

3. On the other hand, learned Additional Advocate General, Punjab assisted by learned Assistant Advocate General, Punjab while producing report & parawise comments to this petition prepared by Deputy Commissioner, Gujrat/respondent No.2 as well as report and parawise

comments to this petition prepared by District Police Officer, Gujrat/ respondent No.3 (which have been placed on record of instant petition) and supporting the impugned orders submits that since detainees have not availed alternative/departmental remedy by filing representation before the Government of Punjab, therefore, instant petition is not maintainable; further submits that both aforementioned brothers of the petitioner are involved in case arising out of F.I.R. No.250 dated: 10.05.2023 registered under Sections: 341, 188, 147, 149 PPC at Police Station: Saddar Gujrat; finally adds that impugned orders are in accordance with law and instant petition is liable to be dismissed.

4. **Arguments heard and available record perused.**

5. As far as objection raised by learned Additional Advocate General, Punjab with respect to maintainability of instant petition due to non-filing of representation by the detenus before Government of Punjab, is concerned, suffice it to say that right to file petition of instant nature i.e. habeas corpus is remedy provided by the constitution of Islamic Republic of Pakistan, 1973 in all matters of illegal confinement as one of fundamental rights; it goes without saying that if arrest of a person for the purpose of “Preventive Detention” cannot be justified in the eyes of law, then there is no reason that why said person should not invoke jurisdiction of this Court for his immediate release; in this regard, case of **“Muhammad Irshad versus Government of the Punjab and others”** (2020 P Cr.L J 206) can be advantageously referred; relevant portion from the same is hereby reproduced: -

“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 same before the Secretary, Home Department, Lahore (Punjab). Reliance is placed on “Abdul Latif Shamshad Ahmad v. District Magistrate, Kasur” (1999 PCr.LJ 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 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 the instant nature. This objection of the learned Assistant Advocate General is overruled.”*

Reliance is also placed on the cases of “Mst. Sana Jamil v. Government of the Punjab through Secretary and 5 others” (2016 PCr.LJ 424) and “Syed Mubbashar Raza v. 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.”

Therefore, objection (mentioned above) is overruled and instant petition is maintainable.

6. It has been noticed that Deputy Commissioner, Gujrat/respondent No.2 has passed the impugned orders No.786/HC(G) dated: 10.05.2023 and 788/HC(G) dated: 10.05.2023 *qua* petitioner’s brothers namely Abdul Rehman *alias* Mooni and Nasir Malik, respectively under sub section 1 of Section: 3 of the West Pakistan Maintenance of Public order Ordinance, 1960 (Amendment 2017) merely on the recommendations of District Police Officer, Gujrat/respondent No.3 and relevant portion of report & parawise comments submitted on behalf of Deputy Commissioner, Gujrat/respondent No.2 is reproduced for ready reference: -

*“Brief facts of the case are that District Police Officer, Gujrat vide his letter No. 8012/S, dated 10.05.2023 and No.8014/S, dated 10.05.2023 (Annex-A & B) reported that Abdul Rehman @ Mooni and Nasir Malik sons of Muhammad Malik r/o Sama, Gujrat are zealous. They have evil design and may cause damage / loss to the lives as well as properties of general public and government. Hence, they could create law & order situation and disharmony in the area. He further reported that the SHO concerned expressed strong apprehension that if above named activists remains free, they may create any untoward Bituation in area.*

*2. As recommended by the District Police Officer, Gujrat, Abdul Rehman @ Mooni and Nasir Malik sons of Muhammad Malik r/o Sama, Gujrat were detained vide this office order No. 786/HC(G), dated 10.05.2023 and No. 788/HC(G), dated 10.05.2023 (Annex-C & D) in District Jail, Gujrat under section 3 of the Punjab Maintenance of Public Order Ordinance, 1960 for 30 days.”*

Similarly, relevant portion of the report of District Police Officer, Gujrat/respondent No.3, is also reproduced below: -

*“2. It is further submitted that on receipt of the instant writ petition, report into the matter was sought from DSP/SDPO Lalamusa circle, Gujrat. As per his report, the SHO Police Station Sadar Gujrat moved the requests for the detention of Nasir and Abdul Rehman @ Mooni, both brothers of the instant petitioner. As per contents of the request, said Nasir and Abdul Rehman @ Mooni, brothers of petitioner, are miscreant. They have evil design and may cause damage/loss to the lives as well as properties of general public and government. Hence, they could create law &*

*order situation and disharmony in the area. The SHO has expressed strong apprehension that if above named activists remains free, they will deteriorate public peace & tranquility.*

*3. On receipt of the above said applications of SHO Police Station Sadar Gujrat, requests were made to the Deputy Commissioner Gujrat/ Respondent No. 2 for the detention of said Nasir and Abdul Rehman @ Mooni. Consequently, Nasir and Abdul Rehman @ Mooni have been detained for 30 days u/s 3 of the Punjab Maintenance of Public Order Ordinance, 1960, vide order No. 788/HC(G), dated 10.05.2023 and 886/HC(G), dated 10.05.2023 respectively by the Deputy Commissioner, Gujrat. 4. It is pertinent to mention here that the above said Nasir and Abdul Rehman @ Mooni have also been found involved in case FIR No. 250 dated 10.05.2023 u/s 341/188/147/149 PPC PS Sadar Gujrat.”*

It is trite law that before passing detention order of a person under Section: 3 of the Ordinance *ibid*, the competent authority must have reasons to believe that said person within his territorial jurisdiction has acted, is acting or is about to act in a manner which is prejudicial to public safety or maintenance of public order; however, perusal of the available record reveals that allegations against the detenus are general in nature and any solid or cogent evidence/material in order to establish the same, was not produced before Deputy Commissioner, Gujrat/respondent No.2 at the time of passing impugned orders (mentioned above); it is also not out of place to mention here that except aforementioned asking/ recommendations of District Police Officer, Gujrat/respondent No.3, there is no material available against the detenus to establish that they were acting or were about to act in any manner, which was prejudicial to the public safety or maintenance of the public order. Learned Additional Advocate General, Punjab assisted by learned Assisted Advocate General, Punjab (on Court's query) could not refer or produce any material to prove that detenus are members of any banned group, proscribed organization or involved in any anti-State activities. Even perusal of report of District Police Officer, Gujrat does not reflect any material to invoke sub-section (1) of Section: 3 of the Ordinance *ibid* except apprehensions. But mere apprehension without any valid reason and also not supported by any cogent material, cannot be allowed to be made basis for curtailing right/liberty or freedom of any citizen which is even otherwise guaranteed by the constitution of Islamic Republic of Pakistan, 1973 and so far as registration of case *vide* F.I.R. No.250 (mentioned above) against the detenus is concerned, suffice it to say that allegations levelled in said case are first to be established during investigation and then to be proved during trial and detenus will face

proceedings in the same separately as per law but in the circumstances, it cannot be *per se* made basis for issuance of impugned detention orders and in this regard, Article 13 (a) of the constitution of Islamic Republic of Pakistan, 1973 can be advantageously referred. It goes without saying that when law requires a thing to be done in a particular manner, it should have been done in that manner otherwise same would be deemed as illegal in the light of maxim **“A communi observantia non est recedendum”** and in this regard case of **“Muhammad Zafar Iqbal versus Sadozai Khan and two others”** (2021 YLR 1206) and case of **“Maqsood Yameen versus R.P.O. Multan and others”** (2015 PCr.LJ 923) can be referred.

7. In view of what has been discussed above, it is crystal clear that the impugned detention orders No.786/HC(G) dated: 10.05.2023 and No.788/HC(G) dated: 10.05.2023 have been passed against the settled principles of law on the subject as well as relevant facts, therefore, same are set aside, and Abdul Rehman *alias* Mooni and Nasir Malik (detenus/brothers of the petitioner) are ordered to be released forthwith, if not required in any other case. Instant petition stands **accepted**.

**(Farooq Haider)**  
**Judge**

**APPROVED FOR REPORTING**

**(Farooq Haider)**  
**Judge**

This order has been dictated, pronounced,  
prepared and signed on 22.05.2023.

*Kashif*