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**JUDGMENT SHEET**

**IN THE LAHORE HIGH COURT**

**MULTAN BENCH, MULTAN**

**JUDICIAL DEPARTMENT**

**Writ Petition No. 6977 of 2023**

Adnan Sami Khan      **Versus**      Government of Punjab through Additional Chief Secretary (Home), Government of Punjab, Home Department, Lahore and six others.

**JUDGMENT**

Date of hearing	16.05.2023.
Petitioner by	Mr. Amir Manzoor Awan, Advocate.
Respondents by:	Mr. Mushtaq Ahmed Chohan, Assistant Advocate General.

**SADIO MAHMUD KHURRAM, J:-**

Through this petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the order dated 10.05.2023, passed by the Deputy Commissioner, Rajanpur, respondent No.4, whereby Zeeshan Sami son of Sami Ullah was ordered to be arrested and detained for a period of thirty days with immediate effect. It was further ordered that the custody of Zeeshan Sami son of Sami Ullah, shall be placed under the superintendence of the Superintendent, District Jail, Rajanpur.

2. In compliance of the order dated 12.05.2023, the learned Assistant Advocate General , Punjab on behalf of the respondent No.4, Deputy Commissioner, Rajanpur has filed his report and parawise comments.

3. Learned counsel for the petitioner has argued that the order passed by Deputy Commissioner, Rajanpur

respondent No.4, under section 3 sub-section (1) of the Punjab Maintenance of Public Order Ordinance, 1960 is against the facts and law; that no material existed to justify the detention of Zeeshan Sami son of Sami Ullah, in the circumstances existing; that there was no sufficient cause available with the respondent No.4, Deputy Commissioner, Rajanpur, to pass the said order; that it is not necessary to file representation before Home Secretary, Government of the Punjab, Lahore as declared by this Court in several judgments. It has been, thus, ultimately prayed that by allowing the writ petition, the impugned order of the Deputy Commissioner, Rajanpur (respondent No.4) dated 10.05.2023 may be declared as illegal, unlawful, void-ab-initio and Zeeshan Sami son of Sami Ullah, be set free immediately.

4. On the other hand, the learned Assistant Advocate General has vehemently argued that petition in hand is not maintainable as Zeeshan Sami son of Sami Ullah has remedy to file representation under section 3 sub section (6) of the Punjab Maintenance of Public Order Ordinance 1960 and that the order passed by respondent No.4, Deputy Commissioner, Rajanpur, is valid and passed on cogent material. He has further contended that the writ petition is incompetent as the remedy provided of filing representation before the Govt. under sub-section (6) of section 3 of Punjab Maintenance of Public Order Ordinance 1960 has not been availed by Zeeshan Sami son of Sami Ullah, therefore, petitioner not having invoked the said remedy could not have filed the instant writ petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. Further maintained that the powers under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 of this Court can be invoked when other alternate remedies are not available to the aggrieved person but in this case, as stated above, the alternate remedy is available to the

petitioner ; that it is the constitutional duty of the Provincial Administration to keep the law and order situation peaceful.

5. I have heard the learned counsel for the petitioner, the learned Assistant Advocate General and perused the record with their able assistance.

6. In order to understand the legal aspect of the case it would be beneficial to reproduce section 3 of Punjab Maintenance Public Order Ordinance, 1960:-

**“Section 3 of the Punjab maintenance Public Order Ordinance 1960**

Power to arrest and detain suspected person.---(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)

(Explanation I)---For the purpose of this section \_\_\_\_

(i)Dealing in the black-market or hoarding as defined in the Hoarding and Black Market Order, 1948; or

(ii)an act of smuggling punishable under the Sea Customs Act, 1878, or the land Customs Act, 1924, or under any other law for the time being in force; or

(iii)an act which is an offence under the Drugs Act 1976 (XXXI of 1976).

Shall be deemed to be an act prejudicial to the maintenance of public order.

(Explanation II)---Whoever is or was a member of an association or its Executive Committee, which association is or has been declared to be unlawful under any law for the time being in force in the Province, at any time during the period of seven days immediately before it was so declared to be unlawful shall be deemed to be a thing in a manner prejudicial to public safety and the maintenance of public order for the purposes of this section.

(2) If a District Coordination Officer or a public servant authorized in his behalf by the Government has reasons to believe that a person, within his territorial jurisdiction has acted, is acting or is about to act in manner which is prejudicial to public safety or maintenance of public order, he shall immediately refer the matter to the Government.

(3) (a) An order of arrest under subsection (1) may be addressed to a Police Officer or any other person and such officer or person shall have the power to arrest the person mentioned in the order and in doing so he may use such force as may be necessary. The Police Officer or the other person, as the case may be, shall commit the arrested person to such custody as may be prescribed under section (7).

(b) A Police Officer not below the rank of Sub-Inspector, if satisfied on receipt of credible information that a person against whom an order of arrest or of arrest and detention has been made under this section is present within such officer's jurisdiction, may arrest him without a warrant in the same manner as he would have done if such order of arrest had been addressed to him "and thereupon commit the arrested person to such custody as may be prescribed under subsection (7); or if he receives any requisition in this behalf from the police officer or other person to whom the warrant, of arrest for the person arrested is addressed, make over the custody of the arrested person to such police officer or other person."

The Constitution of Islamic Republic of Pakistan, 1973 guarantees that no person shall be deprived of life or liberty saved in accordance with law. Liberty of any citizen is an "inalienable right" of the citizen enshrined in article 4 and embodied in article 9 of the Constitution of the Islamic Republic of Pakistan, 1973 and the detention of any citizen would tantamount the violation of fundamental rights guaranteed under articles 2-A, 3,4,9,14 & 18 of the Constitution of Islamic Republic of Pakistan, 1973. Even otherwise, the preamble of Punjab Maintenance Public Order Ordinance, 1960 law is made to ease public and ensure public safety, public interest and maintenance of public order and the applicability of the provisions of a public maintenance order is subject to guarantee provided by the Constitution of the Islamic Republic of Pakistan, 1973. I also do not agree with the learned Law Officer that prior to filing the writ petition against the order of detention, it is necessary to assail the order passed under section 3 of the Punjab Maintenance Public Order Ordinance, 1960 before the Additional Chief Secretary (Home), Government of Punjab, Home Department, Lahore. Reliance is placed on "Abdul Latif Shamshad Ahmad vs.

District Magistrate, Kasur (1999 P.Cr.L.J 2014) in which by tackling such legal observation the Hon'ble Bench 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 Maulna 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 the instant nature. This objection of the learned Assistant Advocate General is overruled."

Reliance is also placed on the cases of "Mst. Sana Jamil Vs Government of the Punjab through Secretary and 5 others" (**2016 P.Cr.L.J 424**) and "Syed Mubbashar Raza Vs Government of Punjab through Secretary Home Department and 2 others" (**PLD 2015 Lahore 20**). Keeping in view the law laid down in judgment supra the objection of the learned AAG is overruled.

7. Now coming up to the merits of the instant case; Zeeshan Sami son of Sami Ullah cannot be detained merely on the grounds that he is an active member of a political party. In the report filed by respondent No.4, Deputy Commissioner, Rajapur, it has been mentioned that Zeeshan Sami son of Sami Ullah is involved in planning civil disturbance, however, the current involvement of Zeeshan Sami son of Sami Ullah in any registered case, has not been mentioned. The respondent No.4, Deputy Commissioner, Rajapur, in the impugned order has only observed that for the fact that Zeeshan Sami son of Sami Ullah is an active member of a political party and he in this manner is planning to participate in protests, therefore, he needs to be detained. The right to protest is also implied in "the right to assemble peacefully", in the "right to form associations or unions", in the "right to form or be a member of a political party" and in the "in the right to

freedom of speech and expression". The august Supreme Court of Pakistan in the ***SUO MOTU CASE NO.7 OF 2017 (P L D 2019 Supreme Court 318 )***, has held as under:-

"25. The Constitution does not specifically stipulate a right to protest. However, democracy recognizes such a right, and it was through democratic means that Pakistan was achieved. The people of the subcontinent acquired independence from British-colonial rule by the efforts of the All India Muslim League and the Indian National Congress; they peacefully protested, demonstrated, held meetings and expressed themselves through elections, as a consequence of which two independent countries, Pakistan and India, emerged. Our Constitution is moored in democracy. The people of Pakistan have declared, "that Pakistan would be a democratic State" and that its citizens are, "dedicated to the preservation of democracy". Citizens have the right to peacefully protest and hold demonstrations, and may do so against any action or decision of a government or authority. The right to protest is also implied in "the right to assemble peacefully", in the "right to form associations or unions", in the "right to form or be a member of a political party" and in the "in the right to freedom of speech and expression"

Political parties are institutions of very great importance under our form of government. They are, in fact, the effective instrumentalities by which the will of the people may be made vocal, and the enactment of laws in accordance therewith made possible. So potent have they become in determining the measures and in administering the affairs of government that they are now regarded as inseparable from, if not essential to, a republican form of government. The people have an inherent right to form, organize, and operate political parties and to reorganize an old political party. This is included in the right of suffrage. It has been characterised as "*an inalienable right guaranteed by the Constitution.*" The august Supreme Court of Pakistan in the case of ***WORKERS' PARTY PAKISTAN through Akhtar Hussain, Advocate, General Secretary and 6***

*others Versus FEDERATION OF PAKISTAN and 2 others (P L D 2012 Supreme Court 681)* has held as under:-

"The freedom of association, as enunciated by Article 17 of the Constitution, confers a Fundamental right on every individual to partake in the political governance of the State, whilst concurrently reinforcing the constitutional mandate to protect and advance this right through a democratic State. Furthermore, the 'freedom of assembly' (Article 16) and 'freedom of speech' (Article 19) also serve to realize this constitutional imperative."

While declaring the Anti-Terrorism (Second Amendment) Ordinance (XIII of 1999) in so far as inserting section 7 A into the Anti-Terrorism Act, 1997, invalid, being repugnant to the Constitution of the Islamic Republic of Pakistan, 1973 by including illegal strikes, go slows, lock outs as "civil commotion" and providing punishment for the same as it militated against the Fundamental Right of freedom of expression provided in Article 19 of the Constitution of the Islamic Republic of Pakistan, 1973 and as being also inconsistent with the labour laws of the country which ensured the observance of various Fundamental Rights, the august Supreme Court of Pakistan in the case of "*JAMATI ISLAMI PAKISTAN through Syed Munawar Hassan, Secretary General versus FEDERATION OF PAKISTAN through Secretary, Law, Justice and Parliamentary Affairs (P L D 2000 Supreme Court 111)*" held as under :-.

"It is difficult to give an exhaustive definition of the term "internal disturbances". It may be understood in the context of run down of the law and order situation in the country. Disturbances resulting in loss of life and property, disturbances resulting from large scale clashes between various factions of the people, or where a Government finds it difficult to maintain law and order, to run the ordinary administration of the country, to keep open educational institutions and to ensure normal economic activity and functioning of the various State institutions could be termed as internal

disturbance, depending upon the language in a statute. It is essential to define in clear and definite terms as to what constitutes an act of civil commotion in unambiguous words without derogation to the rights of the citizens to the enjoyment of rights guaranteed under Article 4 (rights of individuals to be dealt with in accordance with law). Article 9 (security of person), Article 14 (inviolability of dignity of man), Article 16 (freedom of assembly) and Article 27 (equality of citizens) and Article 19 (freedom of speech and expression) and there shall be freedom of the press, subject to any reasonable restriction 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.

17. We are not persuaded to accept that the terms "illegal strike", "lockout" and "go-slow" are to be read in the context of Labour Laws, as argued by the learned Deputy Attorney-General. The learned Attorney-General was right in arguing that the above words are to be read *ejusdem generis* with the word "internal disturbances". However, the difficulty is that the words "internal disturbances" used in section 7-A are vague. The term "internal disturbance" may have various meaning depending upon the context in which it is used. The words "internal disturbance" and "civil commotion" connote temporary outbreak of unlawful violence, whereby the ordinary business of the community is, more or less, interrupted and it has the effect of uprising among the masses which occasion a serious and prolonged disturbance and, insurrection. Civil disorder not attaining the situation of war or an armed insurrection, is a wild and irregular action with many persons assembled together. "Internal disturbance" is a disturbance occurring in any part of the country which wrongfully interferes with the general tranquillity in social and ordinary life of the people under the Constitution and the law. The meaning of the term "internal disturbances", "illegal strike", lock-out" and "go-slow" must be expressed in definite terms for the purposes of section 7-A of the Act, in that, it would not be in the interest of justice to leave it to a Police Officer to apply the law which is vague and unintelligible. Constitutional guarantee of the Fundamental Right to have a fair trial is spelt out from Article 9 of the Constitution. An accused is not only entitled to pre-trial disclosure by the prosecution to the defence of relevant material specially the

statement of witnesses under section 161, Cr.P.C. but also pre-commission disclosure of the offence before being tried. It is the duty of the State to disclose in the law as to what constitutes an offence. Viewed from that angle section 7-A of the impugned Act to the extent indicated above is unconstitutional, in that, it infringes the presumption of innocence and does not meet the condition of reasonableness due to vagueness. Every citizen has a constitutional right to lead his life in accordance with law and what is not prohibited by law, The vague definition of the words "internal disturbances", "illegal strike" "lock-out" and "go slow", if allowed to continue in the statute in their present form, could lead to imbalance in individual and community rights.

18. We, therefore, hold that section 7-A of the impugned Act to the extent indicated above is invalid being repugnant to the Constitution and requires to be suitably amended"

No material is available on record to justify that Zeeshan Sami son of Sami Ullah, created any disturbance in maintaining the law and order situation in the vicinity. Deputy Commissioner, Rajapur, respondent No.4, while passing the said order has not referred any such material for justifying the detention of Zeeshan Sami son of Sami Ullah. The august Supreme Court of Pakistan has clearly laid down guideline in the case titled "Mrs. Arshad Ali Khan VS Government of the Punjab through Secretary Home (1994 SCMR 1532)" in the following unequivocal terms: -

"The word 'public order' is accordingly referable to public order of local significance as distinguished from national up heavals such as revolution, civil strife and war. Equally it is distinguishable from the popular concept of law and order and of security of State. Law and order represents the largest circle, within which is the next circle representing public order and the 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 be prejudicial to public order 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."

Furthermore, the detention of Zeeshan Sami son of Sami Ullah is violative of the principle of fair trial as enshrined in article 10 of the Constitution of the Islamic Republic of Pakistan, 1973. Moreover, as mentioned above, even the Apex Court of the country does not consider being associated with a political party as a valid ground to deprive a citizen from benefit which law provides in his favour and the liberty of any person cannot be curtailed on this ground. In the instant case, the liberty of Zeeshan Sami son of Sami Ullah has been curtailed merely on the ground of his association with a political party otherwise there is no other apprehension to integrity, security or disturbance of public or any part thereof, external affairs of public, public order or maintenance of supply or services at the hands of Zeeshan Sami son of Sami Ullah. It is also a fact that presently the call for protest by the political party to which Zeeshan Sami son of Sami Ullah belongs has also been withdrawn. Presently there do not exist any grounds to continue detaining Zeeshan Sami son of Sami Ullah.

8. In view of the above detailed discussion, there is no evidence collected by the concerned authority due to which detention of Zeeshan Sami son of Sami Ullah under section 3 of the Punjab Maintenance Public Order Ordinance, 1960 can be said as justified and there is no justifiable reasons available for detention, therefore, the impugned order dated 10.05.2023 passed by respondent No.4, namely, Deputy Commissioner, Rajapur, is **set aside** and declared as illegal, without any lawful justification and ineffective upon the rights of Zeeshan Sami son of Sami Ullah. Consequently, the instant petition is **allowed**. Zeeshan Sami

son of Sami Ullah, is directed to be released forthwith if not required in any other case and set at liberty.

**(SADIQ MAHMUD KHURRAM)  
JUDGE**

**APPROVED FOR REPORTING**

**JUDGE**

*Raheel*