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## IN THE HIGH COURT OF SINDH, KARACHI

*Present:*

*Mr. Justice Mohammad Karim Khan Agha*

*Mr. Justice Arshad Hussain Khan.*

### CONSTITUTION PETITION NO. 7503 OF 2022

Petitioner:	Mohammad Imran s/o Muhammad Rahim Sawati through M/s. Mehmood A. Qureshi and Jamshed Iqbal, Advocates
Respondents /State:	The State through Barrister Zeeshan Adhi, Additional Advocate General Sindh.
On Court Notice:	Mr.Ghulam Nabi Memon IGP Sindh Mr.Saeed Ahmed Mangnajo, Home Secretary, Government of Sindh Mr.Faisal Bashir Memon, SSP West
Date of Hearing:	12.12.2022
Date of Announcement of Reasons:	16.12.2022

### ORDER

**Mohammed Karim Khan Agha J.** The petitioner has challenged Order No:SO(JuDL.II)/HD/6-3/2022 dated 01.12.2022 issued by Home Secretary Government of Sindh whereby the petitioner and four others were ordered to be detained under the Maintenance of Public Order 1960 (MPO) for 3 months (the Order).

2. Learned counsel for the petitioner has contended that this court has jurisdiction to hear this petition in its constitutional jurisdiction; that there is no material to justify the Order available with the concerned authorities; that any such material is vague, in general terms, is based on conjectures, presumptions and surmises and cannot stand the test of judicial scrutiny; that the Home Secretary failed to apply his mind in determining whether or not to issue the Order; that the Order is based on malafide and for the sole purpose of keeping the petitioner and the other four in custody despite them being acquitted in the Parveen Rehman murder case by this court vide judgment dated 21.11.2022 and on account of the media pressure arising following the acquittal of the petitioner and the four others; that the Order is in violation of Articles 4, 9, 10 and 10(A) of



the Constitution and as such the Order should be declared as illegal having been passed without lawful and thereby be set aside/struck down. In support of his contentions he has placed reliance on the cases of **Federation of Pakistan through Secretary, Ministry of Interior, Islamabad Vs. Mrs. Amatul Jalil Khawaja and others** (PLD 2003 Supreme Court 442), **Liaquat Ali Vs. Government of Sind through Secretary, Home Department and another** (PLD 1973 Karachi 78), **Arbab Akbar Adil Vs. Government of Sindh through Home Secretary, Government of Sindh, Karachi** (PLD 2005 Karachi 538), **Dr. Muhammad Shoaib Suddle Vs. Province of Sindh through Secretary Home Department, Sindh Civil Secretariat, Karachi and another** (1999 P.Cr.L.J. 747), **Government of Sindh and others Vs. Mst. Najma** (NLR 2001 Civil 521), **Muhammad Nasim Vs. District Magistrate, Mansehra and 2 others** (1997 MLD 1236), **Muhammad Abdullah Vs. District Magistrate West, Karachi and others** (1988 P.Cr.L.J. 1087), **Iffat Razi Vs. Government of Punjab and others** (PLD 2002 Lahore 194), **Muhammad Shafi Vs. District Coordination Officer, Multan and 5 others** (2011 P.Cr.L.J. 1482), **Mst. Sana Jamil Vs. Government of the Punjab through Secretary and 5 others** (2016 P.Cr.L.J. 424), **Asad Khan Vs. Deputy Commissioner Manshera and others** (2016 P.Cr.L.J. 1502) and **Liaquat Ali Khan Vs. District Coordination Officer, Bahawalpur and 3 others** (PLD 2012 Lahore 335).

3. On the other hand learned Additional Advocate General has contended that this court does not have the jurisdiction to hear this petition as an alternate remedy has been provided under S.3 (6) MPO; that the Order has been passed in accordance with law keeping in view the preamble of the MPO, S.3 (1) MPO and the material which was placed on record which fully justified the Order and as such the Order should be upheld and the petition dismissed. In support of his contentions he has placed reliance on the cases of **Sheikh Rashid Ahmad Vs. D.M. Rawalpindi etc.**, (PLJ 2004 Lahore 1221 (FB)), **Azhar Abbas Haideri Vs. Government of the Punjab and others** (PLD 2022 Lahore 278), **Behram Vs. Government of Balochistan through Chief Secretary and another** (2020 YLR 1015), **Ameer Hussain Vs. Government of Punjab and others** (PLD 2021 Lahore 699).

4. We have heard learned counsel for the petitioner, learned Additional Advocate General as well as SSP West, IGP Sindh and Home Secretary who appeared in person in order to assist the court and have also considered the



relevant material which lead to the issuance of the Order and considered the case law cited at the bar.

5. We note that none of the authorities relied upon by the learned AAG relate either to the Supreme Court or the Sindh High Court but of other High Courts which are only of persuasive value. The thrust of most of the authorities is that the petitioner should have availed the alternate remedy available to him under S.3 (6) of the MPO before approaching this court in its constitutional jurisdiction. A Division Bench of the Sindh High Court and the Supreme Court have already held that in certain circumstances in a case concerning an order under the MPO or other preventive detention order under any other statute a petitioner can come directly to the High Court in its Constitutional jurisdiction instead of availing the alternate remedy as provided in the statute, in this case, S.3 (6) MPO. In the case of **Dr. Muhammed Shoaib Suddle** (Supra) which also concerned an MPO it was held as under;

*"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 equal 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.*

6. We have noted that when an appellant is acquitted by this court in a so called high profile case the Government of Sindh (GOS) uses all means possible to detain the acquitted person and defeat the judgment of the Court by detaining the acquitted person under the MPO or some other preventive detention law on spurious grounds. Such tactic has already been deployed and exposed by this court in the cases of **Mst Aziza Naeem v State** (PLD 2021 Sindh 178) concerning Abdul Hameed Bugti's MPO after his acquittal and **Ahmed Omar Shaikh V GOS** (2022 YLR 217) concerning the MPO issued on those acquitted in the Daniel Pearl murder case where all malafide and devious efforts were made by the GOS to ensure that the acquitted accused remained behind bars. The orders by this court as reported tell a sorry tale of such desire to keep acquitted persons behind bars by hook or by crook for extraneous reasons and thus a misuse/abuse of executive authority. Apart from malafides to keep the acquitted person in jail it is quite apparent that the remedy under the statute as provided under S.3(6) MPO is completely ineffacious and unable to provide effective relief to the petitioner on account of the already exposed conduct of the GOS. It is in a case such as this where the court in its constitutional jurisdiction is required to step in to ensure that justice is done to the petitioner in accordance with the law and the Constitution which commands that the courts protect the rights of all citizens under the law and in accordance with law as such we find that we have the jurisdiction to decide this petition and proceed to do so.

7. The starting point and chronology of events which led to the Order is the acquittal of the petitioner and other persons mentioned in the Order by this court vide judgment dated 21.11.22 whereby in essence the petitioner and the other persons named in the Order were acquitted of the charge against them of their involvement in the murder of Ms Parveen Rehman an eminent social worker



connected with the Orangi Pilot Project (OPP). The petitioner and the others named in the Order pursuant to this court's acquittal judgment were accordingly released from Karachi Central Prison on 22.11.2022 much to the chagrin of the media and some members of civil society.

8. After the release of the petitioners and the others named in the Order on 22 and 23.11.2022 the Admin Manager and Chairperson of the OPP respectively wrote to SSP West seeking protection as she and other office workers of OPP felt threatened by the release of the petitioner and the 4 other persons named in the Order following their acquittal. Accordingly as confirmed in court SSP West and IGP Sindh immediately provided the requested protection to the OPP and its Chairperson. **At no stage did any person from the OPP request that the petitioner or other any of the 4 persons named in the Order be placed under preventive detention.**

9. On 24.11.2022 SSP West wrote a letter to the IGP which is reproduced as under for ease of reference in respect of the imposition of the MPO on the petitioner and the others;

"OFFICE OF THE  
SENIOR SUPERINTENDENT OF POLICE  
DISTRICT WEST, KARACHI  
NO.SSP/W/RDR/2165 dated 24.11.2022

The Deputy Inspector General of Police,  
West Zone Karachi.

SUBJECT:- **REQUEST FOR ISSUANCE OF DETENTION ORDERS FOR THE ACCUSED PERSONS ARRESTED IN FIR NO.104/2013 OF PEERABAD PS UNDER SECTION 3 OF M.P.O. 1960 FOR 90 DAYS.**

1. It is submitted that on 13.03.2013, Mst: Parveen Rahman, Director of Orangi Pilot Project (OPP), was shot dead by two unknown accused persons, at 1930 hrs at Pukhtoon Market near main Manghopir road within the jurisdiction of PS Peerabad District West Karachi, in this regard a case vide FIR No. 104/2013 u/s 302/34 PPC r/w 7-ATA was registered on the complaint of Wali Dad, driver of deceased Parveen Rahman.

2. During the course of investigation, five accused persons including the principle accused Raheem Sawati were arrested and challaned in the court of law. The Anti-Terrorism Court on 17.12.2021 convicted all accused persons except Imran Sawati for murder of deceased Perveen Rahman and sentenced them to life imprisonment whereas, accused Imran Sawati was only sentenced to seven-year imprisonment for subverting the investigation and trial. The Anti-Terrorism Court based the conviction on the fact that when the confessional statement of accused Raheem Sawati, was recorded in 2016, it becomes clear that the principle accused Raheem Sawati was threatening deceased Perveen Rahman to illegally occupy the land in the premises of OPP for establishing a karate club and later on planned to murder the deceased to get rid of her.



3. However, on 21.11.2022 the Honorable High Court of Sindh acquitted all five accused persons including the principle accused Raheem Sawati, who lives right across the OPP. office, might force OPP office to close down.

4. It is pertinent to mentioned here that all these accused persons are harden criminals, who pose grave and imminent threat to the family of Mst. Perveen Rahman specially her sister Mst: Aqeela Ismail who works as chairperson in OPP and the entire staff of Orangi Pilot Project. According to intelligence report the life of the family members especially her sister Mst. Aqeela Ismail are in danger after the release of accused.

5. Furthermore the release of mentioned accused may disturb peace and tranquility and can create serious law and order problems and such an act on their part will be highly prejudicial to the public safety and maintenance of public order.

6. In the light of the above circumstance, it is therefore, requested that accused 1) Raheem Sawati, 2) Imran Sawati, 3. Ahmed Khan @ Ahmed Ali @ Papu Shah Kashmir, 4) Ajmal Afridi 5) Ayaz Sawati should immediately be detained under Maintenance of Public Order Ordinance, 1960 for 90 day or under any other relevant law.

Submitted for kind perusal please

SENIOR SUPERINTENDENT OF  
POLICE DISTRICT WEST, KARACHI."

10. The opening 3 paragraphs of the letter reproduced above are of an introductory nature which relate to issues prior to the release of the petitioner and others/accused after their acquittal by this court and as such are not of huge significance. The fourth and fifth paragraphs are of relevance for issuing the Order. It is stated in the letter that the petitioner and the other named persons in the Order are **all hardened criminals**. However when confronted by the court SSP West conceded that the petitioner and the other persons who were named in the Order did **not** have positive CRO's in respect of any crime apart from the crime which they had all been acquitted of. He did not record any statement from any local person that any of the said persons were hardened criminals which in any event would only have been opinion evidence and of no legal value. The petitioner himself was only convicted for 7 years for misleading the original investigation so it is hard to fathom how the SSP reached the conclusion that the petitioners and the others named in the Order were hardened criminals. In fact there was no evidence/material available to him to support this contention.

He then relied on an intelligence report which is reproduced as under;

"INFORMATION REPORT DATED 23.11.22

Brief

Apprehension of Attack - Family of Late Parveen Rehman

Details:



Reportedly, on 13 March 2013, OPP Director Parveen Rehman was killed in the jurisdiction of PS Peerabad. On 12 November 2022, following accused of this case were acquitted by the Sindh High Court:

1. Ahmed Khan,
2. Amjad Swati,
3. Ayaz Swati,
4. Abdul Rahim Swati
5. Imran Swati

It is learnt through source that the accused are infamous for their suspicious criminal activities and have severe aggression / grudge for the family of late Parveen Rehman over perusing the case due to which they were detained and remained under-trial for a long time. Source revealed that the accused may take revengeful action and endanger the family particularly Ms. Aqeela Ismail (sister of-Parveen Rehman), residing in the area of Gulistan e Johar. Any attack on the family cannot be ruled out.

In view of the above, it is recommended that necessary security measures may be taken for protection of family. In this connection, above mentioned accused may be detained in order to prevent any untoward incident.

CONFIDENTIAL"

11. The intelligence report is not on the letter head of any particular intelligence agency. It is not signed by any one and bears no stamp of any organization. It is vague, based on presumptions and assumptions and is not supported by the CRO's of the concerned persons. It is completely lacking in any detail whatsoever and could have been written by any one. It even cites the wrong day of acquittal so careless and per functionary is it. Although the report is dated 23.11.2022 in our view we find that it cannot be ruled out that this report was made **after** the Order once this court had taken notice of this case in order to boost the justification for issuing the Order especially as it is unsigned and does not even bear any stamp of the concerned organization who issued the report. It is literally on an ordinary blank piece of paper which is accessible to anyone. Furthermore, we have been informed that the report came from the special branch of the police which is ultimately under the control of the IGP as admitted by himself in court and as such the so called intelligence report has not even been prepared by an independent body like the IB or the ISI and it appears that the IGP had a conflict of interest in relying on the report. **In fact prior to issuing the Order no report from any other organization/body was considered by SSP West, IGP or the Home Secretary.**

12. The letter of SSP West goes on to state that the release of the persons mentioned in the Order *may* disturb peace and tranquility and *can* create serious law and order problems.



13. **Significantly**, when confronted by the Court in the 9 days since the release of the persons from jail *prior* to them being placed in the Order SSP West conceded that the persons named in the Order had **not** returned to the area of OPP and had not even been seen in the area let alone together. **In addition**, he conceded that the persons from the OPP who had requested security (which had immediately been provided by the police) had **not** informed him that they had received any threat from any of the persons named in the Order by telephone or otherwise or indeed from any other person and that in this 9 day period there had been no untoward incident in respect of the OPP or its Chairman or any of its staff. **Thus, the above paragraph in SSP West's letter was based on presumptions and assumptions alone and no other material.**

14. Now let us pause to consider the logic behind the Home Secretary's decision to issue the Order which appears to be as follows. The persons in the Order had been acquitted in connection with the murder of Ms. Parveen Rehman were hardened criminals (despite not having any previous CRO) and since Ms Parveen Rehman's sister Ms Aquila Ismail had vigorously pursued her sisters case both before the trial court and the appellant court the acquitted persons who were named in the Order would come and take revenge from her despite the presence already of GOS police security hence the need for the Order. If this logic is followed to its conclusion it would imply that in nearly every murder case where the complainant (or even a witness who gives evidence against a convicted accused) pursues the case vigorously against the accused who are convicted at the trial court for serious offences such as murder and target killing and acquitted by the appellant court and the complainant/witness fears reprisals from the acquitted accused the provision of security would immediately be provided and **in addition** the names of the acquitted persons would be subject to being placed on the MPO and hence they would be denied their liberty as they would be further detained after their acquittal. Hence defeating the very purpose of their appeal which lead to their acquittal which *prima facie* appears to be in violation of Articles 4, 9 and 10(A) of the Constitution. This however does not happen in practice. Numerous accused who are eventually acquitted of serious charges such as murder and have CRO's as long as their arm for serious criminal offences are not detained under the MPO even if the complainant is fearful of reprisals. In fact, in most cases when the complainant expresses his concern to the police rarely is he even given police protection due to a lack of interest, concern or resources. These are the ground realities. In high profile cases



however like Bugti, Ahmed Omer Sheikh and this case, that of Parveen Rehaman, cowed down by the pressure of the media and its desire to appease the same time and again such MPO's are unjustifiably issued malafide without proper application of mind based upon the so called material which is placed before the concerned authorities whose spineless behavior is highly deprecated considering that a persons liberty is at stake. The witness protection law is simply a paper law which is little used, if at all, and hardly effective in practice.

15. Having dealt with the letter of SSP West the **next link** in the chain was the AIGP's letter to the IGP dated 25.11.2022 whereby with reference to SSP West's letter detention of the persons mentioned in the Order was sought which shows that no intelligence report was attached as referred to by SSP West and no additional information was provided. The **next link** is the IGP's letter dated 25.11.2022 (one day later) to the Addl. Chief Secretary Home requesting issuance of a detention order under S.3 MPO against the 5 persons who ended up in the Order where once again no additional material is provided.

16. Six days later without receiving any additional material or calling for any further inquiry, for example, seeking a report from the IB or the ISI or further report from the police whether the said persons were even in the area where the OPP was situate or whether any of the persons to be placed in the Order had actually made contact with any member of the OPP in particular Ms Rehman's sister Ms Aqila Ismail by phone, email or otherwise issued the Order after supposedly applying his mind and satisfying himself of the material placed on record to justify the issuance of the Order which is set out below for ease of reference;

“GOVERNMENT OF SINDH  
HOME DEPARTMENT

**ORDER**

*NO:SO(JUDL.II)/HD/6-3/2022: Whereas, the Inspector General of Police, Sindh, Karachi, vide his letter No.50548-52-A1GP/Ops-Sindh/S-11/2022, dated 25.11.2022, has communicated that following five persons are hardened criminals who pose grave and imminent threat to the family of deceased Mst. Parveen Rchman [Ex- Director, Orangi Pilot Project (OPP)], especially her sister Mst. Aqila Ismail who work as Chairperson in OPP and the entire staff of Orangi Pilot Project. Further that there is intelligence report that the life of the family members of Mst. Parveen Rehman, especially her sister are in danger and the following persons may disturb peace and tranquility and can create serious law and order problems and such an act on their part will be highly prejudicial to the public safety and maintenance of public order, therefore, IG Police Sindh has recommended that they may be detained under MPO 1960 for three (03) months at least:-*

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1. Muhammad Amjad Hussain Khan S/o looted.
2. Ayaz Ali @ Sawati S/o Muhammad Sharif.
3. Ahmed All @ Papu S/o Qari Abdul Baqi
4. Muhammad Raheem @ Sawati Sto Steed Ilabib.
5. Muhammad Imran Sawati S/o Muhammad Rahim Swaati.

2. **AND WHEREAS**, the Government of Sindh on the basis of request and considering the merits of the case is satisfied that there is serious apprehension of Public Safety in the interest of public safety and that the presence of above accused persons, at any public place is likely to pose grave threat to the public safety and cause breach of peace and tranquility;

3. **AND NOW THEREFORE**, in exercise of the powers under section 3(1) of the Sindh Maintenance of Public Order Ordinance, 1960, the Government of Sindh has sufficient reason to believe that above accused be arrested and detained for a period of 90 days from the date of arrest. Their custody shall be placed under the Senior Superintendent of Central Prison, Karachi.

4. They shall be at liberty to make a representation to the Provincial Government against this order.

**HOME SECRETARY  
GOVERNMENT OF SINDH**

NO.SO (JUDL-II)/HD/6-3/2022

Karachi, dated. 01.12.2022"

17. The persons named in the Order had just been released from prison after being acquitted by this court after serving about 9 years in jail. Since there was no other custody case against them they were entitled to be released under the law. They could only have been further detained under the MPO if the requirements of S.3(1) had been met keeping in view the protections provided by Articles 4,9,10 and 10 (A) of the Constitution some of which are fundamental rights. For ease of reference S.3 (1) of the MPO is set out below for ease of reference;

**"3. Power to arrest and detain suspected persons. (1)**  
Government, if **satisfied** that with a view to preventing any person from acting in any manner prejudicial to public safety or the maintenance of public order, it is necessary so to do, may, by an order in writing, direct the arrest and detention in such period as may be specified in the order, and Government, if **satisfied** that for the aforesaid reasons it is necessary so to do, may, subject to the other provisions of this section, extend from time to time the period of such detention for a period not exceeding six months at a time".

18. We find the key word in S.3 (1) MPO to be "*satisfaction*" and as such the Home Secretary must be satisfied that based on the material placed before him the other consequences referred to in the Order may flow. In our view that standard must be high as no person can be lightly deprived of his right to life and liberty especially if they have already spent 9 years in jail and have been,



acquitted by the appellant court and at the time of issuing the Order the Government of Sindh had not even lodged an appeal against acquittal before the Supreme Court and had even not done so by the date of this hearing being over three weeks after the acquittal judgment (even the complainant had we believe even up to now only filed an acquittal appeal against **only one** out of the 5 persons in the Order and keeping in view the fact that the police were already proving full protection to the OPP and its Chairperson, the persons sought to be placed in the Order had not been seen in the area of the OPP since their release and no threats had been given by any of the persons to be placed in the order to any member of the OPP including its Chairman and none of them even made any such threats during their trial and long period of incarceration and as, as is well known, each case must be based on its own particular facts and circumstances.

19. In Pakistan the requirement of satisfaction is based on subjective assessment of material as opposed to an objective satisfaction as laid down by the Supreme Court which the High Courts must follow as per the command of the Constitution as was held in the case of **Federation of Pakistan V Mrs. Amatul Jalil Khawaja** (PLD 2003 SC 442) which dealt with Preventive Detention Orders (PDO's) in great detail and reviewed all the then exiting laws on PDO's and laid down the principles for the courts to follow in such cases in 2003 and held at P.454 concerning the **required level of satisfaction** in respect of material which justified a PDO being issued against a person and at P.467 in terms of the test to be applied as under;

*"We have carefully examined the respective contentions as agitated on behalf of the parties in the light of relevant provisions of Constitution of Islamic Republic of Pakistan, the Security of Pakistan Act, 1952, the Qanun e-Shahadat Order, 1984 and judicial precedents. It would be relevant to mention here at this juncture that our, security laws and anti-terrorism enactment are silent to the effect that AI-Qaeda is a terrorist organization having its network at global level and is a serious threat to national/international piece, security and tranquility. We have also perused the order impugned with care and caution. The pivotal question which needs determination would be as to whether sufficient incriminating material justifying the detention of respondents under section 3(1)(b) of the Security of Pakistan Act, 1952 was available which could not be appreciated in its true perspective by the learned Single Judge who erred in substituting his own opinion to that of Federal Government by misconstruing the provisions of section 3 of the Security of Pakistan Act, 1952 and misinterpreting the word "satisfaction" as used therein which resulted in serious miscarriage of justice? Before the said question could be answered in this particular context we*



have thrashed out almost the entire law available on the subject, detail whereof is as follows:--

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6. The judicial consensus seems to be as under:--

(i) "An order of preventive detention has to satisfy the requirements laid down by their Lordships of the Supreme Court that is to say (i) the Court must be satisfied that the material before the detaining authority was such that a reasonable person would be satisfied as to the necessity for making the order of preventive detention (ii) that satisfaction should be established with regard to each of the grounds of detention and if one of the rounds is shown to be bad nonexistent or irrelevant the whole order of detention would be rendered invalid (iii) that initial burden lies on the detaining authority to show the legality of the preventive detention and (iv) that the detaining authority must place the whole material, upon which the order of detention is based before the Court notwithstanding its claim of privilege with respect to any document the validity of which claim shall be within the competence of the Court to decide. In addition to these requirements, the Court has further to be satisfied, in cases of preventive detention, that the order of detention was made by the authority prescribed in the law relating to preventive detention; that each of the requirements of the law relating to preventive detention should be strictly complied with; that 'satisfaction' in fact existed with regard to the necessity of preventive detention of the detenu; that the grounds of detention had been furnished within the period prescribed by law, and if no such period is prescribed, then 'as soon as may be'; that the grounds of detention should not be vague and indefinite and should be comprehensive enough to enable the detenu to make representation against his detention to the authority prescribed by law; that the grounds of detention that is they are not irrelevant to the aim and object of this law and that the detention should not be for extraneous considerations or for purposes which may be attacked on the ground of malice." (Liaqat Ali v. Government of Sind through Secretary, Home, PLD 1973 Karachi 78). (Emphasis provided)

(ii) "The right of a person to a petition for habeas corpus is a high prerogative right and is a Constitutional remedy for all matters of illegal confinement. This is one of the most fundamental rights known to the Constitution. There being limitation placed on the exercise of this right, it cannot be imported on the actual or assumed restriction which may be imposed by any subordinate Legislature. If the arrest of a person cannot be justified in law, there is no reason why that person should not be able to invoke the jurisdiction of the High Court immediately for the restoration of his liberty which is his basic right. In all cases where a person is detained and he alleges that his detention is unconstitutional and in violation of the safeguards provided in the Constitution, or that it does not fall within the statutory requirements of the law under which the detention is ordered, he can invoke the jurisdiction of the High



*Court, under Article 199 and ask to be released forthwith. (PLD 1965 Lah. 135). He need not wait for the opinion of the Advisory Board before praying for a habeas corpus. (AIR 1952 Cal. 26). However, jurisdiction of High Court while examining the material before the detaining authority is not unlimited. When an order passed by an executive authority detaining a particular person is challenged by invoking extraordinary jurisdiction of High Court it is always by means of judicial review and cannot be treated as appeal or revision. The Court cannot substitute its discretion for that of administrative agent. The only function of the Court in such cases is to see whether or not order of detention is reasonable and objective." (PLD 1979 Lah. 741. (Emphasis provided).*

*(iii)"The Court can see whether the satisfaction about the existence of the requisite condition is a satisfaction really and truly existing in the mind of the detaining authority or one merely professed by the detaining authority. (AIR 1953 SC 451) A duty has been cast upon the High Court whenever a person detained in custody in the Province is brought before that Court to "satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner." This Constitutional duty cannot be discharged merely by saying that there is an order which says that he is being so detained. If the mere production of an order of detaining authority, declaring that he was satisfied, was to be held to be sufficient also to "satisfy" the Court then what would be the function that the Court was expected to perform in the discharge of this duty. Therefore it cannot be said that it would be unreasonable for the Court, in the proper exercise of its Constitutional duty to insist upon a disclosure of the materials upon which the authority had acted so that it should satisfy itself that the authority had not acted in an "unlawful manner". (Abdul Baqi Baloch v. Government of Pakistan PLD 1968 SC 313). (Emphasis provided).*

*(iv)"High Court cannot claim in the exercise of writ jurisdiction to usurp the functions of the authority in which power has been vested nor to substitute their own decision for the decision of that authority. Nor can the Court insist on being satisfied that there were materials upon which it itself would have taken the same action. It is in this sense that it has been said that the Court is not concerned with either the adequacy or the sufficiency of the grounds upon which action is taken. The Court in order to be satisfied as required by the Constitution must know that there were in fact grounds relatable to the purposes of the statute upon which the action of the authority concerned could at all have been founded after an honest application of the mind of the authority concerned to all the relevant considerations. The question however, that still remains to be considered is as to whether the reasonableness of the action can be examined when the statute itself does not require the authority to act upon reasonable grounds but leaves him to act upon his own subjective satisfaction. In view of the provisions of Article 199 of the Constitution that degree of reasonableness has at least to be established which has been indicated in the case of Abdul Baqi Baluch PLD 1968 SC 313 Otherwise if an authority could protect himself by merely saying that he believed himself to be acting in pursuance of a statute then what would be the material upon which the Court could say that it was satisfied that the detention or impugned action had not been taken in an unlawful manner. The presumption is that every imprisonment without trial and conviction is prima facie*



*unlawful." (Government of West Pakistan v. Begum Agha Abdul Karim Shorish Kashmiri PLD 196,9 SC 14). (Emphasis provided).*

*(In the case of Abdul Baqi Baluch PLD 1968 SC 313 it was indicated that it is for the High Court to consider as to whether there were grounds upon which any reasonable person could have been satisfied as to the necessity of detention)*

.....

*Test to be applied.*

*"There could be no other opinion that it is for the High Court to examine while exercising its Constitutional Jurisdiction the material on which the satisfaction of the detaining authority is based and had to determine whether it was sufficient for the satisfaction of the detaining authority. Let me mention here at this juncture that when a privilege is claimed even the High Court would be competent to examine the document / material regarding which privilege is sought in order to determine as to whether such privilege is being claimed in advisedly, lightly or as a matter of routine. In this regard we are fortified by the dictum laid down in PLD 19689 SC 14; Abdul Baqi Baluch v. Government of Pakistan (PLD 1968 SC 313); National Bank v. Faridsons Limited 20 DLR SC 249. The High Court can examine the reasonableness of the grounds of detention so as to satisfy itself that the detenu has not been held in custody without lawful authority or in an unlawful manner. It is not the satisfaction of only detaining authority but judicial conscious is also required to be satisfied and thus in our opinion the satisfaction of detaining authority should have been based on actual and real facts and not on mere suspicion, doubt or conjectural presumptions."(bold added)*

20. Keeping in view the above legal test which in a nut shell is whether the Court is satisfied that the material before the detaining authority was such that a reasonable person would be satisfied as to the necessity for making the order of preventive detention when placed in juxta position with the material relied upon i.e. the SSP's letter and the intelligence report both of which we have discussed above and keeping in view the actual ground reality at the time of issuing the Order which could easily have been found out i.e that the OPP and its Chairmen had already been provided full proof security; that none of the persons sought to be put in the Order had been back to OPP or its area in the 9 days since their release; that no actual threats had been received by any of the OPP persons in that 9 day period by any of those persons whose names were sought to be put in the Order or on their behalf we find that no reasonable person would have been satisfied that the material placed before him justified the issuance of the Order under the MPO which is under challenge and as such we find that the Home Secretary failed to apply his independent mind sufficiently to the material before him let alone seek further



information; that the police acted malafidely in its over zealousness to appease the public and the media without giving sufficient weight to the liberty of the petitioner and the others named in the Order (despite proving full proof security to the OPP and its Chairman **prior** to the Order) and the whole exercise leading up to the issuance of the Order was a colorable exercise of authority by the executive especially as mentioned earlier no reasonable person based on the material which was placed before the Home Secretary could have been satisfied of the necessity of issuing the Order and as such the Order is held to be passed without lawful authority and is hereby struck down.

21. These are the reasons for our short order dated 12.12.2022 which is set out below for ease of reference;

“We have heard learned counsel for the petitioner, Additional Advocate General Sindh as well as the explanation from the Inspector General of Police and Secretary, Home Department, Government of Sindh for detaining the petitioner and others under the MPO.

For the reasons to be recorded later, we hereby declare the impugned MPO dated 01.12.2022 passed by the Secretary, Home Department, Government of Sindh to be illegal and passed without lawful authority and hereby strike down the same. However, it is made clear that the police shall continue to provide full protection and security to Ms. Aqeela and other members of OPP as is there lawful duty.”