

FORM No.HCJD/C-121.

ORDER SHEET

IN THE LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

W.P.No.32441/2023

Abu Bakar Siddiq Bhutta

Vs

Govt of Punjab, etc.

S.No.of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of Parties of counsel, where necessary.
	18.05.2023.	Mr. Mudasar Naveed Chatha, Advocate for the petitioner. Mr. Imran Abbas Sahi, AAG.

Through this constitution petition the petitioner has challenged the vires of Order No. DC/GA/535/CNF dated 11.05.2023 by Deputy Commissioner, Wazirabad/respondent No.2, hereinafter called as impugned order, by which Siddique (father of the petitioner) has been put under preventive detention.

2. Report and para-wise comments were called for from Deputy Commissioner, Wazirabad/respondent but despite repeated directions the same have not been received, however, report/parawise comments have been submitted by the District Police Officer, Wazirabad which shows that the impugned detention order was passed on apprehension of the SHO. Relevant lines of the said report are reproduced hereunder:-

“The SHO PS Ghakhar Mandi Wazirabad expressed his strong apprehension that Siddique (petitioner’s father) along with his companions would cause loss/damage to the public and private properties, which could result in breach of peace and law & order situation in the District and made request for detaining the said activist for 90 day under Maintenance of Public Order (MPO) 1960.”

But the above report is not supported with any material showing any reasonable ground or identification of the detenu, busy in any activity prejudicial to public safety or the maintenance of public order, in any of the documentary forms like SMS/Voice messages, WhatsApp Messages or of other social media accounts, Pamphlets/handouts, Posters, play cards, Photographs, Paintings, Caricatures, Books/Literature, Newspapers, Audio/Video CDs, Electronic and Digital material, Wall chalking,

Banners/Pena flex, recording of demonstrations in Rallies, Material on face book, twitter or any other social media account, call records, geo-fencing through CDR, Speeches in Public Meetings , Radio & T.V. shows, Surveillance report in any form, reports from international agencies, suspicious transaction report from any financial institution, membership record of affiliated association or political party etc.

3. The learned counsel for the petitioner has regarded the impugned detention order as illegal and in support of his contention placed reliance on the cases reported as “THE GOVERNMENT OF EAST PAKISTAN versus MRS. ROWSHAN BIJAYA SHAUKAT ALI KHAN” (PLD 1966 Supreme Court 286) and “MUHAMMAD ABDAAL alias ABDALI versus GOVERNMENT OF PUNJAB and others” (PLD 2020 Lahore 471).

4. Arguments heard; record perused.

5. The unrest in the country ensued on 9th May, 2023 after the arrest of a political leader which was flashed on media showing people came out for agitation and demonstrations and with no time it turned into unholy mob who committed mischief at different places in the country. Confused in the situation, the government has opened a front, showing no application of mind, driven by passionate wishes; directed or dictated but not sound and logical started dragging the ordinary citizens in criminal litigation with a ratio of one in 3 cases/proceedings minimum. Government has launched attack on the acclaimed miscreants at the time when there was no law-and-order situation, a condition which necessitates for application of law relating to preventive detention. Government if tracks that any criminal activity was result of participation of some individuals, it has sufficient time to collect the material and book the individuals in criminal cases, so that one could know about the nature of allegations to properly defend and answer the charge which is the essence of due process and access to justice as enshrined in Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973. Not only the violation of section 144 Cr.P.C. is an offence u/s 188 of PPC but ‘Tempering with public servants’ and ‘Sabotage’ are also offences punishable u/ss 19 & 20 of Maintenance of Public Order Ordinance, 1960 which caters to the situation and such offences are cognizable and non-

bailable. Dumb driven actions offend the fundamental rights to life, liberty, and the most of all ‘the dignity’. It is observed that the Constitution framers have rated the dignity a bit at lower level comparing to right to life and liberty, that was the reason it is seriated as Article 14, five steps down from ‘right to life and liberty’ (Article-9) but experience tells that if an individual has all the fundamental rights except right to dignity, he cannot enjoy other rights with pleasure. Life without dignity means, a clutched and wish less creature living on borrowed crumbs. Is that what for Allah has created the human being to lead the world as His vicegerent? What dignity speaks in the words of Constitution is reproduced as under;

Inviolability of dignity of man, etc.

14. (1) The dignity of man and, subject to law, the privacy of home, shall be inviolable.
- (2) No person shall be subjected to torture for the purpose of extracting evidence.

The word “inviolable” has been used in the Constitution only in Article 5 (Loyalty to State) and Article 14 (Dignity of man etc.) which has a strong connotation showing importance and value in the context as to why only for Loyalty to State, Dignity of man and Privacy of home this term has been used. The word ‘inviolable’ in the context of dignity has been interpreted by the Supreme Court, “a right that is not subject to any qualification, restriction or regulation”. The case reported as “UZMA NAVEED CHAUDHARY and others Versus FEDERATION OF PAKISTAN and others” (PLD 2022 Supreme Court 783) throws light as under:-

14. It is underlined that dignity is an inherent and inseparable right of a human being and has thus been guaranteed by our Constitution as an absolute, non-negotiable and inviolable fundamental right that is not subject to any qualification, restriction or regulation.⁸ Dignity values the worth of each person and requires the recognition of each person's worth to be held in equal measure for all.⁹ It is harmed when individuals are marginalized, ignored or devalued, and is enhanced when the full place of all individuals within the society is recognized.

In another case reported as “TAHIR NAQASH and others Versus The STATE and others” (PLD 2022 Supreme Court 385), the expression is as follows;

10. Article 14 of the Constitution guarantees right to dignity to every person. Human dignity encapsulates the notion that every person has inherent equal worth. This simple but profound concept has three

elements: first, every member of the human family has value - no one can be dismissed, ignored, mistreated or abused as if their humanity means nothing; second, each person's worth is equal to every other person and no one's life is more important than any other person; third, human dignity inheres in the human person and cannot be taken away.

6. The above dictum is binding on every organ of the State under Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973 and to be followed while dealing to a law-and-order situation.

7. Although we had entered avowed in 21st century with pride and determination to provide shelter to masses against poverty, unemployment, injustice and other similar vices but we had formalized our life in a shadowy digital world to see everything with the lens of others; even the Media once acclaimed as the fair reporter has flown into the indigenous individualism being propagated by everyone who is holding a most dangerous weapon i.e., 'android phone' in their hands. The unpleasant and surprise events of 9th May, 2023 under the shadow of unbridled mob have defaced the peaceful and democratic image of this country; the responsible should be answerable but not in a way as resorted to by the government by putting lasso to each and every one of its choice without knowing his role in the riots. Riots are suppressed with force under the law as regulated u/s 127 to 132 of Cr.P.C. and not in the way adopted by the government to pick and detain the citizens under Maintenance of Public Order Ordinance, 1960 without registration of criminal cases. This move would be like and seems vindication of selected grievances: if this confrontation continues, where if this would end, lest it should erode our foundation, we must stand out to fight against this vandalism with sound short-term and long-term measures by involving the religious scholars, intellectuals, philosophers, scientists, politicians, bureaucrats, justice analyst, IT experts & programmers etc. to welcome the general masses to return to normalcy by identifying their role as the peacekeeper and builders of Pakistan. The initiative always moves from minority which leads the majority; of course in this case, it is only the government that would take initiative to realize the need for a solution and in this context of amelioration government is not expected to take revenge from their own public rather own them if feel they are derailed. Love and affection have no boundaries, nor it can be confined or subjugated; once it

opens arms, it envelopes all ‘bad or good’ under the shadow, and it is the Divine Rule too. Allow the people to breath in liberty with dignity, give a go to their life flourish in peaceful assembly and freedom to move everywhere with equal rights by avoiding discrimination, make them informed about their rights to education, securing government service and acquisition of property with freedom of trade, business and profession so that they may become prosper, capable to speak with freedom, acquire social justice, play their role to model them into a Muslim society, enrich their culture, ensure protection of minorities, develop brotherhood with the people of their neighbour countries, being helpful to devise a strategic foreign policy so as to bring amity in the region countenanced with internal security and peace. It is not farsighted, once we raise the emblem high under unity, faith and discipline with efficiency, competency and honesty. Who would ring the bell, certainly not the one but we all in a line up with defined roles, should desist not to overlap and while exercising restraint promote harmony to one goal, i.e., Prosper Pakistan. Some elements if are considered as miscreants can be restricted through initiation of criminal process like registration of criminal cases.

8. This court on 30.03.2023 in W.P.No.20258/2023 titled as “Hafiz Ali Raza Vs Deputy Commissioner, Lahore, etc.” (2023 LHC 1304) in a similar situation has directed the authorities to collect certain material before passing an order for preventive detention to meet the threshold as set out through different judicial precedents of Superior Courts like; “Federation of Pakistan through Secretary, Ministry of Interior Islamabad. v. Mrs. Amtul Jalil Khawaja and others” (PLD 2003 SC 442) “MUHAMMAD IRSHAD versus GOVERNMENT OF THE PUNJAB and others” (2020 P Cr. L J 206), “SHAHID RASOOL versus GOVERNMENT OF THE PUNJAB through Secretary Home Department, Lahore and 6 others” (2023 YLR 333) and “MUHAMMAD ABDAAL alias ABDALI versus GOVERNMENT OF PUNJAB and others” (PLD 2020 Lahore 471). Even the connotation of reasonable grounds was also highlighted in the above judgment but it is highly unfortunate and regrettable that authorities do not follow the spirit of judicial decisions; therefore, in like situations, the Supreme Court of Pakistan has directed to impose cost upon the authorities if the order of

detention is found to be in flagrant violation of the mandatory requirements of law and Article 10 of the Constitution. Reliance is on cases reported as “GOVERNMENT OF SINDH and others Versus Mst. NAJMA” (2001 SCMR 8); “STATE through Advocate-General, Sindh, Karachi Versus Mst. TAJI BIBI” (2002 SCMR 914).

9. The above discussion is concluded in the terms that the order impugned being bereft of any supportive material, as discussed in preceding paragraph No.2, is declared as passed in flagrant violation of section 3 of the Maintenance of Public Order Ordinance, 1960; therefore, it is hereby set aside while imposing cost of Rs.5000/- per day for a period of detention to be paid to the detenu who shall be released immediately.

(MUHAMMAD AMJAD RAFIQ)
JUDGE.

This order has been pronounced,
dictated, prepared and signed on
18.05.2023.

Approved for reporting.

Judge.

Javed*