

FORM No.HCJD/C-121.

**ORDER SHEET**

**IN THE LAHORE HIGH COURT, LAHORE**

**JUDICIAL DEPARTMENT**

W.P.No.20258/2023

Hafiz Ali Raza  
Vs

Deputy Commissioner, Lahore, etc.

S.No.of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of Parties of counsel, where necessary.
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30.03.2023.	Mr. Muhammad Suleman, Advocate for the petitioner. M/s. Sattar Sahil and Umar Arshad Butt, Assistant Advocate General(s) with Usman Khalid Khan, Additional Secretary (IS) and Irshad Ahmad Section Officer (IS-I) Home Department.
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Through this constitution petition the petitioner has challenged the vires of Order No. RDM/303 dated 21.03.2023 passed by Deputy Commissioner, Lahore/respondent No.1, hereinafter called as impugned order, by which thirteen persons named in Para-No.3 of this petition, have been put under preventive detention.

2. Learned counsel for the petitioner contends that no material in substance was available which could warrant preventive detention of the detenus, therefore, respondent No.1 has travelled beyond his powers and committed excess while curtailing the liberty of the detunes which is one of the fundamental rights guaranteed under the Constitution of the Islamic Republic of Pakistan, 1973. Further states that on the last date of hearing respondents were directed by this Court that if any supportive material has been collected before or after the passing of impugned order, the same shall be submitted for inspection of this court and detenus were also ordered to be produced pursuant to Rule 39 of the Punjab Public Order Detenu Rules, 1979. Contention of learned counsel for the petitioner was attended; detenus present before the court submit that they were either in their respective houses or at work-places when picked up by the police and so for grounds for their detention have not been conveyed to them nor they have been

allowed to consult any legal counsel and even their family members or relatives were denied access.

3. Mr. Sattar Sahil, the learned Assistant Advocate General submits that detenus are political workers and were designing to participate in subversive activities through demonstration and protest against the sitting regime. Adds that their detention was justified to maintain the public order; he has placed reliance on the cases reported as “Sheikh MUHAMMAD MUSA versus GOVERNMENT OF EAST PAKISTAN AND OTHERS” (1969 P Cr. L J 862) and “PURNENDU DASTIGAR versus GOVERNMENT OF EAST PAKISTAN THROUGH THE SECRETARY HOME (POL.) DEPARTMENT AND 2 OTHERS” (1970 P Cr. L J 11).

4. Contrary to above contentions, the learned counsel for the petitioner submits that in a case reported as “Federation of Pakistan through Secretary, Ministry of Interior Islamabad. v. Mrs. Amtul Jalil Khawaja and others” (PLD 2003 SC 442) the Supreme Court of Pakistan has laid down the criteria to check the vires of order passed for preventive detention and in this case no material is available which could pass such threshold. He has further relied on the cases reported as “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).

5. It is now known that preventative detention is a controversial method of confinement that allows a state to curtail the liberty of a person, often under the auspices of national security and the maintenance of public order. Particularly during times of war, the doctrine of preventative detention operates as a legal go-between of sorts. It borrows elements from both humanitarian and criminal law, but strictly adheres to neither. Several international legal instruments, both binding and non-binding, address what constitute the standards arrest and detention. The Universal Declaration of Human Rights

(UDHR), which may be construed as customary international law, states, “no one shall be subjected to arbitrary arrest, detention or exile.” The drafting history of the UDHR indicates that the original intention of the drafters was to prohibit arrest and detention that was “unlawful.” This is evident in the Drafting Committee’s original provision which prohibited arrest and detention “except in cases prescribed by law and after due process.” The concept of “unlawful” was replaced with “arbitrary” after deliberations that suggested that arbitrariness was a broader means of providing protection to individuals subject to arrest or detention. The International Covenant on Civil and Political Rights (ICCPR) is a binding extension of the UDHR. Article 9(1) of the ICCPR conveys the same principle:

“Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”

In her discussion of preventative detention and personal liberty, Claire Macken demonstrated that there are two possible interpretations of “arbitrary” as follows:

1. An arrest or detention is “arbitrary” if it is purely unlawful and not in accordance with procedure as laid down by law;
2. An arrest or detention is “arbitrary” if it is unlawful or unjust, which means that in addition to violating the letter of the law, it also violates the principles of justice in spirit. <sup>1</sup>

The security of person has also been saved through our Constitution as per Article-9 which says “*No person shall be deprived of life or liberty save in accordance with law*”

6. The relevant provision of law for preventive detention for the subject case is section 3 of the Punjab Maintenance of Public Order Ordinance, relevant part is reproduced as under;

**3. Power to arrest and detain suspected persons.** –(1) Government, if satisfied that with a view to preventing any person from acting in any manner prejudicial to public safety or the maintenance of public order, it is necessary so to do, may, by an order in writing, direct the arrest and detention in such custody as

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1. Research Society of International Law; Preventive-Detention-Maira-Article-ICRC.

may be prescribed under sub-section (7), of such person for such period as may, subject to the other provisions of this section, be specified in the order, and Government, if satisfied that for the aforesaid reasons it is necessary so to do, may extend from time to time the period of such detention, for a period not exceeding six months at a time.

The purpose of above section is to prevent any person from acting in any manner prejudicial to public safety or the maintenance of public order. For ascertaining such act, it is essential that some material in tangible form should be available. Learned Assistant Advocate General states that only a source report is sufficient to prevent imminent danger by putting the person in captivity. Executive authority no doubt can take action on any source report in rare cases but then it becomes mandatory to collect the material to justify detention and the minimum period for collection of such material is impliedly reflected in section 3 (6) of Ordinance *ibid* which is as under;

If a detention order of a person is made under this section, the authority making the order:

(a) shall, within fifteen days of the detention of the person, communicate to the person the grounds on which the order has been made, and shall afford the person the earliest opportunity of making a representation to the Government against the detention order;

Such material should obviously be in tangible form like; SMS/Voice messages, Whats app Messages or of other social media accounts, Pamphlets/handouts, Posters, 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, geofencing 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. On collection of such material there must be a standard satisfaction of authority for necessity to make an order for preventive detention which means that

there must be some reasonable grounds to justify the order. What does reasonable grounds mean, it has been laid down by a Division Bench of this Court in case titled “Saif ur Rehman vs GOP, etc” (**Criminal Appeal No.315/2022**) decided on 10.01.2023, as under;

“Reasonable grounds” means

a set of facts or circumstances which would satisfy an ordinary cautious and prudent person that there is reason to believe and which goes beyond mere suspicion.

a suspicion based on reasons that can be articulated. It is more than mere hunch or supposition, but much less than the level of proof that would be required to impose a disciplinary sanction.

more than mere suspicion but less than the civil test of balance of probabilities. It is a much lower threshold than the criminal standard of “beyond reasonable doubt.” It is a bona fide belief in a serious possibility based on credible evidence.

that there must be some supporting information for the suspicion. A mere allegation is not enough. Reports must not contain information that is known to be untrue.

information that establishes sufficient articulable facts that give a trained law enforcement or criminal investigative agency officer, investigator, or employee a reasonable basis to believe that a definable criminal activity or enterprise is, has been, or may be committed.

7. In the case reported as “Federation of Pakistan through Secretary, Ministry of Interior Islamabad. v. Mrs. Amtul Jalil Khawaja and others” (**PLD 2003 SC 442**), following criteria has been set down by the Supreme Court of Pakistan to check the vires of order passed by the authority;

- (i) *the Court must be satisfied that the material before the detaining authority was such that a reasonable person would be satisfied as to the necessity for making the order of preventive detention;*
- (ii) *the satisfaction should be established with regard to each of the grounds of detention, and, if one of the grounds is shown to be bad, non-existent or irrelevant, the whole order of detention would be rendered invalid;*
- (iii) *the initial burden lies on the detaining authority to show the legality of the preventive detention;*
- (iv) *the detaining authority must place the whole material, upon which the order of detention is based, before the Court notwithstanding its claim of privilege with respect to any*

*document, the validity of which claim shall be within the competence of the Court to decide;*

- (v) *the Court has further to be satisfied, in cases of preventive detention, that the order of detention was made by the authority prescribed in the law relating to preventive detention and that every requirement, of the law relating to preventive detention had been strictly complied with;*
- (vi) *the “satisfaction” in fact existed with regard to the necessity of preventive detention of the detainee;*
- (vii) *the edifice of satisfaction is to be built on the foundation of evidence because conjectural presumption cannot be equated with satisfaction; it is subjective assessment and there can be no objective satisfaction;*
- (viii) *the grounds of detention should not be vague and indefinite and should be comprehensive enough to enable the detainee to make representation against his detention to the authority, prescribed by law;*
- (ix) *the grounds of detention had been furnished within the period prescribed by law, and if no such period is prescribed, then “as soon as may be”*

Keeping in mind the above guidelines, I have examined the report submitted before this court and observe that following reasons are mentioned in the impugned order:-

*“The above said persons are active members of a Political Party. It is further submitted that they are involved in activities, raised/chanted objectionable slogans amongst the general public to provoke and incite them. Moreover, they instigated the general public to take out rallies which is destined to create nuisance for public and they also delivered objectionable speeches at Davis Road, Lahore. On 18-03-2023, the above activists alongwith their accomplices blocked the Davis Road, and created law & order situation and caused harassment amongst the general public. They become potential danger/threat to public peace and tranquility and caused law & order situation. Such like activist/miscreant will give rise to a situation prejudicial to public safety and maintenance of public order, if left unchecked.”*

In support of such information no material whatsoever was collected by the authority; this Court has also adjourned the case twice to produce the material so far collected by the authority but except bald assertions cited above no other material was produced. It has been observed that grounds of detention have also not been communicated to the detainee; mere conjectural presumption cannot take the place of

proof; thus, the requisite necessity for detention was not met before issuance of impugned order.

8. Pursuant to the laws controlling preventative detention, a person may only be detained if there are reasonable grounds. The Supreme Court of Pakistan in a case reported as “THE GOVERNMENT OF EAST PAKISTAN Versus MRS. ROWSHAN BIJAYA SHAUKAT ALI KHAN” (PLD 1966 Supreme Court 286) has held that the grounds given by the authority must be “complete and full”, which means that;

“There should be as full a statement of the evidence and circumstance and the particular acts of the detenu on which the inference against the detenu is based as is reasonably possible under the circumstances. The Government surely does not in any way suffer if it gives a complete statement of facts to the detenu and the cause of justice is advanced by a full disclosure.”

The Karachi High Court reinforced this position in MUHAMMAD YOUNUS Versus PROVINCE OF SIND THROUGH THE SECRETARY TO THE GOVERNMENT OF SIND HOME DEPARTMENT, SIND SECRETARIAT, KARACHI AND 2 OTHERS (PLD 1973 Kar 694), It held, “*The exercise of power by the detaining authority is subject to the ascertainment of reasonable grounds, which is a judicial or quasi-judicial function.*”

This has further been fortified through the Constitution of the Islamic Republic of Pakistan, 1973 as per Article-10(1) which enunciates that:-

“No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.”

9. Though learned Assistant advocate General has maintained that this court lacks jurisdiction to dilate upon the issue of preventive detention as per section 23 of The Maintenance of Public Order Ordinance, 1960 yet the court is not much impressed of such contention which has no force. This court in Constitutional jurisdiction can entertain the request of the petitioner for declaring the detention of the detenus as illegal. While the power of the executive to detain is written into the specific preventative detention laws, the authority for judicial review comes from Article 199 of the

Constitution of the Islamic Republic of Pakistan, 1973, which expands the jurisdiction of the High Court to include orders, “directing that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner.” Individuals that are preventatively detained also need not wait for their appearance before Review Board to seek judicial review of their detention. Reliance is on “Raman Lal Rathi vs Commissioner Of Police And Ors” (AIR 1952 Cal. 26).

10. To prevent misuse of power by the executives and to protect the fundamental rights it has been held by Supreme Court in case reported as “GOVERNMENT OF SINDH and others Versus Mst. NAJMA” (2001 SCMR 8) like as under:-

“Since it is the duty of the superior Courts to protect the fundamental rights of the people, as such, for achieving above object, the superior Courts can exercise all incidental and ancillary power and also can adopt new strategies to enforce the fundamental rights.”

and in the cited case following order of High Court for imposing cost was upheld;

“Order of preventive detention of detenu, who was candidate in elections, passed by District Magistrate, was declared to be without lawful authority and of no legal effect by the High Court and a cost of Rs.5,000 each was imposed on District Magistrate and the Superintendent of Police personally”

Same was the situation in other case reported as “STATE through Advocate-General, Sindh, Karachi Versus Mst. TAJI BIBI” (2002 SCMR 914)

“detenue was kept in custody without lawful order and the order of detention under the Maintenance of Public Order Ordinance, 1960, was found to be in flagrant violation of the mandatory requirements of section 3 of the said Ordinance and Article 10 of the Constitution, and the detenue was allowed compensation at the rate of Rs.5,000 per day for a period of 32 days.”

11. The learned Assistant Advocate General has pointed out that one of the detenus namely Moeed Ullah has also filed a separate petition through one Zia-ud-Din which was fixed before another learned Bench and a direction was passed for treating his application



as representation for decision in accordance with law, therefore, at least he cannot claim any relief in these proceedings. It has been observed that present petitioner has assailed the detention order as a whole, wherein, name of Moeed Ullah is also written, therefore, when the entire impugned order is under scrutiny, it would be unjust to treat said Moeed Ullah separately. In any way the representation of Moeed Ullah has not been decided so far, therefore, no bar attracts for taking decision with respect to his detention as well in this petition. Even otherwise, it is not necessary that firstly the detenus should file a representation and then assail their detention. Reliance is placed on the case reported as “ABDUL LATIF SHAMSHAD AHMED vs. DISTRICT MAGISTRATE, KASUR” (1999 P Cr. L J 2014).

12. For what has been discussed above, since no sufficient material is available with the respondents to justify the preventive detention through impugned order. Thus, detention of detenus is declared as arbitrary, consequently, the instant writ petition is allowed, the impugned order bearing No. RDM/303 dated 21.03.2023 passed by Deputy Commissioner, Lahore is set-aside and the detenus are directed to be released forthwith, if not required to be detained in any other case.

(MUHAMMAD AMJAD RAFIQ)  
JUDGE.

Javed\*

Approved for reporting

Judge