

THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Adnan Iqbal Chaudhry &
Mr. Justice Mohammad Abdur Rahman

- C.P. No. D - 3686/2023 : Mst. Razia Sultana w/o Muhammad Baig versus Province of Sindh and others.
- C.P. No. D - 3689/2023 : Muhammad Javeed son of Abdul Majeed versus Province of Sindh and others.
- C.P. No. D - 3690/2023 : Muhammad Shahid Khan son of Muhammad Shareef Khan versus Province of Sindh and others.
- C.P. No. D - 3698/2023 : Mukarram Ahmed Khan son of Murtaza Ahmed Khan versus Province of Sindh and others.
- C.P. No. D - 3699/2023 : Muhammad Shakir son of Suleman versus Province of Sindh and others.
- C.P. No. D - 3702/2023 : Mehnaz Rashif wife of Muhammad Rashid versus Province of Sindh and others.
- C.P. No. D - 3705/2023 : Muhammad Farooq son of Eid Muhammad versus Province of Sindh and others.
- C.P. No. D - 3709/2023 : Shiraz Ahmed son of Dilawar versus Province of Sindh and others.
- C.P. No. D - 3712/2023 : Rehana Iqbal wife of Muhammad Yamin versus Province of Sindh and others.
- C.P. No. D - 3720/2023 : Fayyaz Ali son of Ali Muhammad versus Province of Sindh and others.
- For the Petitioners : M/s. Naeem Mehmood, Naeem Shahid Ghouri, Bashir Hussain Shah, Tabassum Hashmat, Jowhar Abid, Muhammad Idrees Alvi, Mamoon A.K. Shirwany, Advocates.

For the Respondents : M/s. Shaharyar Mahar, Additional Advocate General Sindh and Saifullah Assistant Advocate General Sindh alongwith Police Officials; DSP Raza Mian, Muhammad Iqbal Awan, Asst. Supdt. Cetral Prison, Karachi, Abdul Rauf, Asst. Supdt. Central Prison, Khairpur, SIP; Jamshed Khan, P.S. Joharabad, DSP Surjani Town, S.H.O. Deedar Hussain, P.S. Surjani Town, S.I. Shahid, Shahid, SIP; Pervez Pasha, P.S. Sachal, S.H.O. Zulfiqar Ali, P.S. Bilal Colony, SIP; M. Jamshed, P.S. Orangi Town & Jauhar Abad, Akhtar Abbasi, SDPO Orangi, SIP Ali Muhammad, P.S. Moinabad, P.I. Rao Rafiq, S.H.O. P.S. Zaman Town, all are present in Court.

Date of hearing : 07-08-2023

Date of order : 07-08-2023

JUDGMENT

Adnan Iqbal Chaudhry J. - The Petitioners are family members of detenues held in preventive detention. The detention orders were issued by the Home Secretary, Government of Sindh to the Inspector General Police, Sindh [IGP] under section 3(1) of the Maintenance of Public Order Ordinance, 1960 [**MPO Ordinance**]. Since detention is for 30 days, the role of the Review Board constituted under Article 10 of the Constitution of Pakistan is not triggered. The detention orders were issued on different dates around mid-July 2023. The ground for detention in all is identical *viz.* that the IGP has informed that each detenu "*is instigating and provoking public to block roads, highways and organize sit-ins which may disturb peace and tranquility, and can create serious Law & Order situations and such an act on his part will be highly prejudicial to the Public Safety and Maintenance of Public Order, therefore; Inspector General of Police Sindh, has recommended that he may be detained under MPO-1960*". It is not the case of the Respondents that the grounds of detention were set-out separately in any other document.

2. By reasons dated 01-08-2023 in C.P. No. D-3387/2023 and connected petitions, and judgment dated 31-07-2023 in C.P. No. D-3601/2023 and connected petitions, a Bench of this Court has already allowed identical petitions challenging identical detention orders. The detention orders impugned in the present petitions are in the same series.

3. The objection taken to the maintainability of like petitions was decided by the Bench as follows:

“Taking objection to the maintainability of these petitions, the learned A.A.G. Sindh contended that sections 3(6) and 3(6a) of the MPO Ordinance enable the detainees to make a representation against the order of detention to the detaining authority, and thus an alternate remedy being available, petitions under Article 199 of the Constitution were not maintainable. However, at the same time it was conceded that after issuing the detentions orders the Home Secretary took no further step to “communicate” the grounds of detention to the detainees as required by Article 10(5) of the Constitution and section 3(6) of the MPO Ordinance, and it appears that the detainees or the Petitioners were left to acquire copies of the detention orders themselves. Nonetheless, to put to rest the objection of the AAG Sindh to the maintainability of these petitions, we can do no better than to quote Justice Sabihuddin Ahmed from the case of *Dr. Muhammad Shoaib Suddle v. Province of Sindh* (1999 PCrLJ 747):

“9. In the first place it may be pertinent to decide preliminary objection as to the maintainability of this petition which was strenuously urged by the learned A.A.G. He contended that section 3(6) of the Ordinance enables the detenu to make representation against the order of detention and an alternate remedy being available this petition under Article 199 of the Constitution could not be entertained. He relied upon a number of reported decisions of superior Courts, including the Honourable Supreme Court, where discretionary jurisdiction under Article 199 was not exercised on the ground that the petitioner should have availed of the alternate efficacious remedy provided by law. He is indeed correct to the extent that normally existence of an alternate efficacious remedy precludes the Court from entertaining a Constitutional petition as is evident from the language of Article 199 itself and it is not necessary to refer to the precedents laid down by Courts. Nevertheless it is equally well-settled that the existence of an alternate remedy does not per se bar the jurisdiction of the Court to entertain a Constitutional petition but it is rule by which the Court regulates its own discretionary jurisdiction. (See *Murree Brewery v. Capital Development Authority* PLD 1972 SC 279). This rule is subject to certain well-recognised exceptions and it is well-settled that the existence of an alternate remedy would not bar the maintainability of a petition, inter alia in the following circumstances: --

(i) When the alternate remedy is not equally efficacious in terms of speed and expense or cannot provide effective relief to the petitioner.

(ii) When the impugned order is without jurisdiction or ultra vires the power conferred upon the functionary passing the same.

(iii) When the order is mala fide.

(iv) When the order suffers from an error of law apparent on its face.

(v) In matters where detention of a person in custody is questioned, the Court must prima facie be satisfied as to the bona fides or legality of detention, irrespective of the remedies available to the detenu."

4. The legal competence of the Home Secretary to issue orders of preventive detention under section 3(1) of the MPO Ordinance was decided by the Bench as follows:

"Since the power to issue an order for preventive detention under section 3(1) of the MPO Ordinance vests in the Provincial Government, and since the impugned orders did not signify the decision of the Provincial Government, we had asked the learned AAG Sindh to verify whether the impugned orders had the backing of the Provincial Cabinet. This was of course in view of the case of *Mustafa Impex v. Federation of Pakistan* (PLD 2016 SC 808) where the Supreme Court held that after the Eighteenth Amendment the word 'Government' means the Cabinet, and also keeping in view the dictum that the law on preventive detention has to be strictly construed. In response, the AAG Sindh placed on record a decision of the Provincial Cabinet dated 27-04-2020, followed by notification dated 11-06-2020 whereby it had delegated to the Home Secretary the power to issue detention orders under section 3(1) of the MPO Ordinance. The AAG Sindh and the Additional Home Secretary submitted that such delegation was permitted, and was so done by the Provincial Cabinet under section 26 of the MPO Ordinance, and hence the impugned detention notices by the Home Secretary exercising delegated power. But neither the Provincial Cabinet nor the AAG Sindh seemed to be aware that section 26 of the MPO Ordinance which had previously enabled delegation of powers, and that too only to the District Magistrate, had been omitted for the Province of Sindh along with sub-section (2) of section 3 *vide* Sindh Laws (Amendment) Ordinance, 2001, published in the gazette dated 28-11-2001, and which Ordinance came to be protected legislation under Article 270AA of the Constitution until repealed. We were not informed of any subsequent repeal or amendment. Thus, on 27-04-2020, the Provincial Cabinet could not have invoked section 26

of the MPO Ordinance to delegate its powers under section 3(1) to the Home Secretary. In any case, as held by a learned Division Bench of this Court in *Liaqat Ali v. Government of Sind* (PLD 1973 Karachi 78), the erstwhile section 26 had envisaged delegation only of the 'power' to arrest and detain under section 3(1), not of the faculty of 'satisfaction', which had to be that of the Provincial Government itself. Consequently, the impugned detention orders issued by the Home Secretary were without lawful authority."

5. While some of the police officers arrayed as Respondents have filed comments reiterating the grounds mentioned in the detention order, the A.A.G. Sindh states that comments of the Home Secretary , Government of Sindh are not forthcoming.

6. Nevertheless, this Court having already held that the Home Secretary, Government of Sindh had no lawful authority to issue detention orders under section 3(1) of the MPO Ordinance, these petitions are also allowed. The impugned notices issued under the MPO Ordinance are declared without lawful authority and are set-aside. The detainees who are listed below shall be released forthwith if not required in any other case:

S#	Case No.	Name of Detenue
1.	C.P. No. D - 3686/2023	Farrukh Baig @ Farooq s/o Muhammad Baig
2.	C.P. No. D - 3689/2023	M. Zeeshan s/o M. Javed
3.	C.P. No. D - 3690/2023	Muhammad Furqan Khan @ Raju s/o Muhammad Sharif Khan
4.	C.P. No. D - 3698/2023	Murtaza Ahmed Khan s/o Zaffar Khan
5.	C.P. No. D - 3699/2023	Masroof Ahmed s/o Suleman
6.	C.P. No. D - 3702/2023	Muhammad Rashid Zahoori s/o Syed Zahoor Ahmed
7.	C.P. No. D - 3705/2023	Noor Hussain s/o M. Alam
8.	C.P. No. D - 3709/2023	Rizwan Malik s/o Malik Muhammad Nawaz
9.	C.P. No. D - 3712/2023	Muhammad Jibran @ Jimms s/o Muhammad Yameen
10.	C.P. No. D - 3720/2023	Faez @ Fayyaz Ali s/o Ali Muhammad

*As per letter dated 25-07-2023 of the Senior Supt. Central Prison, Karachi.

A copy of this order shall also be emailed to the A.G. Sindh, the Home Secretary Sindh and the IGP Sindh for submitting compliance.

Office is directed to place a copy of this order in the all petitions listed above.

JUDGE

JUDGE

Karachi:

Dated: 07-08-2023