

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

Constitutional Petition No. D-4137 of 2023

Present:

Ahmed Ali M. Shaikh, CJ

Yousuf Ali Sayeed, J

Hasnain Ali Chohan, and Samreen Ali Rizvi, Advocates for the Petitioner.
Saifullah, A.A.G alongwith Ali Asghar Mahar, Section Officer, Home
Department; Raza Mian, DPS Legal; PI Asif Ali, CPO Karachi and ASI
Aslam, P.S Madina Colony Karachi.

Date of hearing : 31.08.2023

ORDER

YOUSUF ALI SAYEED, J. - The Petitioner impugns the Order No. SO(JUDL-II)/HD/6-5/2023 dated 12.05.2023 issued by the Home Department of the Government of Sindh in purported exercise of powers under Section 3(1) of the Sindh Maintenance of Public Order Ordinance, 1960, sanctioning and directing the preventive detention of the Petitioner's son, namely Asmatullah, for a period of 30 days from the date of his arrest.

On the first date that matter was taken up, we had been informed that the subject of the aforementioned order had been arrested and was being detained by the Police functionaries at P.S Madina Colony, District Kaemari, Karachi. Notice was issued to the Respondents as well as learned AAG and the case adjourned to today. Upon the matter thus

again coming up in Court, we had posed a query to the learned A.A.G at the outset as to whether the impugned order had been sanctioned by the Provincial Cabinet and what cogent material had even otherwise been placed before the Cabinet or indeed the Chief Secretary to justify the action of curtailing the liberty of a citizen. On both fronts, the learned AG was found wanting.

Indeed, the necessary role of the Cabinet in sanctioning an order for preventive detention under Section 3(1) has been addressed in terms of a Judgment rendered by a learned Division Bench of this Court in C.P No. D- C.P. No. D - 3387/2023 and connected Petitions, with the relevant excerpt of that Judgment reading as follows:

“7. 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.”

Under such circumstances and the admitted absence of any sanction by the Provincial Cabinet, the instant Petition was allowed vide a short order dictated by us in Court upon culmination of the hearing on 31.08.2023, with the Respondent No.1 being directed to release the detenu forthwith if not required in any other case. These are the foregoing reasons for such short order.

JUDGE

CHIEF JUSTICE

Karachi
Dated_____