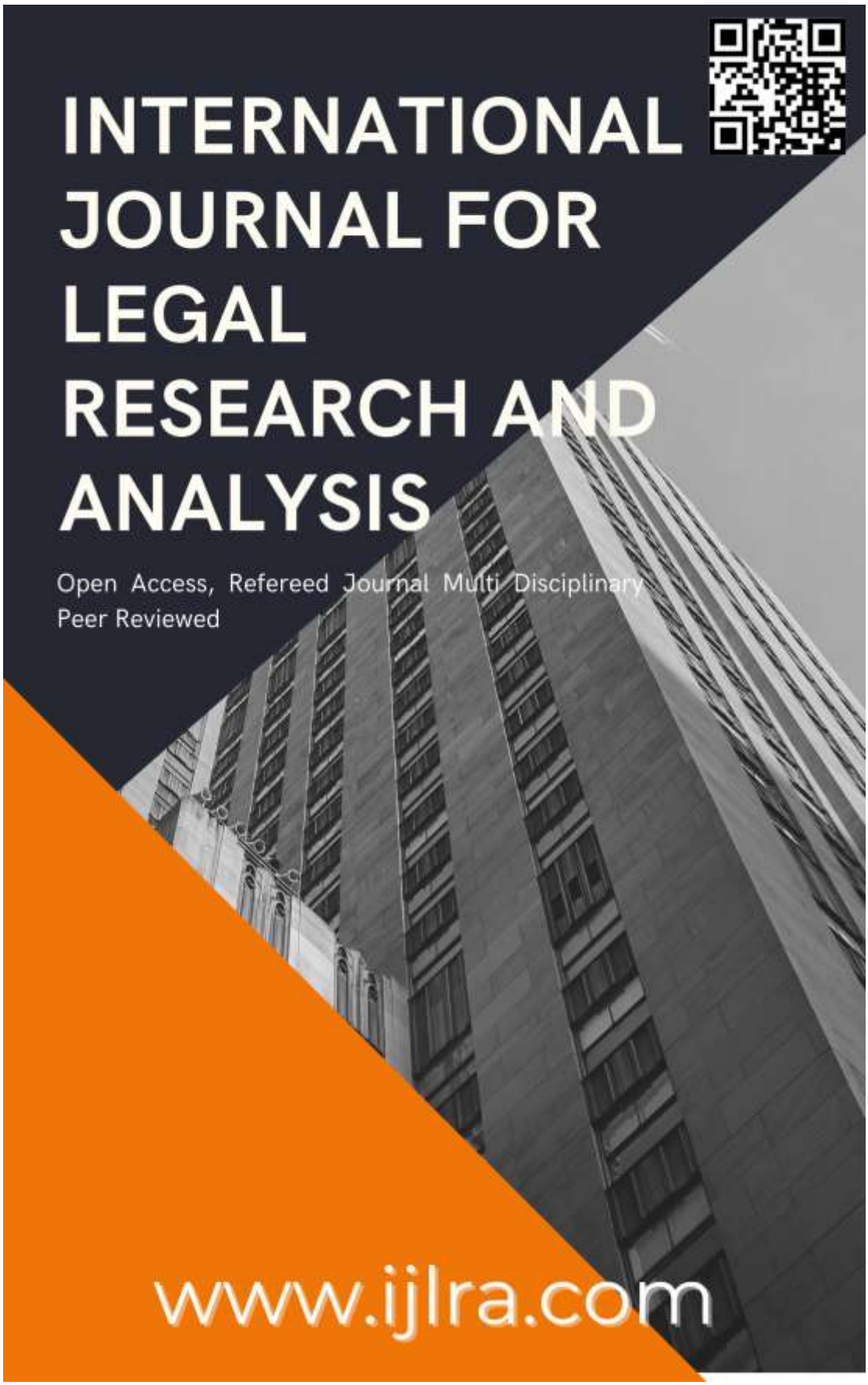

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RESEARCH ARTICLE

Detention Despite Bail: Re-Examining The Constitutional Limits Of Preventive Detention After Bail

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ABSTRACT

Preventive detention can be ordered while a criminal case is pending. Ordering it after a court has granted bail is a different matter, because the criminal court has already decided that the person may stay free, sometimes on conditions meant to meet the very risk the executive later relies on. This article asks how the Supreme Court has treated that situation in *Vijay Narain Singh*, *Rekha*, *Ameena Begum*, *Joyi Kitty Joseph*, *Annu @ Aniket*, *Dhanya M*, *Roshini Devi* and *Mulla Afroz*. It uses doctrinal research. The article argues that bail is not an absolute bar to detention, but a bail order and its conditions are relevant circumstances that the detaining authority must consider, particularly where they address the same apprehension. Distinguishing actual release, bail in connected cases, and detention in anticipation of bail, it proposes a five-stage necessity-based framework. The framework is the author's proposal and has not been adopted by any court.

Keywords: *Preventive Detention; Personal Liberty; Bail; Judicial Review; Article 21*

CHAPTER 1: INTRODUCTION

1.1 Constitutional Context: Preventive Detention and the Exceptional Power of the State

The Constitution does not leave preventive detention to ordinary legislation alone. Article 22(3)(b) takes anyone held under a preventive detention law outside clauses (1) and (2), and clauses (4) to (7) put a thinner set of safeguards in their place.[1] The State acts on an apprehension of future harm, which may rest on

[1]India Const. art. 22(3)(b), (4)–(7).

past conduct or other material but does not depend on a criminal conviction. The Supreme Court calls the power draconian but permitted by the Constitution, to be used responsibly, rationally and reasonably.[2]

The State has a real interest in stopping serious harm before it happens, but the order takes liberty away without a trial. So, Article 21 stays central, and the procedure must be fair, just and reasonable.[3] The question in a given case is narrow: does this order rest on relevant material, serve a preventive purpose and carry the safeguards the Constitution requires?

1.2 The Emerging Constitutional Problem: Preventive Detention After Bail

In *Joyi Kitty Joseph* a Magistrate granted bail on 16 April 2024 on conditions meant to stop further smuggling. Twenty-three days later, on 9 May 2024, a COFEPOSA detention order was passed on the same allegations. It did not say why the conditions were not enough.[4] The decisions studied here connect bail to detention in three ways. In the first, the detenu was out on bail in the cases relied on, as in *Joyi Kitty Joseph*, *Ameena Begum*, *Dhanya M* and *Mala*.[5] In the second, bail had been granted in some cases while custody continued in others. *Roshini Devi* had bail in two cases and custody in a third. *Mulla Afroz* had bail in one connected FIR while held in the others.[6] In the third, the order was made while the accused was in custody, because bail was expected. In *Annu @ Aniket* the detention order of 11 July 2024 came first, bail followed on 28 January 2025, and the detention alone then kept him in jail.[7] The first two positions are central here, because a court that grants bail in one case has not necessarily weighed the risk the executive raises in the others.

A bail order does not conclusively determine the question of future risk, although it may record a judicial assessment of that risk. It remains a judicial decision on release. Sometimes the court took the very apprehension into account when it set the conditions. A detaining authority cannot behave as if the order did not exist. The Supreme Court has warned against an authority "chagrined and frustrated by orders granting bail" using preventive detention to keep the detenu behind bars.[8]

1.3 Research Problem and Research Questions

The research problem is whether the executive may order preventive detention after bail has been granted in the same or connected criminal cases, and if so, on what safeguards. The question is hardest where the detenu is still in custody in another case or where detention follows actual release. Five questions follow.

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[2] *Ameena Begum v. State of Telangana*, (2023) 9 SCC 587, 2023 INSC 788 (India), ¶¶ 9–10. Paragraph numbers follow the neutral-citation text; the SCC numbering differs (the ten review grounds are at ¶ 25 here and ¶ 28 in the SCC text quoted in *Mulla Afroz v. Union of India*, 2026 INSC 1067, ¶ 43 (India) (Sept. 29, 2026)).

[3] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India); *A.K. Roy v. Union of India*, (1982) 1 SCC 271, ¶ 70 (India), as quoted in *Ameena Begum*, ¶ 67.

[4] *Joyi Kitty Joseph v. Union of India*, 2025 INSC 327, ¶¶ 12, 14 (India) (Mar. 6, 2025).

[5] *Ameena Begum*, ¶¶ 3, 51; *Dhanya M v. State of Kerala*, 2025 INSC 809, ¶¶ 6, 20 (India) (June 6, 2025); *Mala v. State of Karnataka*, W.P. (H.C.) No. 100019 of 2026, ¶¶ 13, 16 (Kar. Sept. 22, 2026) (India).

[6] *Roshini Devi v. State of Telangana*, Crim. App. No. 116 of 2026, 2026 INSC 41, ¶ 8 (India) (Jan. 8, 2026); *Mulla Afroz*, ¶ 4.

[7] *Annu @ Aniket v. Union of India*, Crim. App. No. 2920 of 2025, ¶¶ 3–4, 12 (India June 27, 2025).

[8] *Ameena Begum*, ¶ 49.

(1) What is the relationship between a bail order and the power of preventive detention?

(2) Does failure to consider existing bail conditions amount to non-application of mind?

(3) How do the Supreme Court decisions treat the bail order, its conditions and cancellation, and where do they differ?

(4) What standard should courts apply to the necessity of detention after bail?

(5) What steps would better fit preventive power with personal liberty?

1.4 Review of Existing Literature

Writing on Indian preventive detention mostly asks whether the constitutional design is sound, and much less often how a single order should be reviewed. Derek Jinks reads the National Security Act as an institutionalised emergency power.[9] Abhinav Sekhri argues that Article 22 has helped normalise preventive detention and that its safeguards are weak.[10] Hallie Ludsin compares India, England and the United States and argues that democracies are turning preventive detention into an ordinary tool of law enforcement that bypasses the criminal process.[11] None of these works, so far as this review found, says how a bail order should enter the detaining authority's decision, and no other peer-reviewed writing on that question was located. The closest commentary is V. Venkatesan's note on *Mulla Afroz*, which reads the decision as setting a stricter standard of scrutiny after bail.[12]

The gap lies in the judgments. *Ameena Begum* lists grounds of review but does not arrange them for bail cases.[13] *Vijay Narain Singh* asks for great caution where a person on bail is detained on the very same charge.[14] *Joyi Kitty Joseph* requires the authority to consider whether the bail conditions are enough. *Annu @ Aniket*, *Dhanya M*, *Roshini Devi* and *Mulla Afroz* deal with other custody positions, with ordinary remedies and with the material needed to show future risk. On the texts read for this article, none of *Annu @ Aniket*, *Dhanya M*, *Roshini Devi*, *Mulla Afroz* or *Mala* cites *Joyi Kitty Joseph*. So, the Court has not itself drawn these strands together. The contribution of this article lies in organising the Supreme Court's case-specific principles concerning preventive detention after bail into a structured necessity-based framework, while distinguishing actual release, continued custody in connected proceedings, factual overlap and the availability of ordinary criminal-law safeguards.

1.5 Research Methodology, Scope and Limitations

The article is doctrinal. It reads the Constitution, the relevant statutes and Supreme Court decisions for their facts, issues, reasoning and ratio, and it keeps apart what a court held, what it only observed, and

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[9]Derek P. Jinks, The Anatomy of an Institutionalized Emergency: Preventive Detention and Personal Liberty in India, 22 Mich. J. Int'l L. 311 (2001).

[10]Abhinav Sekhri, Article 22 – Calling Time on Preventive Detention, 9 Indian J. Const. L. 173 (2020).

[11]Hallie Ludsin, Preventive Detention and the Democratic State (Cambridge Univ. Press 2016).

[12]V. Venkatesan, How Will Preventive Detention Cases Be Decided After the Supreme Court's NSA Ruling?, Supreme Court Observer (Oct. 9, 2026), https://www.scobserver.in/journal/how-will-preventive-detention-cases-be-decided-after-the-supreme-courts-sambhal-nsa-ruling/.

[13]*Ameena Begum*, ¶ 25.

[14]*Vijay Narain Singh v. State of Bihar*, (1984) 3 SCC 14, ¶ 32 (India), as quoted in *Ameena Begum*, ¶ 52.

what this article infers. Where a precedent was cited as quoted in a later judgment, the later judgment was primarily relied upon; the original report was consulted where accessible. The article is limited to Indian constitutional law and to detention orders made in the shadow of bail. It does not argue that bail ends the power to detain. The framework in Chapter 5 is the author's own proposal, and the Supreme Court has not adopted it.

CHAPTER 2: CONSTITUTIONAL AND LEGAL FOUNDATIONS OF PREVENTIVE DETENTION

2.1 Constitutional Recognition under Article 22

Article 22(3)(b) removes the arrest safeguards of clauses (1) and (2) from anyone detained under a preventive detention law: the right to be told the grounds of arrest, to consult a lawyer and to be produced before a magistrate within twenty-four hours. Clause (4) bars detention beyond three months unless an Advisory Board reports sufficient cause. Clause (5) requires the grounds to be communicated as soon as may be, with the earliest opportunity to make a representation. Clause (6) lets facts be withheld in the public interest.[15] All of this is procedure. None of it says when a detention order may be made, which is left to the statute and the courts.

2.2 Personal Liberty and the Relationship Between Articles 14, 19, 21 and 22

A.K. Gopalan v. State of Madras read the fundamental rights as separate compartments, and *Ameena Begum* put that approach aside, relying on *R.C. Cooper*.[16] *Maneka Gandhi* then required any procedure that takes away liberty to be fair, just and reasonable, and *A.K. Roy* accepted that a preventive detention law within Article 22 must also meet Articles 14, 19 and 21. *Ameena Begum* calls these three articles the constitutional "golden triangle".[17]

Article 14 is engaged when the authority ignores a matter it was bound to consider, relies on something it could not properly take into account, or acts for an improper purpose. *Khudiram Das* states the grounds in those terms.[18] Article 19 depends on which freedoms are in play. In *Joyi Kitty Joseph* the appellant invoked it, but the Court decided the case on the bail conditions and went no further.[19]

2.3 Preventive Detention and Ordinary Criminal Procedure

Punitive detention follows conviction. Pre-trial custody is ordered by a criminal court to secure investigation or trial, and bail can change it. Preventive detention is an executive measure that proceeds on suspicion or anticipation and not on proof.[20] The Constitution Bench in *Haradhan Saha* holds that criminal

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[15]India Const. art. 22(1)–(7).

[16]*A.K. Gopalan v. State of Madras*, AIR 1950 SC 27 (India); *Rustom Cavasjee Cooper v. Union of India*, (1970) 1 SCC 248 (India), as discussed in *Ameena Begum*, ¶ 12.

[17]*Ameena Begum*, ¶¶ 57, 67.

[18]*Khudiram Das v. State of West Bengal*, (1975) 2 SCC 81, ¶ 9 (India), as quoted in *Ameena Begum*, ¶ 15. Treating a disregarded bail order as a matter the authority was bound to consider is this article's own step.

[19]*Joyi Kitty Joseph*, ¶¶ 4, 21.

[20]*Khudiram Das*, ¶ 8, as quoted in *Ameena Begum*, ¶ 15.

proceedings do not by themselves bar preventive detention, and *Mulla Afroz* repeats the point.[21] But the word "preventive" does not shrink the loss of liberty, and *Mulla Afroz*, citing *Rekha*, stresses that the power stays exceptional.[22]

Two points follow. First, there must be a live and proximate link between past conduct and the need to prevent future conduct, so stale or unrelated events cannot dress up punishment as prevention.[23] Second, ordinary criminal process is relevant but does not settle the matter. *Rekha* said that if the ordinary law can deal with a situation, preventive detention is illegal. *Ameena Begum* answered that *Haradhan Saha* "still holds the field" and that the discordant note in *Rekha* was not accepted as the correct exposition of law.[24]

2.4 Statutory Framework Governing Preventive Detention

The statutes behind the recent decisions differ, so a holding under one cannot simply be carried to another. COFEPOSA targets the smuggling-related activities listed in section 3(1) and allows revocation under section 11.[25] The PIT-NDPS Act allows detention under section 3(1) and revocation or modification at any time under section 12.[26] The National Security Act, 1980 allows detention under section 3(2), provides for confirmation and a twelve-month limit, and keeps the power to revoke or modify.[27] The Telangana Act of 1986 (applied in *Ameena Begum* and *Roshini Devi*) and the Kerala Act of 2007 (applied in *Dhanya M*) are state laws with their own maximum periods. Public order is the threshold under the NSA and both state Acts.[28]

CHAPTER 3: BAIL ORDERS AND EXECUTIVE PREVENTIVE POWER: THE CONSTITUTIONAL CONFLICT

3.1 Legal Significance of a Bail Order

A bail order is a judicial decision, and its weight depends on its reasons, its conditions, the cases it covers and whether the person was actually released. A court can take the prosecution's fear of repetition into account and set conditions to meet it. In *Joyi Kitty Joseph* that fear was "reckoned by the jurisdictional Magistrate while granting bail and imposing conditions".[29] Some bail laws build the inquiry into the order.

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[21] *Haradhan Saha v. State of West Bengal*, (1975) 3 SCC 198 (India), as discussed in *Mulla Afroz*, ¶¶ 56–57.

[22] *Rekha v. State of Tamil Nadu*, (2011) 5 SCC 244, ¶ 21 (India), as quoted in *Mulla Afroz*, ¶ 60; see *Mulla Afroz*, ¶ 61.

[23] *Sama Aruna v. State of Telangana*, (2018) 12 SCC 150, ¶ 16 (India), as quoted in *Ameena Begum*, ¶ 17; *Khaja Bilal Ahmed v. State of Telangana*, (2020) 13 SCC 632, ¶ 23 (India), as quoted in *Ameena Begum*, ¶ 18.

[24] *Rekha*, ¶¶ 29–30, as quoted in *Ameena Begum*, ¶¶ 22, 37; *Ameena Begum*, ¶ 24.

[25] Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, §§ 3(1), 10, 11 (India); see *Joyi Kitty Joseph*, ¶ 5; *Ameena Begum*, ¶ 68 (discussing *Vijay Kumar v. Union of India*, (1988) 2 SCC 57 (India)).

[26] Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, §§ 3(1)–(3), 12 (India), as reproduced in *Mala*, ¶ 7.

[27] National Security Act, 1980, §§ 3(2), 12, 13 (India), as described in *Mulla Afroz*, ¶¶ 4–5, and *Annu @ Aniket*, ¶ 23.5.

[28] Telangana Prevention of Dangerous Activities Act, 1986, §§ 2(a), 3, 13 (India); *Ameena Begum*, ¶¶ 3–4, 30–40; *Roshini Devi*, ¶ 10; Kerala Anti-Social Activities (Prevention) Act, 2007, §§ 2(j), 2(o), 3, 7, 12 (India); *Dhanya M*, ¶¶ 12–15, 17–19.

[29] *Joyi Kitty Joseph*, ¶ 14.

Section 37 of the NDPS Act requires the court to be satisfied that the accused is not likely to commit an offence on bail. In *Mala* the High Court reasoned that such an order records a judicial satisfaction on the very apprehension later pressed for detention.[30]

3.2 Whether Preventive Detention Can Follow the Grant of Bail

It can. *Haradhan Saha* holds that a pending trial does not remove the power to detain. *Pesala Nookaraju*, as *Ameena Begum* describes it, upheld a detention although the detenu had bail in four FIRs, because the authority found the liquor, he sold dangerous to public health.[31] Bail therefore does not oust the executive's statutory power, but it remains a relevant circumstance that cannot be disregarded. As the Karnataka High Court put it, bail does not "create an impregnable shield against preventive detention", but the authority must then show, from cogent and proximate material, a compelling necessity.[32]

3.3 Detention Based on the Same or Substantially Similar Allegations

How much weight the bail order carries depends on the overlap between the criminal case and the detention grounds. Three categories help. In the first, detention relies on the same allegations and substantially the same material that was before the criminal court. This is the strongest case for asking why the bail conditions do not meet the risk. *Joyi Kitty Joseph* is the clearest example, since the prosecution and the detention rested on the same allegations of organised smuggling.[33]

In the second category, detention relies on the same occurrence but draws a different preventive inference, such as a continuing propensity or a threat to public order. The authority must name that separate basis and tie it to the statutory purpose, since relabelling criminal allegations is not enough.[34] *Pesala Nookaraju* shows the other side, but a separate purpose does not justify detention by itself, and the material must still support it.

In the third, the authority relies on specific new conduct after release, such as a documented attempt to intimidate witnesses or breach bail conditions. The bail order then weighs less, but the new material must still be credible, proximate and relevant. None of the decisions studied turned on proven conduct of this kind. *Roshini Devi* and *Mulla Afroz* involved anticipated conduct: repetition on release in the one, and violence on release, inferred from police information about jail conversations, in the other.[35]

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[30] *Mala*, ¶¶ 20–22.

[31] *Pesala Nookaraju v. Government of Andhra Pradesh*, Crim. App. No. 2304 of 2023, 2023 INSC 734 (India Aug. 16, 2023), as discussed in *Ameena Begum*, ¶¶ 71, 77.

[32] *Mala*, ¶ 14.

[33] *Joyi Kitty Joseph*, ¶ 21.

[34] *Khaja Bilal Ahmed*, ¶ 23, as quoted in *Ameena Begum*, ¶ 18; see *Joyi Kitty Joseph*, ¶¶ 10–11.

[35] *Mala*, ¶ 13 (no breach alleged after release); *Roshini Devi*, ¶¶ 8–9; *Mulla Afroz*, ¶ 52.

3.4 Bail Conditions and the Duty to Apply Mind

Joyi Kitty Joseph is central, but its holding is narrow. The detenu was arrested on 5 March 2024, and the Magistrate released him on bail on 16 April 2024 on conditions.[36] The Department filed a cancellation application on 6 May 2024 and did not pursue it, and the detention order followed on 9 May 2024. The Court rejected the challenge based on clauses (i) to (iv) of section 3(1) of COFEPOSA and held that non-placement of the cancellation application did not make the order bad.[37]

Then the Court raised a ground nobody had argued. The Magistrate had weighed the prosecution's fear of further smuggling and set conditions to prevent it, yet "nothing is stated by the detaining authority as to why the conditions are not sufficient".[38] The Court did not examine the conditions itself, since that was for the authority. It was "more concerned" that the authority "did not consider the efficacy of the conditions", and it interfered on that ground alone.[39] The result is a duty to consider and not a power for the reviewing court to put its own view in place of the authority's. If there is a consideration, its reasonableness cannot be scrutinised, "[h]owever, when there is no such consideration then we have to interfere".[40] Its reach beyond COFEPOSA has to be argued and cannot be assumed.

3.5 Bail Cancellation and Other Ordinary Criminal-Law Remedies

The authorities answer different questions, so they need careful reconciling. *Joyi Kitty Joseph* asked whether failure to place a recently filed cancellation application before the authority vitiated the order. The Court said it did not, observing that "cancellation of bail cannot be considered as an alternative to a detention order".[41] The other decisions deal with an authority that itself asserts or fears a breach of bail conditions, or a repetition of offences, without having sought cancellation. *Ameena Begum* found no breach alleged and no cancellation sought in the three cases with bail.[42] *Dhanya M*, drawing on *S.K. Nazneen v. State of Telangana*, held that the circumstances relied on "may be ground enough" to seek cancellation but did not call for detention.[43]

These decisions fit together if cancellation is a relevant circumstance and not a precondition to the power. Where the authority's own ground is breach or feared breach of bail conditions, though, failure to seek cancellation weighs heavily. Read together, the later decisions lend substantial weight to the view that failure to seek cancellation is a relevant circumstance where the authority's stated ground is an alleged or feared breach of bail conditions. The article does not say cancellation must come before every detention order, which would conflict with *Joyi Kitty Joseph* and *Haradhan Saha*.

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[36] *Joyi Kitty Joseph*, ¶¶ 4, 6, 14.

[37] *Joyi Kitty Joseph*, ¶¶ 7–8, 12.

[38] *Joyi Kitty Joseph*, ¶¶ 13–14.

[39] *Joyi Kitty Joseph*, ¶¶ 15 (quoting *Rameshwar Lal Patwari v. State of Bihar*, AIR 1968 SC 1303 (India)), 19, 21.

[40] *Joyi Kitty Joseph*, ¶ 16.

[41] *Joyi Kitty Joseph*, ¶ 12.

[42] *Ameena Begum*, ¶ 51.

[43] *Dhanya M*, ¶¶ 20–22 (discussing *S.K. Nazneen v. State of Telangana*, (2023) 9 SCC 633 (India)).

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CHAPTER 4: THE EVOLUTION OF SUPREME COURT JURISPRUDENCE

4.1 Early Judicial Approach to Preventive Detention and Subjective Satisfaction

The early cases held that the authority's satisfaction is subjective but not beyond review. *Khudiram Das* explained that a court may ask whether the authority applied its mind, acted for an improper purpose, relied on material with no rationally probative value, or failed to attend to matters it was bound to consider.[44] The court does not decide whether it would have detained the person.[45]

4.2 Vijay Narain Singh and Rekha

Vijay Narain Singh is the clearest early authority on detention after bail. The Court cautioned that preventive detention should not be used merely to keep an accused in custody where ordinary criminal law may not prevent bail, unless the material independently satisfies the statute. When a person is enlarged on bail, "great caution should be exercised" in scrutinising a detention based on the very same charge.[46] The passage asks for caution and a close look at the material. It does not bar detention.

4.3 Ameena Begum and Joyi Kitty Joseph

Ameena Begum (4 September 2023) set aside a detention order of the Commissioner of Police, Hyderabad, on two grounds. The first and main ground was that the alleged acts were stray acts affecting private individuals and did not disturb public order.[47] The second was extraneous factors, and the bail discussion belongs there. The Commissioner feared that the detenu would break his bail conditions. The Court read this as an intention to detain "at any cost" and noted that no breach was alleged and no cancellation sought in the three cases with bail.[48] It also listed ten grounds on which a constitutional court may test a detention order.[49] *Joyi Kitty Joseph* later described *Ameena Begum* as having held *Rekha*'s observation *per incuriam*, a word *Ameena Begum* itself did not use.[50] The safer reading is that ordinary remedies help show whether the preventive satisfaction is genuine, but their bare availability does not remove the statutory power.

Joyi Kitty Joseph, analysed in Chapter 3, took a narrower route than *Rekha*. It did not hold ordinary law to be necessarily enough or require cancellation. It held only that the authority had to consider whether conditions imposed to meet the very apprehension later relied on were sufficient.[51]

4.4 Annu @ Aniket, Dhanya M, Roshini Devi, Mulla Afroz and Mala

Annu @ Aniket (27 June 2025) concerned a law student detained under the NSA by the District Magistrate, Betul. The order of 11 July 2024 was made while he was in custody, bail followed on 28 January

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[44] *Khudiram Das*, ¶¶ 8–9, as quoted in *Ameena Begum*, ¶ 15.

[45] *Ameena Begum*, ¶¶ 23, 25.

[46] *Vijay Narain Singh*, ¶ 32, as quoted in *Ameena Begum*, ¶ 52, and in *Mulla Afroz*, ¶ 54.

[47] *Ameena Begum*, ¶¶ 39–40.

[48] *Ameena Begum*, ¶¶ 3, 41, 49–54.

[49] *Ameena Begum*, ¶ 25.

[50] *Joyi Kitty Joseph*, ¶ 17; *Ameena Begum*, ¶ 24.

[51] *Joyi Kitty Joseph*, ¶¶ 16, 19, 21.

2025, and he "continued to remain in custody solely on account of the order of preventive detention".[52] The grounds concerned law and order and not public order. The Court added that "the entire intent appears to continue the detention of the appellant since he was likely to get bail in the criminal case, which, in fact, he got", and held that non-application of mind and extraneous factors vitiated the order.[53] It does not bar detention whenever bail is granted.

Dhanya M (6 June 2025) set aside a detention under the Kerala Act of a moneylender who was on bail in all four cases relied on. It gave two grounds: the facts did not amount to a public order situation, and the claim that bail conditions were being broken was unsupported, since no application for cancellation had been filed in any of the four cases.[54] In *Roshini Devi* (8 January 2026) bail had been granted in two NDPS cases and was pending in a third, in which the detenu remained in custody. The authority predicted repetition after release but did not address whether the conditions already imposed were insufficient. The Court held that mere apprehension of similar crimes on release is not a sufficient ground.[55]

Mulla Afroz (29 September 2026) is the fullest of the group, and bail is only one of its strands. The appellant obtained bail on 9 September 2025 in Case Crime No. 340 of 2024 but stayed in custody in the other FIRs when the NSA order was made on 13 October 2025.[56] The Court gave separate reasons. First, a police confession cannot by itself, without independent material, support the satisfaction.[57] Second, CCTV and video material never supplied or produced could not be relied on, and a chargesheet is not proof of disturbance of public order.[58] Third, the Court read the reliance on police information about jail conversations as "an attempt to frustrate the judicial order granting bail, and to keep the detenu in custody by another route". It called the detention "not preventive but punitive" and required "more exacting" scrutiny. It said the earlier bail in one connected case "was a relevant circumstance which required due consideration".[59] It set aside the orders, imposed costs of ₹10 lakh on the State, and reaffirmed *Haradhan Saha*, so the decision creates no automatic bar on detention after bail.[60]

In *Mala* (22 September 2026, a week before *Mulla Afroz*) the Karnataka High Court quashed a PIT-NDPS detention on two separate grounds. The detenu had not been told of his right to represent to the Central Government. And the authority had used detention as a substitute for cancellation of the bail he held under section 37 of the NDPS Act, without cogent and proximate material of a real and imminent propensity to offend.[61] The decision is persuasive and does not bind other courts.

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[52] *Annu @ Aniket*, ¶¶ 3–4, 12.

[53] *Annu @ Aniket*, ¶¶ 25–29, 39–40, 42.

[54] *Dhanya M*, ¶¶ 3, 6, 19–22.

[55] *Roshini Devi*, ¶¶ 8–10.

[56] *Mulla Afroz*, ¶¶ 3–4.

[57] *Mulla Afroz*, ¶¶ 35–39.

[58] *Mulla Afroz*, ¶¶ 46–50.

[59] *Mulla Afroz*, ¶¶ 52–53.

[60] *Mulla Afroz*, ¶¶ 56–57, 67–69.

[61] *Mala*, ¶¶ 10–14, 18–26.

4.5 Doctrinal Development and Remaining Uncertainty

Four uncertainties remain. First, the reach of the duty to consider bail conditions across statutes is not settled. On the texts read for this article none of *Annu @ Aniket*, *Dhanya M*, *Roshini Devi*, *Mulla Afroz* or *Mala* cites *Joyi Kitty Joseph*. Second, the reasoning required depends on the facts: *Joyi Kitty Joseph* bars reassessment of the reasonableness of a consideration, while *Mulla Afroz* examines whether the material supports preventive necessity.[62] Third, credible new conduct after release remains distinct from predictions of repetition, and no decision yet turns on it. Fourth, *Mulla Afroz* says a detention founded "wholly or in part" on legally irrelevant material is unsustainable yet also tells the court to see whether other materials can sustain it. The State had argued that grounds are severable, which is the effect of section 5A of the NSA as *Annu @ Aniket* describes it. *Mulla Afroz* does not mention the section.[63] This article does not resolve that point.

CHAPTER 5: TOWARDS A NECESSITY-BASED FRAMEWORK FOR REVIEWING PREVENTIVE DETENTION AFTER BAIL

5.1 Need for a Structured Standard of Constitutional Review

The existing law gives grounds of review and case-specific statements about bail, but no sequence for analysing a post-bail order. The framework below is the author's own proposal. It is not existing law, it is not a test adopted by the Supreme Court, and it creates no new precondition to the power. It helps authorities identify the judicial orders and the future risk, and it helps courts see whether the statutory process was followed.

5.2 Stage One: Identification of the Existing Judicial Position

The first stage fixes the judicial and custody position on the date of the order. The authority should list every connected case and each bail order with its conditions. It should note whether the person was actually released, whether custody continues in another connected case and whether bail was varied, challenged or cancelled, and record the dates of arrest, bail and detention. The dates show which of the three custody positions in Chapter 1 applies. *Mulla Afroz* shows why bail in one connected case stays relevant while custody continues in others.[64]

5.3 Stage Two: Assessment of Factual Overlap

The second stage asks how the detention grounds relate to the criminal case. There are three possibilities: identical allegations resting on substantially identical material; the same occurrence with a distinct preventive inference or statutory purpose; or specific new conduct after release. The answer changes the weight of the bail order but does not change whether the executive has power. In the first case the authority should explain why the bail conditions do not meet the same apprehension. In the second it should name the separate basis and show that the material supports it. In the third it should point to credible, proximate

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[62] *Joyi Kitty Joseph*, ¶¶ 15–16; *Mulla Afroz*, ¶¶ 46–50.

[63] *Mulla Afroz*, ¶¶ 11(e), 35, 39; *Annu @ Aniket*, ¶ 23.3; Venkatesan, Supreme Court Observer (Oct. 9, 2026).

[64] *Mulla Afroz*, ¶ 53.

material, which must not be confused with the anticipated conduct in *Roshini Devi* or *Mulla Afroz*.[65] The three categories are this article's own device, and the decisions do not use them.

5.4 Stage Three: Evaluation of Necessity and Existing Safeguards

The third stage tests necessity against the safeguards that already exist. The authority should name the specific future conduct it fears and the material supporting the fear. It should ask whether the bail conditions meet the same risk, whether a breach has actually occurred, and whether any feared breach rests on material. It should ask whether variation or cancellation of bail is available and relevant and explain why ordinary remedies would not meet the threat. *Joyi Kitty Joseph* supports looking at the conditions. *Ameena Begum*, *Dhanya M*, *Roshini Devi* and *Mala* show why ordinary remedies may matter where breach is alleged. *Mulla Afroz* requires relevant, disclosed and rationally probative material.[66]

5.5 Stage Four: Recorded Reasons and Meaningful Judicial Review

The fourth stage is about the record and the review that follows it. The file should show that the authority considered the bail order, the conditions, the custody status, the overlap, the feared risk, the statutory purpose and the material relied on. A court need not put its own view of the bail conditions in place of the authority's. It may look for non-application of mind, irrelevant material, improper purpose, lack of rationally probative value, non-disclosure of relied-upon material, lack of proximity and breach of the statute.[67]

5.6 Stage Five: Continuing Necessity and Review

The fifth stage is about what happens after the order. Preventive detention rests on necessity. According to the Constitution Bench, a person can be detained only so long as detention is found necessary and must be released forthwith once it is found unnecessary.[68] Where the statute allows revocation or modification, a material change, such as cancellation or variation of bail, release in connected cases, credible new information or a change in the feared risk, should be put before the competent authority. In *Mulla Afroz* the appellant had bail in every case by June 2026, yet the confirmed detention continued until the Supreme Court acted in September.[69] The stage is not an automatic periodic review. The Court has held that a State need not review a detention every three months once it has passed the confirmatory order. The stage applies only where the statute provides for revocation or modification, as COFEPOSA, the PIT-NDPS Act and the NSA do.[70]

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[65] *Joyi Kitty Joseph*, ¶ 21; *Mulla Afroz*, ¶¶ 52, 63–66; *Roshini Devi*, ¶¶ 8–9.

[66] *Joyi Kitty Joseph*, ¶¶ 19, 21; *Ameena Begum*, ¶ 51; *Dhanya M*, ¶¶ 20–22; *Roshini Devi*, ¶ 8; *Mala*, ¶¶ 14, 24; *Mulla Afroz*, ¶¶ 46–48.

[67] *Ameena Begum*, ¶ 25; *Joyi Kitty Joseph*, ¶ 16; *Mulla Afroz*, ¶¶ 35, 46.

[68] *Sunil Fulchand Shah v. Union of India*, (2000) 3 SCC 409, ¶ 11 (India), as quoted in *Ameena Begum*, ¶ 19.

[69] *Mulla Afroz*, ¶¶ 5, 68.

[70] *Pesala Nookaraju*, ¶ 44, as quoted in *Ameena Begum*, ¶¶ 73–74.

5.7 Limits and Safeguards Against Mechanical Application

The framework is not a mechanical checklist or a precondition the law does not recognise. It is not an automatic ground for quashing a detention order after bail, and it does not replace the statutory test or pass the executive's responsibility to a criminal court. An order can stand where relevant and reliable material shows a distinct, continuing threat within the statute.[71]

CHAPTER 6: POLICY RECOMMENDATIONS AND INSTITUTIONAL REFORMS

6.1 Disclosure of Bail Orders and Custody Status

The sponsoring authority should place before the detaining authority the bail orders, their conditions, the custody status in each connected case and any pending application to vary or cancel bail. Withholding a bail order may vitiate the satisfaction, as a fact that could sway the authority has been kept from it.[72] *Joyi Kitty Joseph* held that non-placement of the cancellation application did not, on those facts, vitiate the order. So, disclosing its status is a sound administrative step and not a legal precondition.[73]

6.2 A Reasoned Necessity Assessment and Decision Template

The authority should record a short, individual assessment naming the harm feared, the supporting material, the statutory purpose, the existing bail conditions, and why those conditions and ordinary remedies are not enough. A label such as "habitual offender" or an unsupported prediction of repetition cannot take the place of statutory satisfaction.[74] A standard template recording each case, the bail orders, the custody status and the overlap would not guarantee that the authority applies its mind, but it would make omissions visible.

6.3 Strengthening Judicial Scrutiny

Courts reviewing a detention should ask whether the authority considered the bail orders and conditions, relied on disclosed and rationally probative material, and addressed the statutory purpose. They should ask whether it kept a live link between past conduct and future necessity. They should not reassess whether the conditions were enough, as an appellate court would.[75]

6.4 Administrative Accountability, Training and Guidelines

Training for detaining authorities and police officers should cover the difference between punitive and preventive purposes. *Ameena Begum* quotes an earlier decision recording that over five detention orders

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[71] *Mulla Afroz*, ¶¶ 56–57; *Ameena Begum*, ¶¶ 71, 77.

[72] *Sushanta Kumar Banik v. State of Tripura*, 2022 SCC OnLine SC 1333, ¶¶ 27–28 (India), as reproduced in *Mala*, ¶ 23.

[73] *Joyi Kitty Joseph*, ¶ 12.

[74] *Ameena Begum*, ¶ 45; *Roshini Devi*, ¶ 9.

[75] *Joyi Kitty Joseph*, ¶¶ 15–16; *Ameena Begum*, ¶ 25; *Mulla Afroz*, ¶¶ 35, 46.

under one State's Act had been quashed in five years.[76] Administrative guidelines are a better first step than amending the statutes, because the Acts differ in purpose, threshold and revocation rules. A common protocol can require disclosure of bail orders and custody status without creating powers the law does not give.

CHAPTER 7: FINDINGS AND SUGGESTIONS

The doctrinal findings are these. First, bail does not create an absolute bar, and *Haradhan Saha*, repeated in *Mulla Afroz*, still controls the line between preventive and punitive jurisdiction. Second, a bail order in the same or a connected case is a relevant judicial circumstance. *Joyi Kitty Joseph* requires consideration of bail conditions that address the very apprehension later relied on. *Mulla Afroz* requires due consideration of bail in one connected case even while custody continues in others. Third, the custody position matters, because actual release, bail in some cases with custody in others, and detention in anticipation of bail raise different questions. Fourth, cancellation is relevant but not a precondition. Fifth, detention must rest on relevant, rationally probative and disclosed material showing a real preventive need. The suggestions are the five-stage inquiry in Chapter 5 and the administrative steps in Chapter 6.

CHAPTER 8: CONCLUSION

Preventive detention is an exceptional constitutional power and not a second criminal process for keeping a person in custody after bail. The State may act against a real future threat, and neither a pending prosecution nor a bail order removes that power. But the executive cannot treat a judicial order as if it did not exist.

The decisions from *Vijay Narain Singh* to *Mulla Afroz* do not forbid detention after bail. They show that a bail order can be a vital circumstance, above all where it addresses the risk later relied on. Detention must rest on material showing a real need to prevent future harm. The Supreme Court has come back to the problem in 2023, 2025 and 2026 without giving one method for it. The framework proposed here is one way of organising what it has said.

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Allahabad | Volume 2 | Issue 6 | November 2026 | ISSN 2582-6433

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