

*JUDGMENT SHEET*IN THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH.

JUDICIAL DEPARTMENT

W.P No. 91-A of 2016.*JUDGMENT*

Date of hearing.....03.02.2016.....

Petitioner (s)...(Syed Salim Shah) by M/S Fazal-i-Haq Abbasi,
Shad Muhammad Khan, Mehdi Zaman Khan and
Tahir Hussain Lughmani, Advocates.....

Respondent (s) (Government of KPK etc) by Mr. Muhammad
Naeem Abbasi, Additional Advocate General,
.....

QALANDAR ALI KHAN, J:- Syed Salim Shah,
petitioner, through his son, Syed Altaf Shah, has
invoked the constitutional jurisdiction of this Court
under Article 199 of the Constitution of Islamic
Republic of Pakistan, 1973, thereby, challenging his
detention under Section 3 (1) of the West Pakistan
Maintenance of Public Order Ordinance, 1960
(hereinafter referred to as 3 MPO) vide order of the
Deputy Commissioner, Abbottabad (respondent
No.2) bearing No.1/1/3MPO/141-44-RDR dated
Abbottabad the 30/01/2016. The detention order
under Section 3 MPO reads as follows;

“Whereas, it has been made to appear to me through District Police and the officers of District Administration Abbottabad that one:-

Saleem Shah s/o Makhan Shah r/o Gharlanian Tarnawai, Tehsil & District Abbottabad staged a protest at Fawara Chowk on 28.01.2016 for his personal political gains, which resulted in a dreadful traffic jam at KKH and the commuters and other public remained captive at the road for about 05 hours, thus choking the whole communication network. He is also involved in obnoxious, anti-social activities and his involvement in provoking the general public for agitation and disruption of the peaceful environment of the district cannot be ruled out in prevailing law & order situation of the district. His activities are prejudicial to public safety and maintenance of public order in the district. Thus there is every likelihood of breach of peace in the District Abbottabad.

AND WHEREAS,
having considered the material
produced before me, I am of
the opinion that it is necessary
to prevent the said person from
acting in a manner prejudicial
to public safety and
maintenance of peaceful
atmosphere in the district
during the prevailing security
situation.

NOW, THEREFORE, I
Capt (R) Khalid Mehmood,
Deputy Commissioner
Abbottabad, in exercise of the
powers vested in me under
Section 3(1) of the West
Pakistan Maintenance of Public
Order Ordinance, 1960 do
hereby order that the said
named person may be detained
and confined in Central Jail D.I.
Khan with effect from the date
of execution of arrest for a
period of 30 days."

3. The petitioner assailed the impugned order, inter alia, on the grounds that he was a law abiding citizen and was never involved in any anti-social activity which was prejudicial to public safety and maintenance of public order; that on 29.01.2016

at 10.00 P.M a large contingent of police entered in to his house unlawfully and without any warrant of arrest or search warrant and arrested him, but was shown order under Section 3 MPO on the following date i.e. 30.01.2016; that under the garb of an order under Section 3 MPO which was not only based on malafide and was totally false and frivolous, he was sent to Central Jail Dera Ismail Khan; that protest was staged in a peaceful manner; that a case under Sections 341/147/149 PPC and 16 MPO etc had already been registered vide FIR No.126 dated 28.01.2016 in Cantt: Police Station; that he had already secured ad-interim pre-arrest bail from the Court of learned Additional Sessions Judge-VI, Abbottabad; that another case vide FIR No.128 was also registered against him on 29.01.2016, which reflected malafide on the part of the District Administration/respondents; that no notice was served upon him prior to the detention order; that the detention order was result of political pressure exerted on the District Administration by his Political Rivals; that prior to this incident there was nothing against him to prove that he was undermining writ of the government; that he was a well known person of

the locality and had contested election for a seat of Provincial Assembly from his constituency; and that he had, on the other hand, tried to control the mob from turning violent.

3. The copy of FIR No.126, referred to in the writ petition, would show that the petitioner was one of the leaders of protesting public against shifting of mini *Adda*, and the charge against him and others is only of interrupting/blocking of smooth flow of traffic on the main road, as nothing untoward happened and the assembled public dispersed peacefully. The petitioner, however, secured ad-interim pre-arrest bail in the case from the Court of learned ASJ-VI, Abbottabad on 29.01.2016. The other FIR No.128 dated 29.01.2016 shows resistance of family members of the petitioner to his arrest in the earlier case vide FIR No.126 dated 28.1.2014. The time of occurrence has been shown as 2215 hours on 29.1.2016. It is noteworthy that even in the FIR it has been mentioned by Parvez Khan SHO P.S Cantt: that the petitioner showed him order of BBA in case FIR No.126/16 but despite that he arrested the petitioner under Section 3 MPO.

4. In response to Court notice, the learned Additional Advocate General appeared and submitted copy of the impugned order as well as record of case FIR No.126 dated 28.01.2016. Arguments of learned counsel for the petitioner and learned Additional Advocate General also heard, and record perused.

5. Apart from the impugned order under Section 3 MPO showing at its top the date of issueance as 30.01.2016, but, intriguingly, bearing 29.01.2016 as the date with signature of respondent No.2, the only charge against the petitioner, as is discernable from the impugned order, was that he was involved in staging a protest at Fawara Chowk on 28.01.2016 (written as 28.01.2015 in the order) thereby causing traffic jam at KKH for about 5 hours. The petitioner has further been charged for obnoxious and anti-social activities and his involvement in provoking the general public for agitation and disruption of the peaceful environment of the District in the prevailing law and order situation. Needless to point out here that for the offences enumerated in the impugned order, the petitioner had already been booked not only under PPC and other laws but also under Section 16 MPO

which pertain to dissemination of rumours and making statements and speeches which are likely to cause fear or alarm to the public or to any section of the public or is likely to further any activity prejudicial to public safety or the maintenance of public order. However, since cases already registered against the petitioner are not subject matter of the instant writ petition; the question for determination before this Court would be that how the District Administration could have resort to preventive detention under Section 3 MPO when couple of cases were already registered against the petitioner under other provisions of law, including 16 MPO. The answer is obviously in the negative.

6. The District Administration could justifiably resort to preventive detention under Section 3 MPO before the occurrence that too if there was likelihood of breach of peace, but after the occurrence and registration of case against the petitioner on the basis of the same charges, there was no justification for his preventive detention under Section 3 MPO, especially when the petitioner had already secured ad-interim pre-arrest bail in the case from the Court of competent jurisdiction, to the knowledge of the

police/District Administration. The arrest of the detinue despite his showing order of pre-arrest bail in the case to the police speaks volumes about the actual designs of the District Administration to subject the petitioner to humiliation and harassment under all circumstances, though the petitioner had already surrendered to the process of law in the case registered against him and was already on ad-interim pre arrest bail. The date of issuance mentioned at the top of the impugned order i.e. 30.01.2016 would amply demonstrate that the impugned order was not shown to the petitioner or served on him at the time of his arrest under section 3 MPO, as claimed in the impugned order, rather there was no such order in existence at 2215 hours on 29.01.2016. The conduct of the District Administration, especially police department, has thus left much to be desired. There can, possibly, be no explanation, let alone plausible explanation, for such an unlawful and malicious conduct, showing scant regard for the process of law and Courts of law. The District Administration, therefore, certainly owe explanation for such an unsavory and uncalled for conduct. In any case, the petitioner had a right to

be communicated the grounds of his preventive detention, but the District Administration, having not done so, acted in flagrant violation and disregard of mandatory provisions of law. (**PLJ 1992 Peshawar 19) (DB) (Abbottabad Bench)**).

6. Having said that, the orders and actions of the District Administration, impugned herein, are not condonable on any ground whatsoever. Therefore, the impugned detention order of Syed Saleem Shah, petitioner, under Section 3 MPO is declared illegal, unlawful, without jurisdiction, without lawful authority and perverse. Consequently, on the acceptance of the writ petition, the respondents are directed to forthwith release the petitioner from the prison where he is confined at present under the impugned detention order.

Announced:
03.02.2015

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