

## THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Adnan Iqbal Chaudhry &  
Mr. Justice Zulfiqar Ali Sangi.

- C.P. No. D - 3588/2023 : Muhammad Ousaf Khan son of Muhammad Sajjad Khan versus Province of Sindh and others.
- C.P. No. D - 3597/2023 : Mst. Farah Begum daughter of Anwar ul Haq versus Province of Sindh and others.
- C.P. No. D - 3616/2023 : Erum Shaheen wife of Ali Ahmed Asharfi versus Province of Sindh and others.
- C.P. No. D - 3617/2023 : Ghulam Rasool son of Ghulam Muhammad versus Province of Sindh and others.
- C.P. No. D - 3618/2023 : Waqas Ahmed son of Qadeer Ahmed versus Province of Sindh and others.
- C.P. No. D - 3626/2023 : Muzammil Hussain son of Manzoor Hussain versus Province of Sindh and others.
- C.P. No. D - 3627/2023 : Muhammad Tariq son of Abdul Aziz versus Province of Sindh and others.
- C.P. No. D - 3628/2023 : Muhammad Danish son of Muhammad Farooq versus Province of Sindh and others.
- C.P. No. D - 3634/2023 : Akhtar Hussain son of Mumtaz Ali versus Province of Sindh and others.
- C.P. No. D - 3637/2023 : Muhammad Saleem son of Maqbool Ahmed versus Province of Sindh and others.
- C.P. No. D - 3638/2023 : Adeel Ali son of Asghar Ali versus Province of Sindh and others.
- C.P. No. D - 3639/2023 : Zaheer Khan son of Waheed Khan versus Province of Sindh and others.

- C.P. No. D - 3640/2023 : Mustaqeem Ahmed Khan son of Akhlaq Ahmed Khan versus Province of Sindh and others.
- C.P. No. D - 3641/2023 : Farrukh Sheikh son of Sheikh Mahtab versus Province of Sindh and others.
- C.P. No. D - 3642/2023 : Mst. Farzana Naz wife of Muhammad Imran versus Province of Sindh and others.
- C.P. No. D - 3643/2023 : Shahzad Ali son of Murad Ali versus Province of Sindh and others.
- C.P. No. D - 3644/2023 : Anees son of Muhammad Siddique versus Province of Sindh and others.
- C.P. No. D - 3645/2023 : Muhammad Hussain Qureshi son of Muhammad Haneef Qureshi versus Province of Sindh and others.
- C.P. No. D - 3646/2023 : Adil Baloch son of Khan Muhammad versus Province of Sindh and others.
- C.P. No. D - 3647/2023 : Muhammad Arif son of Anwaruddin versus Province of Sindh and others.
- C.P. No. D - 3648/2023 : Aqeel son of Shafiquddin versus Province of Sindh and others.
- C.P. No. D - 3649/2023 : Mst. Erum Arshad wife of Arshad Ali versus Province of Sindh and others.
- C.P. No. D - 3650/2023 : Mst. Jahan Ara wife of Riazuddin versus Province of Sindh and others.
- C.P. No. D - 3653/2023 : Abdul Karim son of Abdul Hakim versus Province of Sindh and others.
- C.P. No. D - 3654/2023 : Abdul Wassay Sultan son of Munawar Sultan versus Province of Sindh and others.
- C.P. No. D - 3657/2023 : Mst. Salma Begum wife of Shabbir Ahmed versus Province of Sindh and others.
- C.P. No. D - 3658/2023 : Muhammad Nadeem son of Noor Bakhsh versus Province of Sindh and others.

- C.P. No. D - 3659/2023 : Sualeh Ali son of Anwar Ali versus Province of Sindh and others.
- C.P. No. D - 3660/2023 : Syed Faraz Ali son of Syed Raza Ali versus Province of Sindh and others.
- C.P. No. D - 3665/2023 : Asad Ali son of Nigah Hussain versus Province of Sindh and others.
- C.P. No. D - 3678/2023 : Junaid Ahmed son of Muhammad Gulzar versus Province of Sindh and others.
- C.P. No. D - 3679/2023 : Muhammad Aman Ali son of Irshad Ali versus Province of Sindh and others.
- C.P. No. D - 3680/2023 : Zaitoon Begum wife of Siraj Uddin versus Province of Sindh and others.
- C.P. No. D - 3681/2023 : Talha son of Muhammad Fayyaz Bhatti versus Province of Sindh and others.
- C.P. No. D - 3682/2023 : Abdul Majeed Khan son of Abdul Rasheed Khan versus Province of Sindh and others.
- C.P. No. D - 3683/2023 : Manzoor Pasha son of Syed Jalil Pasha versus Province of Sindh and others.
- C.P. No. D - 3684/2023 : Muhammad Saqib son of Muhammad Sabir versus Province of Sindh and others.
- C.P. No. D - 3685/2023 : Aurangzaib son of Muhammad Rasheed versus Province of Sindh and others.
- C.P. No. D - 3687/2023 : Muhammad Adil son of Abdul Ghaffar Qureshi versus Province of Sindh and others.
- C.P. No. D - 3688/2023 : Muhammad Asghar son of Liaquat Qureshi versus Province of Sindh and others.
- C.P. No. D - 3692/2023 : Muhammad Ali Siddiq son of Muhammad Siddiq versus Province of Sindh and others.

C.P. No. D - 3611/2023 : Syed Abbas Jeelani son of Syed Sajjad Hussain versus Province of Sindh and others.

For the Petitioners : M/s. Jowhar Abid, Muhammad Idrees Alvi, Muhammad Arshad Khan, Sadia Ghauri, Qamaruddin Ujjan, Syed Mujahid Ali Hashmi, Naeem Shahid Ghouri, Israr Ahmed Abro, Mumtaz Ali Khan Deshmukh, Advocates.

For the Respondents : Mr. Mehran Khan, Assistant Advocate General Sindh alongwith Mr. Ali Asghar Mahar, Focal Person, Home Department, AIG Legal-II, Mushtaq Ahmed Abbasi, DSP Legal, Mussadiq Amjad, DSP Nadeem Khan, P.S. Khawaja Ajmair Nagri, DSP Muhammad Aslam, SDPO Azizabad, Inspector M. Ameen Qureshi, DSP Yousuf Uddin, Central Prison Karachi, SIP Maqsood Hussain, Office of the SP Complaint Cell, SIP Tahir Habib, S.H.O. Azizabad, SIP, Ali Muhammad, P.S. Mominabad, SDPO Akhtar Abbas, Orangi, SIP Ashraf Ali, P.S. Khokhrapar, SDPO Pakistan Bazar & SHO, Iqbal Market, Rao Rafiq, S.H.O. P.S. Zaman Town, SIP Tanveer Abbasi, S.H.O. P.S. Brigade, DSP Waheed Murad, SDPO Mangopir, SI Shah Faisal, P.S. Peerabad, all are present in Court.

Date of hearing : 03-08-2023

Date of order : 03-08-2023

## **JUDGMENT**

**Adnan Iqbal Chaudhry J.** - The Petitioners are family members of detainees 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, this Bench 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 us 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 us 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. 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 - 3588 of 2023	Sajjad Khan son of Shehzad Khan
2.	C.P. No. D - 3597 of 2023	Irshad ul Haq son of Anwar ul Haq
3.	C.P. No. D - 3616 of 2023	Ali Ahmed Ashrafi @ Ali Ganja son of Sagher Ahmed Ashrafi
4.	C.P. No. D - 3617 of 2023	Muhammad Faisal son of Ghulam Rasool
5.	C.P. No. D - 3618 of 2023	Muhammad Faisal son of Qader Ahmed @ Kodu
6.	C.P. No. D - 3626 of 2023	M. Ali @ Khushka son of Manzoor Hussain
7.	C.P. No. D - 3627 of 2023	Sajid @ Bakra son of Abdul Aziz
8.	C.P. No. D - 3628 of 2023	Muhammad Talha son of Muhammad Farooq
9.	C.P. No. D - 3634 of 2023	Imran Akhter son of Akhter Hussain
10.	C.P. No. D - 3637 of 2023	Shahzaib son of M. Tasleem
11.	C.P. No. D - 3638 of 2023	Asif Ali son of Asghar Ali
12.	C.P. No. D - 3639 of 2023	Arbaz son of Zaheer
13.	C.P. No. D - 3640 of 2023	Amir son of Ikhlaq Ahmed
14.	C.P. No. D - 3641 of 2023	Abdul Qadir son of Abdul Qudus
15.	C.P. No. D - 3642 of 2023	Arshad son of Mehmood
16.	C.P. No. D - 3643 of 2023	Amir Ali son of M. Hamed

17.	C.P. No. D - 3644 of 2023	M. Khurrum son of Anees
18.	C.P. No. D - 3645 of 2023	Tahir son of M. Hussain
19.	C.P. No. D - 3646 of 2023	Abdi Baloch son of Khan Muhammad
20.	C.P. No. D - 3647 of 2023	Kashif Anwar son of Anwar Din
21.	C.P. No. D - 3648 of 2023	Parveez Abbasi son of M. Shafi
22.	C.P. No. D - 3649 of 2023	Arshad Ali son of Hashmat Ali
23.	C.P. No. D - 3650 of 2023	M. Haris son of Riaz Uddin
24.	C.P. No. D - 3653 of 2023	Muhammad Sarfaraz Khan son of Khan Muhammad
25.	C.P. No. D - 3654 of 2023	Muhammad Sultan son of Athar Sultan
26.	C.P. No. D - 3657 of 2023	Moeen son of Shair Ahmed
27.	C.P. No. D - 3658 of 2023	Irfan Ali son of Hashim Ali
28.	C.P. No. D - 3659 of 2023	Danish son of Anwar Ali
29.	C.P. No. D - 3660 of 2023	M. Basit Ali son of Raza Ali
30.	C.P. No. D - 3665 of 2023	Kamran Ali Kashmiri son of Ali Zaman
31.	C.P. No. D - 3678 of 2023	Javed son of Gulzar
32.	C.P. No. D - 3679 of 2023	Iftikhar Ali @ Sohna son of Irshad `
33.	C.P. No. D - 3680 of 2023	Kamran son of Siraj Ud Din
34.	C.P. No. D - 3681 of 2023	Muhammad Ali Fayyaz son of Muhammad Fayyaz Bhatti
35.	C.P. No. D - 3682 of 2023	Abdul Saeed son of Abdul Rasheed
36.	C.P. No. D - 3683 of 2023	M. Tahir son of M. Manzoor
37.	C.P. No. D - 3684 of 2023	Muhammad Saleem son of Muhammad Sabir
38.	C.P. No. D - 3685 of 2023	Arham son of Abdul Rasheed
39.	C.P. No. D - 3687 of 2023	Ali Asghar son of M. Amir
40.	C.P. No. D - 3688 of 2023	Muhammad Hanif son of Muhammad Bashir
41.	C.P. No. D - 3692 of 2023	Muhammad Amir son of Muhammad Sadiq
42.	C.P. No. D - 3611 of 2023	Naeem Gallani son of Sajjad Hussain

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: 03-08-2023