

Form No: HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT,
BAHAWALPUR BENCH BAHAWALPUR.
JUDICIAL DEPARTMENT

W.P. No. 5770/2024.

Muhammad Asad Mehmood **Versus** Government of Punjab through
Secretary Home Department,
Punjab, Lahore & others.

S.No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties of counsel, where necessary
	<u>01.08.2024.</u>	M/s Asif Arshad, Muhammad Arshad Ali Singhaira, Sultan Qadir Altaf and Muhammad Akthar Chaudhary, Advocates for petitioner. Mr. Zafar Iqbal Awan, Addl. A.G. Mr. Khurram Pervaiz Deputy Commissioner, Rahim Yar Khan. Mr. Javed Akhtar Jatoi, SP Headquarter, Rahim Yar Khan. Mr. Sohail SI Police Station, Khanpur.

Instant petition seeks declaration of invalidity against detention orders, variously passed, apparently in exercise of powers under section 3(1) of the West Pakistan Maintenance of Public Order Ordinance, 1960 ('MPO, 1960'), on 25th July 2024 and 26th July 2024, pursuant thereto persons identified in the Schedule-A were detained – details of persons in the Schedule-A is lifted from the petition and each of the person is identified with reference to corresponding detention order. It is alleged that detainees are affiliated with the political party.

2. Learned law officer objects to the maintainability of this petition on the ground that representation / appeal of detainees is pending

before the Secretary Home Department, Government of Punjab, which is an available alternate remedy.

3. On merits of the detention orders, learned law officer refers to a report, placed on record today, signed by the District Police Officer, Rahim Yar Khan. District Police Officer and Deputy Commissioner, Rahim Yar Khan, to demonstrate that detainees had previous criminal record and detention is essential to secure public peace, tranquility and prevent disturbance.

4. Heard. Detention orders replicate in content, except name(s) / identity(ies) of the persons referred therein. One of the detention order of 26.07.2024, available at page 22 of this petition, ordering detention of one Shabbir Ali, son of Khadim Hussain, is read with the assistance of law officer, text whereof, for convenience's sake, is reproduced hereunder,

"WHEREAS, the District Police Officer, Rahimyarkhan vide his letter No.3465/SB dated 25.07.2024 has stated that as per report of SHO, PS "City Khanpur", Shabbir Ali s/o Khadim Hussain Caste Pahoor R/o Model Town Khanpur is a quarrelsome/ combative type of person. He is involved in instigating people to participate in anti state campaign, which can disturb the law & order situation and endanger the lives and properties of General Public of Rahimyarkhan. In prevailing situation, if he remains free, he will indulge in the activities prejudicial to public peace and tranquility. His activities are dangerous to public health and"

creating disharmony in the area due to which, people of the locality are feeling insecurity.

2. **AND WHEREAS,** Under the above circumstances, DPO, Rahimyarkhan has recommended that in order to prevent the said anti-social element from his unlawful activities and acting in a manner prejudicial to the public safety and the maintenance of public order, he may be detained u/s 3(1) MPO, 1960 for a period of 30 days in the public interest.

3. **WHEREAS,** Considering the above said grounds given by the DPO, Rahimyarkhan, I am fully satisfied that in order to prevent the said person from acting in any manner prejudicial to public safety and the maintenance of public order, his detention is necessary and expedient in public interest.

4. **NOW THEREFORE,** I Khurram Pervaiz, Deputy Commissioner, Rahimyarkhan, in exercise of the powers conferred upon me u/s 3(1) of the West Pakistan Maintenance of Public Order, ordinance, 1960, vide Home Department's notification No.SO(ISOI)3-12/2007 dated 16-02-2008 hereby order to detain **Shabbir Ali s/o Khadim Hussain Caste Pahoor R/o Model Town Khanpur** for a period of 30 days from the date of his entrance in District Jail, Rahimyarkhan to avoid any likelihood of breach of peace/unlawful assembly in the district.

5. The detainee is at liberty to make representation to Government of the Punjab against this order.

6. Given under my hand on this 26th day of July, 2024.”

5. Perusal of detention order indicates reference to some letter No.3465/SB dated 25.07.2024 – [on perusal letter bears No.3466/SB dated 25.07.2024] - of District Police Officer, Rahim Yar Khan. It is appropriate to reproduce contents of referred letter, which read as,

“Subject: **REQUEST FOR ISSUANCE OF DETENTION ORDER U/S 3-MPO.**

Memorandum:

Kindly refer to the subject cited above.

2. *It is stated that as per report submitted by SHO PS City Khanpur, Shabbir Ali s/o Khadim Hussain Caste Pahoor r/o Model Town Khanpur is a quarrelsome/combative type of person. He is involved in instigating the people to participate in anti-state campaign, which can disturb the law & order situation and endanger the lives and properties of General Public of this district.*

3. *In prevailing situation, if he remains free, he will indulge in the activities prejudicial to public peace and tranquility. His activities are dangerous to public health and creating disharmony in the area due to which, people of the locality are feeling insecurity.*

4. *In view of the above, it is requested that an order under section 3-MPO may be issued against him for a period of 30-days in order to restrain him from indulging in the activities prejudicial to public and maintenance of law & order, please.*

*District Police Officer,
Rahim Yar Khan.”*

6. Heard.

7. Objection regarding availability of alternate remedy is repelled on the premise that order of detention is inherently defective, which evidently fails to meet the statutory test for encumbering one's personal liberty / freedom, reasons provided *infra*. In the circumstances, claim of alternate remedy is misconceived and not adequate and efficacious to cure illegality and incidence of abdication of jurisdiction. There is no cavil that law permitting preventive detention has to be construed strictly. No reinventing of wheel is required; jurisprudence regarding scope of preventive detention, embodied in section 3(1) MPO, 1960, is well-settled, which expounds that

justification and justiciability of a detention order has to be ascertained and adjudged in the context of the material / evidence, available and referred to in the order and sufficient enough to meet exception to the fundamental rights, guaranteed under the Constitution of Pakistan – [Article 10 provides for such preventive detention subject to the law, which is MPO, 1960]. Perusal of detention order(s) manifest broad-spectrum / general allegations, attributing participation in anti-state campaign – which insinuations followed by repetitive cliché / platitudeous expressions in the text of detention order(s). When asked to provide specific facts / circumstances that led to the passing of detention orders, learned law officer emphasized that each of the detainee had previous criminal record, who responded to the query, that whether such details were referred to or indicated in the detention orders or letter by District Police Officer, Rahim Yar Khan, with deafening silence. Details of any criminal case was not referred in the detention orders. It is unexplained that how mere registration of criminal cases – [It is evident that case FIR No.695/24 u/s 341/188/186/148/149 PPC PS Kotsmaba, and FIR No.536/23 u/s 341/188/148/149 PPC 16-MPO PS Saddar

Khanpur] -would make detainee *Anti-State campaigner*" – often used cliché, which is akin to a "lawfare mechanism" adopted these days to cause problems for opponent(s) and presently so frequently employed that it lost credibility and even fails to meet straight face / giggle test. This is serious allegation and has had to be justified with compelling reasons/grounds conspicuously absent. Registration of case does not *per se* justify the preventive detention – See the case of "MRS. ARSHAD ALI KHAN. VS. GOVERNMENT OF THE PUNJAB through Secretary, Home." (1994 SCMR 1532). Contents of the detention orders smacks of *mala-fide*, whereby 28 persons are deprived of their liberty / freedom – on trumped-up allegations, surmises and conjectural basis, when no tangible evidence or sufficient support material is produced / shown to justify the grounds for preventive detention, which amount to an incidence of *malice-in-law*. Reference is made to the ratio in the case of "BEGUM NAZIR ABDUL HAMID. VS. PAKISTAN (FEDERAL GOVERNMENT) THROUGH THE SECRETARY, INTERIOR, DIVISION ISLAMABAD and another." (PLD 1974 Lahore 7), relevant portion therefrom is reproduced hereunder,

“An order of detention is mala fide if it is made for a “collateral” or “ulterior” purpose, i.e. a purpose other than what the Legislature had in view in passing the law of preventive detention. In Shearer v. Shields (1) it was held that the person who inflicts a wrong or an injury upon a person in contravention of the law is not allowed to say that he did so with an innocent mind. It is “malice in law”, although so far as his mind is concerned, he may have acted honestly or innocently. The malice in law is to be inferred when an order is made contrary to the objects and purposes of the Act, or the rules made thereunder. It is not enough that the order is passed under a colour of the power conferred. It must be done in actual exercise of it and no power is conferred to make such an order in abuse of the Act.”

8. This appears to be a textbook case of misuse
qua exercise of discretion and authority.

9. In view of the above, detention orders under
reference are declared illegal and of no legal effect
and directions are made for forthwith release of
persons, mentioned in Schedule-A, provided same
are not required in any other criminal case.

**(ASIM HAFEEZ)
JUDGE**

APPROVED FOR REPORTING.

JUDGE.

SCHEDULE-A

W.P. No.5770/2024.

Muhammad Asad Mehmood.

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Sr. No.	Name with Parentage of detained person	Date of detention Order.
1.	Muhammad Tanveer s/o Akhtar Hussain.	26 th July, 2024
2.	Muhammad Khalid s/o Allah Bakhsh.	26 th July, 2024
3.	Muhammad Yaqoob s/o Noor Din.	26 th July, 2024
4.	Faheem Ahmad s/o Abdul Ghaffar.	26 th July, 2024
5.	Muhammad Sanwal s/o Ibraheem.	26 th July, 2024
6.	Muhammad Saghir Ali s/o Muhammad Yaqoob.	26 th July, 2024
7.	Maaz s/o Mehrab Khan.	26 th July, 2024
8.	Mujahid Hussain s/o Abdul Khaliq.	25 th July, 2024
9.	Muhammad Saqlain s/o Abid Hussain.	26 th July, 2024
10.	Muhammad Arslan s/o Akram.	26 th July, 2024
11.	Shabbir Ali s/o Khadim Hussain.	26 th July, 2024
12.	Asad s/o Ayaz Ahmed.	26 th July, 2024
13.	Muhammad Shafiq s/o Muhammad Shafi.	26 th July, 2024
14.	Mohammad Asghar s/o Bashir Ahmad.	26 th July, 2024
15.	Muhammad Zeeshan s/o Muhammad Akram.	26 th July, 2024
16.	Jam Mahboob Ahmed s/o Hajji Ahmed.	25 th July, 2024
17.	Muhammad Shahzad s/o Sajjad Ahmad.	25 th July, 2024
18.	Talib Hussain s/o Dost Ali.	25 th July, 2024

(ASIM HAFEEZ)
JUDGE.