

Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

Writ Petition No.34019/2023

Kamran Khan **versus** Govt. of Punjab, etc.

JUDGMENT

Date of hearing	<u>25.05.2023</u>
Petitioner by	Ch. Ali Murtaza, Advocate.
Respondents by	Mr. Umar Arshad Butt, Assistant Advocate General, Punjab for respondents along with Ishtiaq S.I. and Jameel Ahmad, Assistant Commissioner (HR, Co-ordination) office of Deputy Commissioner, Narowal.

FAROOQ HAIDER, J.:- This petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 has been filed with the following prayer: -

"In view of the above facts and submissions, it is therefore, most respectfully prayed that instant petition may kindly be accepted and the impugned detention order of the detainee bearing No.HC(G)/1823 dated 10.05.2023, passed by respondent No.3, be declared illegal, unconstitutional and null and void upon the rights of the detainee, hence, liable to be quashed and also issue appropriate directions to the respondents to release the detainee from the jail at once.

Any other relief which this Honourable Court may deem fit and appropriate under the given circumstances may also be awarded to the petitioner. "

2. Learned counsel for the petitioner submits that real brother of the petitioner namely "**Zeeshan Razzaq**" has been arrested and detained *vide* aforementioned impugned order passed under Section: 3 (1) of the West Pakistan Maintenance of Public Order Ordinance, 1960 for a period of 30-days by Deputy Commissioner, Narowal/respondent No.3; further adds that there is no evidence/material available against him to show that he was acting or was about to act in a manner which was prejudicial to public safety or maintenance of public order; also adds that respondent No.3 has passed the impugned order (mentioned above) merely on the basis of asking/recommendations of District Police Officer,

Narowal/respondent No.4 and without application of his own mind; finally prays that aforementioned impugned order is against the law as well as facts of the case, therefore, same is liable to be set-aside.

3. On the other hand, learned Assistant Advocate General, Punjab while producing report & parawise comments to this petition prepared by Deputy Commissioner, Narowal/respondent No.3 as well as report and parawise comments to this petition prepared by District Police Officer, Narowal/respondent No.4 (which have been placed on record of instant petition) and supporting the impugned order submits that since detenu has not availed alternative/departmental remedy by filing representation before the Government of Punjab, therefore, instant petition is not maintainable; finally adds that impugned order is 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 Assistant Advocate General, Punjab with respect to maintainability of instant petition due to non-filing of representation by the detenu 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) and **“Abdul Rauf versus Govt. of Punjab, etc.”** (2023 LHC 2697) can be advantageously referred; relevant portion from former case law 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. Now coming to the merits of the case, it has been noticed that Deputy Commissioner, Narowal/respondent No.3 has passed the impugned order No.HC(G)/1823 dated: 10.05.2023 *qua* petitioner's brother namely Zeeshan Razzaq under Section: 3 (1) of the West Pakistan Maintenance of Public order Ordinance, 1960 merely on the recommendations of District Police Officer, Narowal/respondent No.4 and relevant portion of report & parawise comments submitted on behalf of Deputy Commissioner, Narowal/respondent No.3 is reproduced for ready reference: -

“It is submitted that the District Police Officer, Narowal through his letter No. 1203/SB dated 10/05/2023 (Annex-1) intimated that Zeeshan Razzaq W/O Abdul Razzaaq, Caste Pathan, R/O Bara Manga, Tehsil Shakargarh, District Narowal was delivering speeches against Pakistan Government, National Security Agencies and was instigating/provoking the people to create law & order situation. There was strong apprehension that the said Individual might exploit the public sentiments with the objective to commit violence, deliver unlawful speeches to cause civil commotion and damage the human live, Govt./public properties, to overawe the Government and to obstruct the Government machinery in discharging its lawful functions/duties which might led to lawlessness and anarchy. Accordingly, DPO Narowal 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 maintenance of public order, the said that Zeeshan Razzaq W/O Abdul Razzaaq be detained for a period of 30 days. Therefore, in view of the recommendation of the DPO Narowal and in order to prevent the said Individual from acting in any manner prejudicial to the public safety and maintenance of public order, that Zeeshan Razzaq W/O Abdul Razzaaq was detained vide order No. HC(G)/1823 dated 10/05/2023 for a period of 30 days from the date of his entrance in district Jail Narowal In terms of section 3(1) of the Maintenance of Public Order, 1960 to avoid any likelihood of breach of peace/unlawful assembly in the district (Annex-II).”

Similarly, relevant portion of the report of District Police Officer, Narowal/respondent No.4, is also reproduced below: -

"2. It is further submitted that as per report of Incharge Security of this office Zeeshan Razzaq s/o Abdul Razzaq caste Pathan r/o Bara Manga, Tehsil Shakargarh, District Narowal was delivering speeches against Government of Pakistan, National Security Agencies and persuading the people to create law & order situation in the District. Therefore, there was apprehension that he may exploit the public sentiment with the object to commit violence, deliver unlawful speeches to cause civil commotion and damage to human life, Government/public properties, to overawe the government and to obstruct the Government Machinery in discharging lawful functions/duties and his free movement was likely to disturb the public peace, safety and tranquility which may lead to anarchy in the country. Due to above said circumstances and in order to prevent the said anti social element and his unlawful activities and to maintain the public order, he was recommended to be kept in detention in the best interest of public peace.

3. Consequently, Deputy Commissioner, Narowal vide order. WHCIG)/1823 dated 10.05.2023 (copy enclosed Annex-'A') has detained Zeeshan Razzaq s/o Abdul Razzaq caste Pathan r/o Bara Manga, Tehsil Ghakargarh, District Narowal for a period of 30 days from the date of his entrance in District Jail Narowal to avoid any likelihood of breach of peace/unlawful assembly, please.

Report is submitted for kind perusal, please."

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 detenu is general in nature i.e. he was delivering speeches against Government of Pakistan, National Security Agencies and persuading the people to create law & order situation in the district but any solid or cogent evidence/material in order to establish the same, was not produced before Deputy Commissioner, Narowal/respondent No.3 at the time of passing impugned order (mentioned above); furthermore, any audio/video recording of speech, voice transcript in said regard or exact wording in written form of the same has not been mentioned in the impugned order as well as reports and parawise comments (mentioned above) and even any such like material/evidence has not been produced today before the Court; it is also not out of place to mention here that except aforementioned recommendations of District Police Officer, Narowal/respondent No.4, there is no material available against the detenu to establish that he was acting or was about to act in any manner, which was prejudicial to the public safety or maintenance of the public order. Learned Assistant Advocate General, Punjab (on Court's query) could not refer or produce any material to prove that detenu is member of any banned group, proscribed organization or involved in any anti-State activities.

Even perusal of report of District Police Officer, Narowal/respondent No.4 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. Learned Assistant Advocate General, Punjab under instructions of police official (present in Court) submits that any criminal case regarding alleged speeches against Government of Pakistan, has not been registered against the detenu. In the circumstances, mere apprehension cannot be *per se* made basis for issuance of impugned detention order. 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 order No.HC(G)/1823 dated: 10.05.2023 has been passed against the settled principles of law on the subject as well as relevant facts; therefore, same is set aside, and Zeeshan Razzaq (detenu/brother of the petitioner) is 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 judgment has been dictated, pronounced,
prepared and signed on 25.05.2023.

Kashif