressure, lack of parental affection, care and guidance, stress from academic pressures and the easy availability of drugs contribute to this alarming trend. In many cases, adolescents resort to drugs as a form of escapism, trying to cope with personal and emotional issues.

9.7 Preventing drug addiction among adolescents requires a concerted effort from multiple stakeholders: parents and siblings, schools and the

community. Given the disturbing rise in adolescent drug use, urgent interventions are needed.

9.8 The MoSJE 2019 Report found that only one among four persons suffering from dependence on illicit drugs had ever received any treatment and only one in twenty persons with illicit drug dependence ever received any in-patient treatment. Given the scale of the issue, there is need for a more comprehensive view of the solutions to the grave problem.

Parents:

9.9 Parents have a crucial role in the prevention of drug abuse among adolescents. Parental awareness, communication, and support are key in mitigating the risk of drug addiction. The first step in the effective preventive leap should start within the household. In our view, the most important yearning of children is love and affection and a sense of security emanating from parents and family. Domestic violence and discord between parents; lack of time being spent by parents with children due to various reasons and compensating the same by pumping pocket money are some of the reasons why young adolescents are being veered towards escapism and substance abuse. Affectionate and friendly conversations between parents and children and a continuous assessment of the direction in which a child is proceeding is a duty which each parent must undertake. This is to build a sense of emotional security around a child for, in our view, an emotionally secure child would not become vulnerable and be lured towards substance abuse as a possible path towards seeking what is lacking in life. No longer should drug abuse be treated as a taboo that parents disengage from. Instead, open discussions about drug use and its ill consequences will provide parents and children a safe space and equip children with the knowledge to help themselves out of peer pressure.

Schools and Colleges:

9.10 Of equal importance is the need for schools and colleges to aid the government programs in educating students about the perils of drug abuse. They must include prevention of drug abuse in their curriculum, focusing on the physical, emotional, and legal consequences of drug abuse. Naturally, all efforts should be backed by scientific evidence and experiential learning. It is an urgent need that the Ministry of Social

Justice and Empowerment's framework of National Action Plan for Drug Demand Reduction and other programs are given a boost and truly imbibed in drug education programs run by schools and colleges in the country.

Local Communities and NGOs:

9.11 Local communities should work with NGOs and law enforcement agencies to create awareness campaigns that address the risks of drug abuse with a special focus on schools and youth centres. Either through awareness campaigns, community outreach or peer education, communities can play a critical role in creating knowledgeable safe space that curb the use of drugs.

NALSA:

9.12 The National Legal Services Authority and State Legal Authorities must devise awareness programs and implement them particularly in vulnerable regions of the States and territories more exposed to drug menace.

NCPCR and NCB:

9.13 There is a need for more synergies along the lines of Joint Action Plan on "Prevention of Drugs and Substance Abuse among Children and Illicit Trafficking" developed by the National Commission for Protection of Child Rights ("NCPCR") in collaboration with Narcotics Control Bureau ("NCB").

To the Youth of India:

9.14 For youngsters just beginning to explore the world, the consumption of drugs in popular culture has propelled the cultural push towards a dangerous lifestyle, one that incorrigibly applauds drugs use as 'cool' and a fashionable display of camaraderie. We implore the youth to take charge of their decisional autonomy and firmly resist peer pressure and desist from emulation of certain personalities who may be indulging in drugs.

9.15 It is sad that vulnerable children turn to drugs as an escapism from emotional distress and academic pressures or due to peer pressure. The unfortunate reality is that victims of substance abuse are not limited to the unfortunate ones who have fallen prey to it but also include their

family and peers. Our approach towards the victims of drug abuse must not be to demonize the victims but to rehabilitate them.

9.16 Deep-rooted in our constitutional philosophy and social fabric is the vision to facilitate every citizen to be a constructive citizen, the best they can be. This vision hopes that the State's Page 84 of 84 obligation is met with a commitment to contribute as constructive citizens to the nation's development. Part and parcel of this constructive citizenship is the positive aspect of uplifting oneself and those around towards a more participative polity and dynamic economy. Inextricably linked to this commitment is also the negative aspect of constructive citizenship, that is, to actively refrain from contributing against the interest of the community and the nation. It is a need of the times that the end consumers of the illicit drug trade exercise community-friendly decision making and refuse to sustain the bottom-line of drug traffickers.

9.17 The arc and web of drug trade cannot be permitted to corrode the shine of the youth of India!"

30. Thereafter, in ***Union of India v. Namdeo Ashruba Nakade [2025 Live Law (SC) 1109]***, the Hon'ble Supreme Court dealt with the pernicious effect of drug abuse on public health and recorded its views in paragraphs 8 and 9 of it, which makes very interesting reading and hence reproduced below:

"8. This Court is of the view that the issue of substance abuse has emerged as a global public health crisis in the twenty-first century, affecting every country worldwide, as drug trafficking and addiction have become pervasive. The United Nations Office on Drugs and Crime (UNODC) reported in its 2025 World Drug Report that "As at 2023, some 316 million people worldwide had used drugs in the past year, representing an increase over the past decade that outpaces population growth, which indicates a higher prevalence of drug use."

> 9. In India, there has been a concerning increase in drug abuse among the youth. Substance abuse not only affects individuals, families, and communities but also undermines various aspects of health including physical, social, political, cultural foundations, and mental well-being. (See: "Bhattacharya S, Menon GS, Garg S, Grover A, Saleem SM, Kushwaha P. The lingering menace of drug abuse among the Indian youth – it's time for action. Indian J Community Med 2025;50:S9-12, published on 17th April, 2025")"

31. Since this Bench is fully aware of the unmistakable and undeniable importance of the issues under reference, we, by our order dated, 11.2.2026, allowed the members of the Bar, not merely the learned counsel appearing in this matter, to make submissions and enlighten us on its contours and nuances, recognising it to be of vital importance in the present milieu.

32. We have heard Sri.M.H.Hanis - learned counsel appearing for the petitioner in the writ petition; Sri.S.Prasun, Smt.Chithra George, Sri.Mathew P George and Sri.Vivek A.V., learned counsel of this Court who made submissions to assist us; and Sri.K.A.Anas - learned Public Prosecutor, appearing for the State of Kerala and other official respondents.

33. Sri.M.H.Hanis, in his submissions, primarily focused on the definition of "drug offender" under the "KAAPA", with specific emphasis on the word "stocks" therein, to argue that, unless the offending person is alleged to have been found in possession of large quantities of a drug or

psychotropic substances, he cannot be brought under its ambit; and, consequently, not to be subjected to the rigour of preventive detention. He contended that, when all the other words used in Section 2, to denote the actions of a "drug offender" – namely, "cultivates", "manufactures", "transports", "sells", "distributes", qua any drug in contravention of the NDPS Act or any other law in force - attract severe punishment, including imprisonment upto ten years, the word "stocks" can, partake only that quantity of the drug or psychotropic substance, the possession of which would also attract similar or analogous punishment. His specific contention was that, since the possession of "small quantities" of drugs - as defined under Section 2(xxiiia) of the NDPS Act - attract punishment of not more than a year of imprisonment and Rs.10,000/- in fine, such an act can only be taken to be a "petty offence"; and hence, as said in ***Suhana***, not liable to preventive detention. He pinned the word "petty", as used in Suhana, and argued that, if such "minor" offences are taken to be on the same gravity as other offences which involve larger penalties, the very purpose of the NDPS Act would be lost and Police officers and Authorities will obtain unbridled power to requisition the detention of any person, including an addict, or one who consumes small quantities of drugs, thus leading to rampant misuse of the provisions.

34. Sri.M.H.Hanis further contended, referring to the legislative debates with respect to "KAAPA" – a copy of which was provided by him across the bar -- that even the legislature did not intend to subject persons who are found in possession of "small quantities" of drugs or psychotropic substances, or addicts of it, to preventive detention, since it would only have the effect of "destroying" them, rather than serving any societal benefit. He prayed that ***Suhana,*** therefore, be approved.

35. Before we note the submissions of Sri.K.A.Anas - the learned Public Prosecutor, we deem it necessary to go through the opinion and suggestions made at the Bar by Sri.S.Prasun, Smt.Chithra P. George, Sri.Vivek.A.V. and Sri.Mathews P George.

36. Sri.Prasun.S, offered submissions based on a written note he made available across the bar, pointing that the Hon'ble Supreme Court has, in ***Amrutlal Manchanda and another [2004 (3) SCC 75],*** declared leaving no doubt, that punitive action and preventive detention are not parallel proceedings; and that the latter is to be resorted when the executive is convinced that it is necessary to prevent an offender from acting in any manner prejudicial to the objects specified by the concerned law. He submitted that the objected rules of conduct cannot be laid down in an exhaustive manner; and that the imperative requirement is the

preservation of the necessities of freedom of democratic society and social order. He cited ***Nenavath Bujji v. State of Telangana [2024 SCC Online SC 367], Khaja Bilal Ahmed v. State of Telangana and other [2020 (13) SCC 632], Mallada K. Sri Ram v. State of Telangana 2022 SCC Online SC 424,*** which he said, brings across the true distinction between law and order on one hand; and public order on the other, both being routed on the degree and extent of the effects of the offending act upon the society. He added that even similar acts, but committed in different contexts and circumstances, might require different reactions; and emphasisingly stated that drug menace in a society cannot be taken lightly, or in a casual manner, since it causes grave amount of insecurity, danger and fear among general public, endangering not only the safety of individuals, but that of public as also public health. He asserted that recidivism in drug related crimes contribute to the normalisation of illicit substance circulation within residential localities, thus making the fear among residents -- particularly women, students and vulnerable sections -- real and palpable; and insisted that narcotic offences have an impact not merely on individual users, but on the societal fabric at large with repeated offences - even those related to small quantity - result in criminal presence in the society, creation of drug hotspots, unsafe neighbourhood, leading to

serious crimes, including sexual offences, economic crimes, money laundering which are all prejudicial not only to the local society but to the nation at large.

37. Sri.Prasun thereafter took us through the literal meaning of the words "possess" and "stock" and cited ***Regina v. Boyesen (1982) AC 768,*** to show that it has held that a person holding drugs on behalf of another may still be in possession, and that "supply" includes distribution. He argued that, when possession in some manner - either joint, physical or constructive - is necessary for onward supply of the drug; and hence that the word "stock" used in "KAAPA", is intended to take in all kinds of possession, whether it be for immediate use or for later use or whether for causing consumption, distribution, or commercial use. He concluded, stating that the holdings in ***Suhana*** – namely that **-** possession of "small quantities" cannot render a person as a "drug offender"; and that to bring such a person with the conspectus of "goonda" he should concurrently qualify the concepts of "anti-social activity" and, inter alia, "drug offender" is incorrect and impermissible.

38. Smt.Chithra P. George relied upon ***Ankush Vipan Kapoor,*** to argue that, even the Supreme Court has taken note of the extremely deleterious consequences of rampant drug abuse and use; and has given a

clarion call to put such down, with necessary force and requisite mechanisms. She then cited ***Elizabeth Monica M. v. State of Kerala and others*** [**WP(Crl.)No.854 of 2023] [2023:KER:62146],** a judgment delivered by a learned Division Bench of this Court - to fortify her above submission, showing us that, the following have been emphatically stated therein, after referring to the definition of the words "anti-social activities" in the "KAAPA":

> "We may immediately refer to the definition of an anti-social activity under Section 2(a) of KAA(P)A, which is extracted here below:-
> "2. Definitions.- In this Act, unless the context otherwise requires,-
> (a) "anti-social activity" means acting in such manner as to cause or is likely to cause, directly or indirectly, any feeling of insecurity, danger or fear among the general public or any section thereof, or any danger to the safety of individuals, safety of public, public health or the ecological system or any loss or damage to public exchequer or to any public or private property or indulges in any activities referred in clauses (c), (e), (g), (h), (i), (1), (m),(n), (q), [(qb)] and (s) of this section;
> (aa) xxx xxx
> (b) xxx xxx" (underlined by us for emphasis)
>
> The above extracted definition, more particularly the underlined portion thereof, would amplify that danger to the safety of individuals would also qualify as an 'anti-social activity' within the definition of KAA(P)A, wherefore, the strict necessity of an activity which will invariably affect the general public, their safety, health, etc. cannot be read into as an inextricable concomitant in the definition of 'anti-social activity' under Section 2(a) of KAA(P)A. We, therefore, reject the said contention as well."

39. Smt.Chithra P. George, finally read out from the "UN Single Convention on Narcotic Drugs, 1961", to show that, even as per it, the word "stock" does not mean large quantities, but even drugs or

psychotropic substances used for personal consumption or in small quantities.

40. Sri.Mathews P George - learned counsel, had a totally different spin to offer on the issues, saying that the "KAAPA" is unconstitutional, since it suffers from the vice of repugnancy, under Article 254 of the Constitution of India, because it conflicts with the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (for short, 'the PITNDPS Act') - which is a statute enacted by the Indian Parliament. His argument was that, both statutes substantially cover the same area – namely, preventive detention of persons involved in narcotic offences; and hence, "KAAPA", to the extent to which it provides for preventive detention of "drug offenders", is repugnant to the PITNDPS Act, within the sweep of Section 254 of the Constitution of India.

41. Sri.Vivek. A.V., began his submissions, explaining that the NDPS Act provides a clear distinction between drug traffickers and addicts; and that this is necessary in order to ensure that the latter category are subjected to reformation and led out of their addiction through the path of rehabilitation. He opined that, if the offences involving small quantity of drugs are treated on par with that involving intermediary or large quantities; and if all such offenders are then brought within the rigour of

the "KAAPA", it would have the effect of addicts and persons who consume drugs, to be subjected to inequitable prejudice, which would only go to deracinate them, since addiction is not solely a legal issue, but a physiological and psychological condition. He argued that a reformative approach to the addicts, and the persons who consume drugs and psychotropic substances, is the order of the day, having obtained international approval; and hence that, if such persons are also brought within the fold of "KAAPA", the very intent of rehabilitation or reformation under it, would be wholly lost.

42. Sri.Vivek.A.V., then referred to several preventive detention statutes, including: (i) the Telangana Prevention of Dangerous Activities of Boot-leggers, Dacoits, Drug-Offenders, Immoral Traffic Offenders, Land-Grabbers, Spurious Seed Offenders, Insecticide Offenders, Fertilizer Offenders, Food Adulteration Offenders, Fake Document Offenders, Scheduled Commodities Offenders, Forest Offenders, Gaming Offenders, Sexual Offenders, Explosive Substances Offenders, Arms Offenders, Cyber Crime Offenders and White Collar or Financial Offenders Act, 1986; (ii) the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Slum Granners Act. 1982; (iii) The Karnataka Prevention of Dangerous

Activities of Bootleggers, Drug Offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum Grabblers Act, 1985; (iv) The Gujarat Prevention of Anti-social Activities Act, 1985; and (v) Rajasthan Prevention of Anti-social Activities Act, 2006, to opine that the word "stocks" can only be considered to be a quantity meant for future sale or commercial activity, and not small quantity intended for personal use. After making such submissions, Sri.Vivek.A.V. then made an additional statement -- which we found upfront to be rather untenable -- that the choice of an addict, or a person consuming drugs, to do so, fully aware of the consequences on him/her, would have to be seen as part of the freedom of choice guaranteed under the Constitutional scheme.

43. Sri.K.A.Anas - learned Public Prosecutor controverted every argument in support of ***Suhana,*** vehemently contending that, it has declared the law incorrectly and contrary to the intent, requirements and purposes of "KAAPA". He submitted that the "KAAPA" was brought into force with the specific objective to provide for the effective prevention and control of certain kinds of anti-social activities in Kerala; and that, it is to such purpose, that the word "goonda" has been defined to be a person who indulges in any anti-social activities; or one who promotes or abets any illegal activity directly or indirectly harmful for the

maintenance of public order. He pointed out that, as per Section 2(j) of "KAAPA", "goonda" has been further inclusively defined to mean persons who are, inter alia, "drug offenders"; asserting that, this is to ensure that the specified kind of anti-social activities therein are strongly prevented and controlled.

44. Sri.K.A.Anas, thereupon, alluded to Section 2(a) of "KAAPA", which, defines "anti-social activity" and predicated that it refers to any action from a person which will cause, or is likely to cause, directly or indirectly, any feeling of insecurity, danger or fear among the general public, or any section thereof; or danger to the safety of individuals, safety of public, public health or the ecological system or loss or damage to the exchequer or to any public or private property; further showing us that, those activities which are defined under Sections 2(c), (e), (g), (h), (i), (l), (m), (n), (q), (qb), and (s) of Section 2 of the said Act are specified to be within the scope of "anti-social activity. He emphasised that, by bringing in these classes inclusively to the definition of "anti-social activity", the legislature has vocally declared that such activities, and those which are analogous, fall within its net, which require to be prevented and controlled.

45. Sri.Anas further went on to argue that ***Suhana*** has, unfortunately, not understood the perspective clearly while declaring that, to make a person "goonda", he must indulge in anti-social activities or promote an illegal activity contrary to public order; and must also be, inter alia, a "drug offender". He contended that Section 2(j) of "KAAPA", in any manner of being read, does not concede that the two limbs must be read conjointly; but, on the contrary, provides an inclusive definition of the word "goonda", to mean persons who fall within the category of, inter alia, "drug offenders".

46. The learned Public Prosecutor then moved on to his last limb of argument, contending that the word "stocks" in Section 2(i) of "KAAPA" construes possession in every form - be that in small quantity, intermediate quantity, large quantity, or for sale or for personal consumption; and that it is, therefore, that the word "possess", as available in Section 8 of the NDPS Act, has been not used therein. He predicated that the Legislative Debates produced on record by some of the learned counsel would bear testimony to this; and reiterated that the findings in ***Suhana,*** to the contrary, is forensically incorrect.

47. Now that the unexpendable facts and the submissions of the learned counsel are on board, we proceed to evaluate the issues referred to us for our evaluation and opinion.

48. The central and constitutive issue we are called upon to consider, going by the reference of the learned Full Bench and the doubt raised by the learned Division Bench, is, if a person is found and apprehended more than once, or repeatedly, in possession of drugs and psychotropic substances – even to such extent which falls within the definition of 'small quantity' under the NDPS Act – would he/she be liable to be declared as a 'goonda' under the "KAAPA"; and consequently, subjected to the rigour of preventive detention, if the statutory and requisite criteria are found attracted. All the other aspects and issues projected before us, are corollary and intended either to justify or to oppose the afore singular issue.

49. There is hardly any doubt – either from the pleadings, or in the arguments of the parties – that the Legislature of Kerala was fully competent to legislate the "KAAPA" since the requisites of 'security of a State', 'maintenance of public order' and 'maintenance of supplies and services essential to a community; fall within Entry 3 of List III of the concurrent list, in the 7th Schedule to the Constitution of India. Therefore,

even under the 'Pith and Substance' principles, there cannot be a contention that the Legislature of Kerala could not have brought out the "KAAPA".

50. In the same vein, there is also no challenge that "KAAPA" is in any manner unconstitutional – at least in the reference before us – or that it does not conform to the strict requirements of Article 22(5) of the Constitution of India.

51. The controversy in question relates essentially to persons who violate, or are suspected to violate, the NDPS Act more than once, or repeatedly, by being in possession of the prohibited drugs and psychotropic substances. When it comes to 'large quantities' or even 'intermediate quantities' – as falling within the sweep of NDPS Act, that is no cavil because, it is accepted without contest that such persons would certainly come within the rigour of 'goonda'.

52. It is *qua* 'small quantities' of the prohibited drugs and psychotropic substances which fall within the umbra of Section 2 (xxiii a) of the NDPS Act, that the issues have all arisen.

53. As seen *ut supra*, the focal argument of Sri.M.H.Hanis – which is supported substantially by the submissions of Sri.Vivek – is that, when the NDPS Act has consciously thought of a difference in the manner in

which possession in 'small quantities' and that of higher quantities are to be dealt with and punished, such a distinction should carry itself into the "KAAPA" also. The justification offered in support of this is that, persons who are apprehended with 'small quantities' are either invariably addicts or casual consumers; and hence, if they are also to be dealt as 'goondas' under the "KAAPA" and subjected to preventive detention, the end result would be to impede their reformation and rehabilitation, thus to deracinate them, rather than obtain a valid societal requirement.

54. When one is to answer the above assertion, it must be first taken to mind, for what purpose the "KAAPA" has been enacted.

55. As in the case of every statute providing for preventive detention, authorised under Section 22(5) of the Constitution of India, the "KAAPA" also seeks to prevent and control certain kinds of anti-social activities in the State of Kerala. The words '**certain kinds of anti-social activities**' is of seminal importance in the valuation of the aspects we are presented with.

56. A run through the statement of objects and reasons of "KAAPA" render it inescapable that, it was found necessary because, '*the existing laws are inadequate in preventing and controlling the organized criminal activity*' (sic); and hence that it is enacted to provide adequate

intervention to prevent antisocial activities of various types prejudicial to the maintenance of public order, with particular emphasis on the larger interests of society.

57. It is in such perspective that the "KAAPA" defines anti-social activity – the definition of which has been extracted in paragraph 14 of this judgment – to mean acting in such manner:

> (a) so as to cause or likely to cause, directly or indirectly, any feeling of insecurity, danger or fear among the general public or any section thereof or;
>
> (b) to cause danger to the safety of individuals, safety of public, public health or the ecological system or;
>
> (c) causing loss or damage to public exchequer or to any private or public property.

58. It then includes activities as are referred in Clauses (c), (e), (g), (h), (i), (l), (m), (n), (q), (qb), and (s) of the said Section; namely that of 'bootlegger', 'counterfeiter', 'depredator of environment', 'digital data and copyright pirate', 'drug offender', 'hawala racketeer', 'hired ruffian', 'immoral traffic offender', 'loan shark', 'money chain offender' and 'property grabber'.

59. The purpose of the "KAAPA" becomes crystally manifest from the afore definition, namely, that it is designed to prevent, *inter alia*,

'antisocial activities', which fall within the sweep of its definition under Section 2(a) thereof.

60. We will return to this in a while, after the definition of the word 'goonda' is also analyzed.

61. The "KAAPA" defines the word 'goonda' under Section 2(j) thereof – the definition having been extracted in para 13 earlier – to mean a person:

> a) who indulges in antisocial activity;
>
> b) or promotes or abets any illegal activity which is harmful for the maintenance of the public order, directly or indirectly; and
>
> c) includes ones engaged in the aforementioned activities, namely from 'bootlegger' to 'property grabber', within its fold.

62. Since the other activities, as included in the afore two sections, are not relevant to us, but only 'drug offenders', it enjoins us to examine it carefully; and when one does so, it becomes limpid that it is defined to mean a person:

> a) who illegally cultivates, manufactures, stocks, transports, sells or distributes any drug in contravention of the NDPS Act, or in violation of any other law for the time being in force or;
>
> b) who knowingly does anything abetting or facilitating any such activity.

63. The scheme of the "KAAPA" thus describes a "goonda" to be a person, who either indulges in any anti-social activity; or promotes or abets any illegal activities which are harmful to the maintenance of public order, directly or indirectly; and includes all those categories from bootlegger to property grabber, as mentioned above.

64. It is perspicuous that "goonda" draws into its clasp, not only the categories of offenders from "bootlegger" to "property grabber"; but also anyone who indulges in "any anti-social activities"; apart from promoting an illegal activity harmful to the maintenance of public order.

65. In this perspective, the word "anti-social activity" in Section 2(a) of the "KAAPA" assumes great importance, particularly, when we evaluate the correctness of the holdings in ***Suhana.***

66. As statutorily defined, "anti-social activity" - for the purpose of the "KAAPA", takes in any action which causes, or is likely to cause – directly or indirectly, any feeling of insecurity, danger or fear among the general public or any of the section thereof; and then expands its ambit, by providing that actions which can cause or likely to cause danger to the safety of individuals, safety to public, public health, or ecological system; or actions to cause or likely to cause loss or damage to

public, etc.; or to any public or private property, would fall within its umbra. As already said above and merely to reiterate, it then inclusively brings in persons who indulges in the activities of "bootlegger" to "property grabber", as mentioned supra.

67. Interpreting the afore provisions, ***Suhana*** has declared that, for a person to be declared as a "goonda", he must indulge in anti-social activities as are harmful to the maintenance of public order; and should also qualify, *inter alia*, as a "drug offender".

68. In ***Devaki*****,** as early as in the year 2014, a learned Division Bench evaluated the definition of "goonda" under the "KAAPA", to hold that a person does not have to qualify concurrently under the two limbs of the definition of "goonda", under Section 2(j) thereof, to be so declared. We are persuaded to find in favour of this opinion, rather than that recorded in ***Suhana***, for the reasons we shall presently state.

69. Our view, as afore, is underpinned on the statutory definition of "goonda" itself, which has to be read and interpreted literally, since it concedes to no ambiguity. The definition luculently states that a "goonda" means a person who indulges in any anti-social activity, or promotes an illegal activity harmful to the maintenance of public order; then to say that

it includes various categories of offenders from “bootleggers” to “property grabbers”, as mentioned above.

70. It is beyond doubt that Section 2(j) of “KAAPA” provides an inclusive definition to the word “goonda”; and as it is well known and established, such a definition only expands the meaning of the term beyond its ordinary definition, to include specific, additional, or related concepts. This broadens the definition, to cover terms which may otherwise not be covered; but does not limit the term to only what is listed; or in other words, is not exhaustive. There can be no contest, when one reads Section 2(j) of the “KAAPA” carefully, that it is a classic case of employing an inclusive definition, by first providing the activities as are intended to be covered; and then stipulated to include specific types of offenders within its fold.

71. When the Section ineluctably says that a “goonda” includes a “bootlegger”, “counterfeiter”, “depredator of environment”, “digital data and copyright pirate”, “drug offender”, “hawala racketeer”, “hired ruffian”, “rowdy”, “immoral traffic offender”, “loan shark” or “property grabber”, it is explicit that such categories are included to expand the definition of the said word provided in the first limb of Section 2(j) of the

"KAAPA" - namely, to be a person who indulges in any anti-social activity; or one who promotes or attempts any illegal activity which is harmful to the maintenance of public order, directly or indirectly.

72. Obviously, therefore, the conclusion in ***Suhana***, that only a person who concurrently qualifies the two limbs of statutory definition of "goonda" will come within it, can never obtain legal or forensic imprimatur.

73. That said, ***Suhana*** further holds that an "anti-social activity" committed by a person, would bring him within the purlieus of "goonda", only if the offending action is found harmful to the maintenance of public order, directly or indirectly.

74. ***Suhana*** has discussed the concept of public order at great length, holding that not every infraction of law or order, can be construed as a violation of public order; and that the latter is synonymous with public safety and tranquility. The learned Full Bench has then gone on to say that, every law and order infraction or disorder cannot be taken to be a threat to public order; and ought to be dealt with under the powers of the ordinary laws and statues, without invoking the rigour of preventive detention. We see that, the learned Bench has relied upon ***Ram Manohar***

Lohia v. State of Bihar [AIR 1966 SC 740] to conclude that "law and order" is not the same as "public order", and that the latter is much more a constricted term - which means actions to lead to a disturbance of the community, or the state, at large and not merely those which are offences, as defined by the various other statues. It emphasized the test -- to decide the difference between "law and order" and "public order" -- to be whether the complained of action merely affects an individual or individuals, but leaving the tranquility of the society undisturbed.

75. One can surely have no difference of opinion on what "public order" means and we fully affirm the views in ***Suhana*** on it; but, it is on the question if, only an act which is found harmful to "public order" can alone render a person a "goonda", which is contentious qua this reference.

76. As already seen, the word "goonda" has been defined to be one that indulges in any anti-social activity; but then also includes a person who promotes or abets any illegal activities, which are harmful to the maintenance of public order. This distinction has been noticed by the Division Bench in ***Devaki*** and we are in full approval of the same, because, the first limb of the definition includes two distinct types of

activities, namely; (a) anti-social activity; and (b) promotion or abetment of an illegal activity, leading to threat of the maintenance of public order.

77. No doubt, when the word "antisocial activity" and "maintenance of the public order" are used one after the other in the definition of "goonda", it may be open to a doubt whether it is only such types of anti-social activity, which are serious enough to threaten the maintenance of public order, which would have to be taken into account.

78. This becomes important, because, in ***Suhana*****,** as noticed above, the affirmative opinion is that only actions which are harmful to the maintenance of public order would come within the rigour of "goonda".

79. At first blush, the aforementioned may seem compelling. However, the definition given to the word "anti-social activity" surely persuade a different perspective. This is because, as said many times before, an "anti-social activity" is defined to be one that causes, or is likely to cause, a feeling of insecurity, danger or fear among the general public, or any section thereof – which may perhaps tend to the notion of public order; but then, includes actions which causes, or is likely to cause, danger to the safety of individual, safety of public, and public health,

along with other actions. At this stage, it is evident that the activities brought under the ambit of "anti-social activities", lean more to protect the safety of even individuals, or sections thereof, and to public health. This impression is fortified, with the definition including the activities of the specified categories of offenders from "bootleggers to "property grabbers", which takes in "drug offenders" as well. This definition, indubitably, is also an inclusive definition, as in the case of the word "goonda"; and again, certain specified types of violators or offenders are included within its scope, to expand its effect and purpose. This inclusion renders the position clear that it is not activities that threaten public order alone which are targeted, but also those that causes, or is likely to cause, feelings of insecurity, danger, or fear even to sections of people or individuals, because the actions of the offenders specified, namely; "bootlegger", "counterfeiter", "depredator of environment", "drug offender", "hawala racketeer", "hired ruffian", "immoral traffic offender", "loan shark", "money chain offender", or "property grabber", can never be taken to be one that creates a threat to the maintenance of public order, as defined in ***Ram Manohar Lohia.***

80. We cannot, therefore, subscribe to the opinion in ***Suhana*** that, for a person to be declared a "goonda," the "anti-social activity" imputed against him must always be of such a kind as to be harmful to the maintenance of public order.

81. Now, the question arises whether the actions of a person found in possession of "small quantity" of drugs and psychotropic substances, as defined in NDPS Act, would construe to be an "anti-social activity".

82. Interestingly, Sri M.H. Hanis - learned counsel for the petitioner, accepted that repeated offences of any kind under the NDPS Act could constitute an anti-social activity; but, still argued, as recorded above, that only actions with "graver effects" could be reckoned for the purpose of attracting the rigour of "KAAPA".

83. Luculently, the proximal cause for this reference is the fact that the NDPS Act defines "small quantity" and then prescribes a lesser punishment for it. We would hazard a guess -- without affirmatively stating so -- that the said Act does so, perhaps to draw a distinction between an addict or a mere consumer, from someone who holds the

drugs or substances for the purpose of distribution, sale, or commercial use.

84. Even then, it can never be lost sight of – and it could be to peril, if we were to do so – that the material we are talking about, namely, drugs and psychotropic substances, are prohibited ones, which the law does not permit anyone to hold under any circumstances whatsoever. There cannot be any justification for the possession of any drug or psychotropic substance - be that in any quantity; and the NDPS Act causes a blanket prohibition, providing punishment for every act in contravention.

85. That said, it is pertinent that the issue before us involves not the apprehension of a person for the first time with "small quantity" of drugs; but repeated violations, namely, recidivistic tendencies.

86. We must, at this time, allude to the argument of Sri.M.H.Hanis, that an addict or a consumer of drugs or psychotropic substances will not "always cause" feeling of insecurity, danger or fear among the public or section thereof. One can only view this submission to be wholly speculative and highly conjectural; because, when the article in question is prohibited and when a person is still found in possession of the same, it can concede only to a facile argument that this would not cause a feeling

of insecurity or danger or fear with the community, or to sections of people. This is more so, when it is well documented that the behaviour of addicts, or repeated consumers of drugs and psychotropic substances, is so unpredictable and incapable of any prior foretelling; which is then exacerbated by the rising crimes and burden on public health on account of the mounting costs and logistics involved. It would rather be puerile to even suggest that such actions would cause no insecurity, danger or fear among the people or sections thereof.

87. To have a person repeatedly offending the NDPS Act and found in possession of drugs and psychotropic substances - *albeit* in small quantities - would surely not be countenanced by any civilised society; and since the demeanour and comportment of such persons remain without any predictability, the feeling of insecurity, danger and fear among law abiding citizens is certain and undeniable. Add to this, when the word "anti-social activity" is defined under Section 2(a) of the "KAAPA" to even include actions that would pose a danger to the safety of individuals, along with the safety of the public, the purpose behind the enactment of the said Act becomes glaring and beyond doubt.

88. It is at this juncture that the thrust of the argument of Sri.M.H.Hanis, edificed on the definition of "drug offender" under Section 2(i) of the "KAAPA" comes to the fore. The underpinning of his assertions is that, since the word "possess" is not used in the said definition -- though mere possession of a prohibited drug or psychotropic substance has been specified to be a violation under the NDPS Act vide Section 8 thereof -- it can only lead to the conclusion that the possession of "small quantities" cannot render a person a "drug offender", particularly because the substitute word used in the provision is "stocks". The lion's share of the arguments of Sri.M.H.Hanis before us was centered on the definition of the word "stocks", with him contending that the said word can only be construed to be "hoarding" which, in turn, means keep in large quantities.

89. It is further argued by Sri M.H. Hanis that the other expressions used to define a "drug offender" under Section 2(i) of the "KAAPA" — namely, *cultivates, manufactures, transports, sells,* or *distributes* — attract severe penalties, including imprisonment exceeding one year and fine under the NDPS Act; and axiomatically that the act of "stocking", as

provided therein, must also refer to quantities of such magnitude as would attract similar or analogous punishment.

90. Interestingly, ***Suhana*** declares that a "petty drug offence" cannot render a person as a "drug offender" and, consequently, to be declared as "goonda"; and it is clear that it is the afore argument which has been found favourable with therein.

91. We are afraid that we can offer no support to the above view because, it is impossible to countenance that any drug offence can be "petty". We are firm in our minds that each such offence is and must be treated as a serious one -- being an offence against the society at large, since it corrodes persons of their worthiness and capacity and causes burden on their near ones and family, if not on the community as a whole.

92. Contextually, we think that the word "petty" has been used in ***Suhana*** because, invariably, the first offence of possession of small quantities of drugs or psychotropic substances are dealt with by Courts, imposing a fine alone. The prescribed punishment for such an offence, qua various categories of drugs or psychotropic substances, as governed by Sections 15 to 22 of the NDPS Act, is imprisonment upto one year, along with fine of upto Rs.10,000/-. However, when it comes to repeat

offences, even the second one, the NDPS Act provides for a much higher punishment, involving mandatory imprisonment for upto $1^{1}/_{2}$ years, through Section 31(1) thereof, which is as under:

> "Section 31 - Enhanced punishment for offences after previous conviction
>
> [(1) If any person who has been convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, any of the offences punishable under this Act is subsequently convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, an offence punishable under this Act with the same amount of punishment shall be punished for the second and every subsequent offence with rigorous imprisonment for a term which may extend to
>
> [2][one and one-half times of the maximum term] of imprisonment and also be liable to fine which shall extend to [one and one-half times of the maximum amount] of fine.
>
> (2) Where the person referred to in sub-section (1) is liable to be punished with a minimum term of imprisonment and to a minimum amount of fine, the minimum punishment for such person shall be [one and one-half times of the maximum term] of imprisonment and [one and one-half times of the maximum amount] of fine:
>
> Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding the fine for which a person is liable."

93. When it is so viewed, the argument of Sri.M.H.Hanis that "drug offender" would take in only those activities that invite a punishment of over one year would have no legs to stand on because, the reference we are concerned with, deals with repeated offences, which would then fall within the mischief of Section 31 of NDPS Act afore extracted. In such

event, the punishment would extend to one and a half years' of rigorous imprisonment, along with a fine of Rs.20,000/-; and from such stand point, we fail to fathom how such an offence could be treated as a "petty drug offence", much less as a petty offence at all.

94. Having said so, for the sake of clarity, we must advert to Section 229 (2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'the BNSS), which is *pari materia* to Section 206(2) of Cr.P.C., which defines "petty offence" to be one for which the punishment is limited to only fine. Admittedly, and without any contest, every punishment under the NDPS Act – be that involving "small quantity" or otherwise, attracts a term of imprisonment – whether or not it is handed out by courts at the first instance. As far as repeated offences are concerned, Section 31 thereof, makes imposition of imprisonment imperative.

95. Axiomatically, from no angle of inspection, can the offences under the NDPS Act be termed to be "petty"; and, in any event, a drug offence can never be treated as being a petty one, it militating against social order and security.

96. The holdings in ***Suhana,*** therefore, that "petty drug offences" -- to mean offences involving "small quantities" of drugs -- cannot bring a

person within the hold of a "drug offender", can never be approved or found legally correct.

97. Now, to the concept of "stocks", as used to define a "drug offender", the argument is that it should denote that quantity which is substantial and meant for commercial use. This is what ***Suhana*** has also held.

98. This opinion has been apparently entered, interpreting the word "stock" both semantically and in conjunction with the other words used in the definition. ***Suhana*** opines that the words "cultivates," "manufactures," "transports," "sells," and "distributes" – used in Section 2(i) of the "KAAPA" – construe a commercial element; and hence that the word "stock" also must be seen in such light. However, we are unable to comprehend how the words "cultivates", "manufactures" and "transports" can be attenuatedly seen to be only for commercial use, when it is possible to do so even for personal use. Pertinently, under Sections 15, 16 and 20 of the NDPS Act, the cultivation of even a single plant would attract severe punishment, without distinction of it being for commercial use or personal use. It, therefore, wholly escapes us how it can be held that a

person cultivates, manufactures or transports drugs only for commercial use or for sale, and not for personal consumption.

99. In ***Suhana***, the interpretational tool of *noscitur a sociis* was employed to conclude that the word "stocks" would only be that quantity which is amenable to be suspected to be kept for commercial use or sale. However, going in line with what we have said above, the same doctrine would render "stocks" also to mean the holding of drugs or psychotropic substances for personal consumption because, solely to reiterate, the words "cultivates", "manufactures" and "transports" can never be confined to be for a particular purpose - be that commercial use or personal consumption; and can be for any of them, if not for other myriad purposes.

100. *Noscitur a sociis* is a maxim, which defines a term by its associates, under the principle that a word is known by the company it keeps. However, this doctrine requires it to be employed only when the meaning of the word is ambiguous, which then makes it incumbent for its meaning to be determined by the surrounding words or phrases. As far as the definition of "drug offender" in "KAAPA" is concerned, even when the principle of *Noscitur a sociis* is applied, the word "stocks" would

derive its meaning from the words "cultivates"," manufactures" and "transports", which can be for both personal consumption; or for sale and commercial exploitation.

101. The final argument qua the word "stocks" is that its synonym would concede only to "hoarding" and keeping in large quantities. We cannot accede to this either because, "stocks" in the "KAAPA" is not used in the same meaning as 'stock-in-trade', as is now tried to be urged before us by Sri.M.H.Hanis. It can only construe the normal semantic meaning, namely, 'to keep for a future time'; and which, therefore, would have no reference to the quantity.

102. We have gone through the Legislative debates with respect to the "KAAPA", as has been provided to us by Sri.M.H.Hanis and Smt.Chithra P. George; and undoubtedly, the honourable members did not want the word "possess" to be used to define "drug offender", but only the word "stocks". We are firm in our opinion that this was for a very specific purpose, namely, that, if the word "possess" had been used to define a "drug offender", then the argument of its quantity, on account of the distinction between small quantity and others under the NDPS Act, may have to be pressed into service. The Legislature, therefore, in our

firm view, decided to use the word “stock” and not “possess”, so as to avoid any interpretation that would be contrary to the specific objectives of the “KAAPA”, namely to prevent and control the specified kinds of activities, including drug offences - whatever kind it may be.

103. In ***Suhana***, the word “stocking” appears to have been accepted as holding a drug or psychotropic substance in large quantities, which is manifest from it declaring that, "the term ‘stocking’ encompasses possession, whereas possession does not necessarily imply stocking”. Going by lexicographic definitions, “stocking” is the keeping of an article for use in future, but without reference to quantity or even quality. Every time an article is stocked, there is possession; and the concept of stocking is much wider than mere possession. In many ways, stocking and possession are the same because, there cannot be one without the other; but when possession of an article is held for future use – whatever be the nature of such goods – it infers “stocking” in its semantic sense. In fact, the Legislative debates conclusively show that every violation of the NDPS Act was intended to be brought within the net of “anti-social activity”, as defined under the “KAAPA” and to subject the offender to its full warrant, especially for repeated offences.

104. This being our view, the holding in ***Suhana*** that only commercially driven drug activities, fall within the ambit of "drug offender", cannot be approved.

105. When we find against ***Suhana*** as afore, it is not that we are oblivious to the impact that preventive detention can have, or of the constitutional safeguards against it, except in statutorily specified situations. As is well recognised, in normal circumstances, offences are to be controlled by the statutes enacted for its punishment; and that it is only in the grave circumstances, which involve danger or fear to the society, that preventive detention is to be normally used. It is neither lost to us that the concept of "law and order" is wider than the concept of "public order"; and we advert to the illustrative three concentric circles propounded by ***Ram Manohar Lohia (supra),*** with the smaller circle representing the "security of the State", the next circle representing "public order" and the largest circle representing "law and order". We travel in line with ***Suhana,*** that not all violations of "law and order" can create a threat to "public order"; and we have no disagreement with that proposition in an abstract sense. **It is just that, in the "KAAPA", it is not merely "public order" that has been emphasised, but also "anti-**

social activity" of the nature enumerated; and this is where the said Act has a definitive impact.

106. Undoubtedly, punishment and preventive detention are two different mechanisms. The pivotal aim of any penal law, under the various theories of punishment -- be that the retributive, reformative, preventive, deterrent, or expiatory theories -- is not merely to punish, but to make the threat of punishment widely known, thereby discouraging crime. Thinkers like Jeremy Bentham, John Stuart Mill, and John Austin supported the preventive theory, rather than the retributive approach, emphasizing prevention by restraining offenders and curbing their harmful activities. While, on the other hand, as declared in ***Haradhan Saha v. the State of West Bengal [1974 AIR 2154]***, preventive detention is precautionary in nature, exercised in reasonable anticipation. It may or may not relate to a specific offence, and is not a parallel proceeding; it does not overlap with prosecution, though it may rely upon certain facts for which the prosecution has been, or may be, launched; and such order can be made even before prosecution. Ineluctably and to restate, an order of preventive detention can be made with or without prosecution, either in anticipation of, or after discharge or even acquittal; while, the pendency

of prosecution is no bar for issuance of such an order. As lucidly said in ***Borjahan Gorey v. State of West Bengal [(1972) 2 SCC 550],*** *"the fields of these two jurisdictions are not co-extensive, nor are they alternative";* and that *"this jurisdiction (preventive detention) is sometimes called the jurisdiction of suspicion founded on past incidents".*

107. All the afore said, there is a very compelling angle in this matter, which appears to have missed the learned counsel who has made submissions before us, as also in ***Suhana***.

108. Under the "KAAPA", after an offender is declared to be a 'goonda', he would be amenable to preventive detention only if he is then determined to be a 'known goonda' under Section 2(o) thereof. The definition of this has already been provided in paragraph no.13 of this judgment; and it is therefrom limpid that a first offence never leads to such declaration, but only recidivistic tendencies, after the first violation either leads to a finding of guilt by a competent court; or if two different instances, not part of the same transaction, are found proved in investigation or enquiry by a competent police officer, authority or competent court. Interestingly, the punishment for the second offence, as discussed above, even for possession of a "small quantity", under Section

31 of the "KAAPA Act", is mandatory imprisonment upto 1½ years with fine upto Rs.20,000/- (being 1 ½ times of the offence of the punishment that would have been attracted for the first offence).

109. In contradistinction, the "KAAPA" provides for preventive detention for a period upto six months in the first instance; and for a period of one year for the subsequent. In other words, the duration of detention under the "KAAPA" is, in fact, lesser than the duration of punishment for a second offence under the NDPS Act. The only difference is that, under the NDPS Act, the second offence will have to be proved and a conviction secured, before the offender to be handed over the punishment; while, under the "KAAPA", for the purpose of averting any further statutorily defined "anti-social activity", the person found even in possession of "small quantities" can be subjected to preventive detention, but subject to the safeguards therein.

110. It is thus apodictic that even the NDPS Act does not view recidivistic tendencies of drug offences lightly, but provides for strict punishment – involving mandatory imprisonment and fine – as noticed above. The "KAAPA" also comes into play only when such tendencies are noticed and not with respect to the first offence.

111. Undoubtedly, the concepts and requirements of rehabilitation and de-addiction are vitally important; but, this does not mean that there ought to be any kind of acceptance for the use of drugs or psychotropic substances. The submissions made before us by Sri.M.H.Hanis, supported by Sri.Vivek.A.V., that addicts and casual users of drugs must be treated differently, cannot be accepted within the strict contours of law; though, the desideratum of proper rehabilitation of such persons, using scientific method and temper, surely deserves to be promoted.

112. In conspectus, there is hardly any repugnancy in the manner in which the two statutes operate and run; but, in fact, enforces its powers harmoniously, with the ultimate aim of ensuring that the scourge of drug menace is combated strongly, so that individuals and society at large are kept away from harm from the pernicious spread of drugs and narcotic substances; and the consequent evil of crimes, social unrest and threat to public order and public health. The "KAAPA" surely draws in all the afore into its fold, with the singular aim of annihilating the menace of drug abuse in every form; while, as said by the Hon'ble Supreme Court in ***Hira Singh v. Union of India (2020) 20 SCC 272***, the NDPS Act is to be enforced stringently to ensure that it acts as a deterrent.

113. Within the contextual bounds of the above, it is imperative to call to mind that India is a party to the three Core Conventions of the United Nations, namely: the Single Convention on Narcotic Drugs, 1961 (as amended by 1972 Protocol); the Convention on Psychotropic Substances, 1971; and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988. It, therefore, has the obligation to ensure that its domestic laws comply with the afore Conventions; and that it is in tune therewith that it has enacted the NDPS Act, along with the Drugs and Cosmetics Act, 1940 and the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

114. Democratic societies, in order to preserve their vigour and vitality, require to adopt a policy of "Zero Tolerance" towards drugs, drug trafficking, and the powerful narcotic drug networks, by constantly evolving its statutory mechanisms to keep pace with the changing times. The focus of this policy is not merely preventive, but to disrupt illicit networks and ensure co-ordination among enforcement agencies, so that every drug offence be met with a firm and non-negotiable response, mixed with philosophy of reformation and rehabilitation, as far as it is necessary,

to obtain the ultimate aim of a drug-free society —an objective that can never be realised if legitimacy is, even *sotto voce*, offered to the consumption of drugs, whether in "small quantities" or otherwise.

115. We thus proceed to answer this reference *ut infra*:

- In view of the opinion recorded by us in paragraphs 72, 80, 95, 104 and 112, we hold the declarations in ***Suhana,*** as also in ***Luciya Francis,*** to be incorrect; and hence not good law.
- We declare that the holdings in ***Devaki***, ***Ansar T A*** and ***Ashraf*** are correct and approve them as good law.

116. With the reference so answered, we want to add a postlude.

These days, there appear to be a growing unacceptable impression, particularly among young citizens, that they can get away paying a fine, if apprehended with a 'small quantity' of drugs; and this, with little doubt, has led to the apparent tenacious grip of the offending articles on our societies. Every offence requires to be viewed with "Zero Tolerance" and "Non-Negotiability"; and in that perspective, it would be desirable, as far as practically possible, to subject even the first offender found with "small quantity" of drugs and/or psychotropic substances - if not, at least on detecting the second offence - to medical evaluation and mandatory

rehabilitation, which then would bring in substantial degree of control on recidivistic tendencies and subsequent offences. Of course, we cannot command, nor do we; but commend to the Executive and Legislature that this be considered though apposite mechanisms, including nomothetic exercises, as required.

SD/-

DEVAN RAMACHANDRAN, JUDGE

SD/-

GOPINATH P, JUDGE

SD/-

A BADHARUDEEN, JUDGE

SD/-

M.B.SNEHALATHA, JUDGE

SD/-

JOBIN SEBASTIAN, JUDGE

RR/SPV/Jes