

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

Constitutional Petition No. D-6230 of 2023

**PRESENT:**

Justice Naimatullah Phulpoto  
Justice Khadim Hussain Tunio

Muhammad Ashraf ... *Petitioner*

*versus*

Government of Sindh and others ... *Respondents*

Petitioner: In-person

For Respondent No. 1: Mr. Rafiq Ahmed Rajori, Addl. AG  
Mr. Abrar Ahmed Khichi, Addl. PG  
Mr. Aijaz Bhatti, Focal Person, Home Dept.

For Respondent No. 2-6: Inspector Munawar Khan, Special Branch  
SSP Zeeshan Shafi Siddiqui, Central Karachi  
DSP Ishtiaq Ghouri, SDPO Azizabad  
SHO Tariq Raheem, Police Station Azizabad  
DSP Ishtiaq Ghouri, SDPO Azizabad

Date of Hearing: 18.04.2024

**ORDER**

**KHADIM HUSSAIN TUNIO, J.** Muhammad Ashraf, a real Estate agent by profession residing in Karachi, was apprehended by law enforcement agencies at Jinnah International Airport on January 20, 2017, upon his return from Umrah in Saudi Arabia. His family members, including his brother and father, addressed various applications and instituted numerous petitions before this Court alleging unlawful detainment and for the recovery of the petitioner. Upon his release, the petitioner's name was placed in the Fourth Schedule of the Anti-Terrorism Act 1997 ("**the Act**") pursuant to allegations of affiliation with a proscribed organization.<sup>[[1]]</sup> Subsequently, after the expiration of three years as required under the Act, the official respondents renewed the placement of the petitioner's name in the Fourth Schedule<sup>[[2]]</sup> after he was allegedly not found at his address, which is currently being contested through the captioned Constitutional Petition.

2. The petitioner, appearing pro se, contended that the official respondents did not have any incriminating records to substantiate their allegations linking him to Lashkar-e-Jhangvi or Sipah-e-Sahaba. He further contended that his fundamental rights enshrined in the Constitution are being infringed upon without lawful justification as long as his name

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<sup>[[1]]</sup> Notification No. SO(JUDL-II)/HD/8-3/2017 dated February 8, 2017.

<sup>[[2]]</sup> Notification No. SO(JUD-II)/HD/8-1/2022 dated March 25, 2022.

is kept on the list, and that his initial detention in 2017 was itself unlawful. The petitioner also alleged that law enforcement agencies targeted him due to his involvement in politics and local governance as he had participated in the 2013 elections representing PDM which were followed by his aspirations to contest in this year's General Elections. However, his inclusion in the Fourth Schedule hindered his ability to maintain a bank account which was a requirement under the Election Act, effectively barring his participation in what is also a right of every Pakistani. Finally, he asserted his status as a law-abiding citizen with no history of criminal activity or involvement in anti-State activities.

3. A report was called from respondent No. 5, who was also ordered to appear along with any materials held by the police in relation to the petitioner and his culpability. We were informed by SSP that no such material is available against the petitioner at the time. It was disclosed that his inclusion in the Fourth Schedule was initiated by the Home Department upon a recommendation from the Counter Terrorism Squad of the Sindh Police, vide letter No. SP-HQ/CTS-278 dated 17.02.2017. This was due to the petitioner's suspected facilitation of the proscribed organization Sipah-e-Sahaba Pakistan. Respondent stated that upon expiration of the three-year period, the petitioner violated mandatory check-in requirements with Police Station Azizabad. Subsequent investigation of his home address revealed his relocation in 2007, prompting FIR No. 104/2017 u/s 11-EE of the Act against him. In consequence, the District Committee convened to discuss listing of names on the proscribed persons list sought re-notification of the petitioner's name in the Fourth Schedule of the Act.<sup>[3]</sup> The report furnished by the respondent No. 5 indicated that the petitioner has re-established contact with the police, disclosing his current residence. Despite this, the report contends continued suspicion of terrorist activity involvement due his previous absence. The lodged FIR for failure to meet mandatory obligations awaits trial before the Anti-Terrorism Court-III Karachi, the report also disclosed.

4. A statement was filed by the Home Department, Government of Sindh through its focal person wherein the Home Department sought to absolve itself of responsibility by placing the entirety of the onus on the Inspector General of Police, Sindh. They asserted that a letter received from the Inspector General<sup>[4]</sup> was the exclusive foundation for the decision. Needless to say, this statement provided no assistance and instead raised significant concerns. It implies a lack of due diligence by the Home Department, which bears ultimate authority for the inclusion of names within the Schedule.

5. The learned Additional Advocate General and learned Additional Prosecutor General have both contested the petition, asserting that the petitioner's status as an absconder and prolonged non-compliance with mandatory check-ins at Police Station

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<sup>[3]</sup> Letter No. SSP/C/DIB-663 dated March 2, 2021

<sup>[4]</sup> Letter No. AIGP/LEGAL/4thSch/CPO/1048-55/22 dated February 17, 2022

Azizabad remain unchallenged. They further argued that the petitioner's recent re-emergence and subsequent compliance are insufficient grounds for his name to be taken off of the list and that continued non-compliance of the check-ins cannot be ruled out.

6. After consideration of arguments by counsel for all parties and review of the record, we identified that Section 11-EE of the Act empowers the Home Department to unilaterally include name of any person within the Fourth Schedule, with such orders being published in the official Government Gazette. These proceedings are conducted *ex parte*, though they necessitate the presence of '**reasonable grounds**' for such inclusion. This burden rests upon the Agency seeking the placement, and such grounds must lead them to believe that the targeted individual falls under one of the following categories: (a) involvement in terrorist activities, (b) membership as an activist, office bearer, or associate of an organization under observation, or (c) suspected association with or affiliation to an organization or group engaged in terrorism, sectarianism, or acting on behalf of a proscribed organization.

7. Where the requirement of '**reasonable grounds**' precedes the issuance of any adverse order or the undertaking of any consequential action, the power to do so ceases to be absolute. A fundamental principle of constitutional and administrative law dictates that when decision-making authority is vested in a statutory functionary based on their subjective satisfaction, there exists an implicit obligation to not "[...]act in an arbitrary, fanciful and whimsical manner -- they should be judicious, fair and just in their decisions."<sup>[5]</sup> A bare perusal of the order passed by the Home Department shows the use of words like apparently which directly suggest suspicion rather than assurance. Similarly, the order alleges that the appellant provides financial assistance to terrorists and arranges attorneys for them. If that were so why has such record not been placed before this Court, the likely assumption that no such record ever existed as admitted by the respondent No. 5. The lack of reasonable grounds is evident and what has been made the basis of the order of detention can at best be described as reasonable suspicion and not reasonable grounds. The concept of reasonable grounds implies the existence of circumstances which would convince a reasonable and prudent individual. It transcends mere suspicion.<sup>[6]</sup> While not requiring direct evidence, even the most compelling suspicion remains insufficient as reasonable grounds without a clear basis in plausibility.<sup>[7]</sup> Moreover, we observed a complete absence of any ground/incriminating material, let alone reasonable ones, in the subsequent order issued by the Home Department dated 25.03.2022.

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<sup>[5]</sup> Abdul Wahab v. Secretary, Government of Balochistan and another, 2009 SCMR 1354

<sup>[6]</sup> Chaudhry Shujat Hussain v. The State, 1995 SCMR 1249

<sup>[7]</sup> Chaudhry Abdul Malik v. The State, PLD 1968 Supreme Court 349

8. A compelling argument exists for the Home Department to demonstrate heightened attention and improved discretion when exercising its authority under Section 11-EE of the Act. This is due to the direct impact such orders have on various fundamental rights enshrined within our Constitution<sup>[8]</sup>, specifically, Article 4 which guarantees individuals the right to be treated in accordance with the law, and to enjoy its protection.<sup>[9]</sup> This right extends to a bar on any action demonstrably detrimental to life, liberty, bodily integrity, reputation, or property. Furthermore, it bars the prohibition of activities not explicitly outlawed.<sup>[10]</sup> In light of these considerations, the order issued by the Home Department is not tenable. As previously observed, it demonstrably fails to meet the minimum threshold for satisfying the '*reasonable grounds*' requirement. Consequently, the order cannot be considered legally sustainable, nor can it be construed as treating the Petitioner in accordance with the law.

9. For the foregoing reasons, the captioned petition was allowed vide our short order dated April 18, 2024.

Judge

Judge

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<sup>[8]</sup> Constitution of Islamic Republic of Pakistan, 1973

<sup>[9]</sup> 4. (1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen. Wherever he may be, and of every other person for the time being within Pakistan.

<sup>[10]</sup> 4. (2) In particular— (a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law; (b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and (c) no person shall be compelled to do that which the law does not required him to do.