

THE HIGH COURT OF SINDH, KARACHI

Present:
Chief Justice &
Mr. Justice Adnan Iqbal Chaudhry.

- C.P. No. D - 3738/2023 : Muhammad Aslam son of Muhammad Tasleem versus Province of Sindh and others.
- C.P. No. D - 3741/2023 : Jawaid son of Ajaz versus Province of Sindh and others.
- C.P. No. D - 3747/2023 : Muhammad Kashif Meo son of Fateh Muhammad Meo versus Province of Sindh and others.
- C.P. No. D - 3750/2023 : Asma Kanwal wife of Kamran Ali versus Province of Sindh and others.
- C.P. No. D - 3761/2023 : Rizwan son of Muhammad Yameen versus Province of Sindh and others.
- C.P. No. D - 3773/2023 : Muhammad Azam son of Altaf Hussain Zargar versus Province of Sindh and others.
- For the Petitioners : M/s. Jowhar Abid, Liaquat Ali Hamid Meyo, Muhammad Imran Meo, Advocates.
- For the Respondents : Mr. Saifullah, Assistant Advocate General Sindh alongwith M/s. Asghar Mahar, Focal Person, Home Department, Government of Sindh, Police Officials namely; Rao Rafiq, SHO, Zaman Town, Syed Mussadiq Amjad, DSP Legal Raza Mian, DSP/Focal Person IGP and DSP Muhammad Yousuf, Central Jail, Karachi, all are present in Court.
- Date of hearing : 11-08-2023
- Date of short order : 11-08-2023
- Date of reasons : 16-08-2023

JUDGMENT

Adnan Iqbal Chaudhry J. - By a short order dated 11-08-2023 we had allowed these petitions and had ordered the release of the detainees after declaring their preventive detention unlawful. These are the reasons for that order.

2. 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.

3. By reasons dated 01-08-2023 in C.P. No. D-3387/2023, judgment dated 31-07-2023 in C.P. No. D-3601/2023, and judgment dated 07-08-2023 in C.P. No. D-3686/2023 (all including connected petitions), this Court had allowed identical petitions challenging identical detention orders. The detention orders impugned in the present petitions are in the same series.

4. In the aforesaid cases, the legal competence of the Home Secretary to issue orders of preventive detention under section 3(1) of the MPO Ordinance had also come into question, which was decided 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. The detention orders in these petitions are also afflicted by the same defect. The comments filed by the Focal Person of the Home Department Sindh simply state that the impugned detention orders were issued on the request of the IGP Sindh. No attempt has been made to address the apparent want of authority discussed above.

6. Therefore, 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 were also allowed vide short order dated 11-08-2023.

JUDGE

CHIEF JUSTICE

Karachi:

Dated: 16-08-2023