

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN
&
THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
&
THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA**

Wednesday, the 7th day of January 2026 / 17th Pousha, 1947
ICR (WP(CRL.)) NO. 20 OF 2025(S)

PETITIONER:

AALIYA ASHRAF, AGED 28 YEARS, D/O ASHRAF, FATHIMAS,
CHALAD P.O, PALLIKUNNU, 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 07/01/2026 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, ADDL.DIRECTOR GENERAL OF PROSECUTION & SRI. C.K.SURESH, SENIOR PUBLIC PROSECUTOR for R1 to R3 & R5 and of SRI.K.A.ANAS, PUBLIC PROSECUTOR, the court on the same day passed the following:

P.T.O.

**DEVAN RAMACHANDRAN, A.BADHARUDEEN &
M.B. SNEHALATHA, JJ.**

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Dated this the 7th day of January, 2026

REFERENCE ORDER

Devan Ramachandran, J.

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 'drug-offender' 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

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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 anti-social 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 anti-social 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,

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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.

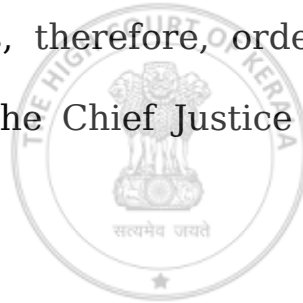
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9. We are, therefore, of the firm opinion that the issue requires to be re-looked, and to be considered by a Bench of competent strength since we are unable to fully subscribe to the holdings in the said judgment.

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.



Sd/- DEVAN RAMACHANDRAN, JUDGE

Sd/- A.BADHARUDEEN, JUDGE

Sd/- M.B. SNEHALATHA, JUDGE

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