

Form No: HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE
(JUDICIAL DEPARTMENT)

Case No. Writ Petition No.32094/2023

Sarfraz Ali

Versus

Chief Secretary etc.

Sr.No.of order/ Proceedings	Date of order/ Proceedings	Order with signatures of Judge, and that of parties or counsel, where necessary.
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18.05.2023

Mr. Tahir Shehzad, Advocate for the petitioner.
Rana Umair Abrar Khan, A.A.G.

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Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, petitioner Sarfraz Ali has questioned the legality and validity of impugned order dated 12.05.2023 passed by respondent No.3/Deputy Commissioner, Lahore, whereby his son Asad Bilal (hereinafter shall be called as detainee) was ordered to be arrested and detained for a period of thirty days with immediate effect.

2. Learned counsel for the petitioner contends that the impugned order for the detention of detainee under sub-section (1) of Section 3 of the Punjab Maintenance of Public Order (Ordinance), 1960 is against the law and facts; that no material existed with respondent No.3 to justify detention of the detainee; that the detainee did not participate in any protest and he was apprehended from his house just to harass and humiliate him under the garb of peaceful protest launched by the public on 9th May, 2023; that liberty of a citizen is an inalienable right as enshrined under the Constitution and the same cannot be curtailed merely at the whims of the executive; that the

impugned detention order is nullity in the eye of law and is liable to be set-aside.

3. On the other hand, learned Law Officer has submitted that under sub-section 3 of Section (6) of (Ordinance) ibid the petitioner has alternate remedy of filing an appeal before the Home Secretary, Government of Punjab, as such this writ petition is not maintainable; that there was apprehension that the detainee was instigating the general public against the law enforcing agencies and likely to force them to damage public and private properties; that the impugned order was passed while taking into consideration the recommendations of the CCPO, Lahaore, which needs no intervention by this Court in its Constitutional jurisdictions.

4. I have heard learned counsel for the petitioner as well as learned Law Officer and gone through the available record.

5. First of all I would like to dilate upon the objection of learned Law Officer qua maintainability of instant writ petition. Freedom and liberty of a citizen is a fundamental right guaranteed under Article 4 and Article 9 of the Constitution of Islamic Republic of Pakistan, 1973 and its infringement tantamount to violation of fundamental rights enshrined under Article 2-A,3,4,9,14 and 18 of the Constitution. When a person is detained without any just cause, it amounts to violation of his fundamental rights, then he may invoke the jurisdiction of this Court directly under Article 199 of the Constitution, without having course to alternate remedy. Reliance is placed on case reported as **Abdul Latif Shamshad Ahmad .V. District Magistrate,**

Kasur (1999 PCr.LJ 20) wherein it has been observed as under:-

“At the very outset I would express that before the filing of this writ petition, the making of the representation or preference of appeal before the Secretary Home Department Government of the Punjab is not necessary. It has been held in Maulana Shah Ahmad Noorani v. Government of the Punjab PLD 1984 Lah.222 and Azad Papers (Jasarat) v. Province of Sindh and others PLD 1974 Kar. 81 that availability of alternate remedy of making representation to the Provincial Government against the impugned order does not oust and eclipse the jurisdiction of the Constitutional Court in exercise of its writ jurisdiction in a matter of instant nature.”

Reference may also be made to the cases reported as “**Mst. Sana Jamil v. Government of the Punjab through Secretary and 5 others (2016 P Cr LJ 424)** and “**Syed Mubbashar Raza V. Government of Punjab through Secretary Home Department and 2 others (PLD 2015 Lahore 20)**. Thus, the objection of learned Law Officer qua maintainability of this writ petition is repelled.

6. The detainee was detained under sub Section (1) of Section 3 of the Ordinance, which reads as under:-

“3. Power to arrest and detain suspected persons.—(1) Government, if satisfied that with a view to preventing any person from acting in any manner prejudicial to public safety or the maintenance of public order, it is necessary so to do, may, by an order in writing, direct the arrest and detention in such period as may be specified in the order, and Government, if satisfied that for the aforesaid

reasons it is necessary so to do, may, subject to the other provisions of this section, extend from time to time the period of such detention for a period not exceeding six months at a time.”

When the above provision of law read in conjunction with Articles 4,9,10 and 15, of the Constitution which jealously safeguard liberty of every citizen “wherever he may be”, it can safely be concluded that the above Article does not give a “carte blanche” to the Provincial Government to curtail the liberty of ordinary citizens, political rivals and ordinary criminals without applying due process of law. In case reported as “*Federation of Pakistan through Secretary, Ministry of Interior, Islamabad ..Vs.. Mrs. Amatul Jalil Khawaja and others*” (**PLD 2003 SC 442**), the Apex Court has laid down that every detention order should be in conformation with the following criteria:-

- (i) The Court must be satisfied that the material before the detaining authority was such that a reasonable person would be satisfied as to the necessity for making the order of preventive detention;
- (ii) The satisfaction should be established with regard to each of the grounds of detention, and if one of the grounds is shown to be bad, non-existent or irrelevant, the whole order of detention would be rendered invalid;
- (iii) The initial burden lies on the detaining authority to show the legality of the preventive detention;
- (iv) The detaining authority must place the whole material, upon which the order of detention is based, before the Court notwithstanding its claim of privilege with respect to any document, the validity of which claim shall be within the competence of the Court to decide;
- (v) The Court has further to be satisfied, in cases of preventive detention, that the order of detention was made by the authority prescribed in the law relating to preventive detention and that every requirement, of the law relating to preventive detention had been strictly complied with;

- (vi) The “ satisfaction” in fact existed with regard to the necessity of preventive detention of the detenu;
- (vii) The edifice of satisfaction is to be built on the foundation of evidence because conjectural presumption cannot be equated with satisfaction; it is subjective assessment and there can be no objective satisfaction;
- (viii) The grounds of detention should not be vague and indefinite and should be comprehensive enough to enable the detenu to make representation against his detention to the authority, prescribed by law.
- (ix) The grounds of detention had been furnished within the period prescribed by law, and if no such period is prescribed, then “as soon as may be”.

7. It is on the touchstone of above principles, I have to examine the grounds on the basis of impugned detention order was passed. The same are reproduced hereinunder for ready reference:-

- (i) “The detainee is an active member of a political party and his activities are prejudicial to the public safety and maintenance of public order.
- (ii) He is inciting the people to stand u[against the government, particularly the youth of his locality to create law and order situation, plan unlawful assembly and disturb peace in the city.
- (iii). There is great apprehension that he and his followers can damage private and public property, create difficulties, hurdle to public at large by blocking the roads at different points of the city. He alongwith his companions can create law and order situation and cause harassment amongst the public at large.”

8. From the gist of impugned order, it is quite clear that it based on assumptions and presumptions. All the grounds are vague and indefinite. On Court’s query, what was the material available with Deputy Commissioner for passing impugned detention order, learned Law Officer instead of replying this specific query, has cited some unfortunate incidents of attacking sensitive buildings by the protestors. No doubt attacking /ransacking public or private buildings, is

an abhorrent act and cannot be tolerated. The perpetrators of said incidents should be taken to task but under the garb of these unfortunate incidents, the Executive cannot be given a free hand to curtail the liberty of any person at its whims. Incidents cited by learned Law Officer took place on 09.05.2023, whereas, the impugned detention order was issued on 12.05.2023 i.e. after three days of the alleged incidents, where no such allegation was levelled against the detainees. Even otherwise, if there is some proof qua involvement of the detainee in said incidents, he may be proceeded under the relevant law of the country but on that basis provisions of Ordinance ibid cannot be invoked. No material whatsoever has been placed on record to substantiate the above grounds. Article 15 , 16 & 19 of the Constitution reads as under:-

“15. Every citizen shall have the right to remain in, and, subject to any reasonable restriction imposed by law in the public interest, enter and move freely through Pakistan and to reside and settle in any part thereof.

16. Every citizen shall have the right to assemble peacefully and without arms, subject to any reasonable restrictions imposed by law in the interest of public order.

19. Every citizen shall have the right to freedom of speech and expression, and there shall be free of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, [commission of] or incitement to an offence.”

It is thus quite evident that right of liberty, peaceful assembly and freedom of speech and expression has been enshrined in the Constitution as fundamental rights of every citizen and the same cannot be curtailed merely at the whims of the executive. The detainee may be a political activist but participating in politics or carrying out peaceful political activities is neither a crime nor give premium to the executive to use Ordinance ibid to harass or humiliate a political worker under the garb of public safety and maintenance of public order. No material prejudicial to the public peace and tranquility which is a *sina qua non* for issuance of detention order has been brought on record. The Hon'ble apex Court in the case reported as **Mrs. Arshad Ali Khan ..Vs.. Government of Punjab through Secretary Home” (1994 SCMR 1532)** has observed as under:-

“The word ‘public order’ is accordingly referable to public order of local significance as distinguished from material up heavals such as revolution, civil strife and war. Equally it is distinguishable from the popular concept of law and order of security of State. Law and order represents the largest circle, within which is the next circle representing public order and smallest circle represents security of the State. Hence an activity which affects law and order may not necessarily affect public order and an activity which may not necessarily affect security of the State.

From the above-stated legal position, it is quite clear that before an act is held to be prejudicial to public order, it may be shown that the act or activity is likely to affect the

public at large. As a corollary, therefore, it follows that an act which concerns only to an individual and does not amount to an activity prejudicial to the public peace and tranquility cannot fall within the ambit of section 3 of the Ordinance.”

9. Apparently, respondent No.1 while issuing impugned detention order has acted in a mechanical manner and blindly relied upon the recommendations of the police without applying its judicious mind. Impugned order being devoid of any material and reasoning cannot be allowed to hold the field. Resultantly, instant writ petition is **allowed** as a result whereof impugned order of respondent No.3 dated 12.05.2023 is hereby set-aside. The detainee is directed to be released forthwith, if not required in anyother case.

Copy Dasti on payment of usual charges.

**(Asjad Javaid Ghural)
Judge**

Approved for reporting

Judge

*Azam**