JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.1569 of 2023
Chaudry Fawad Hussain and others
Versus
Federation of Pakistan and others

Date of Hearing / Decision:	16.05.2023
Petitioners by:	Dr. Babar Awan, Tanvir Hussain Rajput, Hassan Sajjad, Murtaza Turi, Malik Tariq Noon, Zakria Arif, Ayesha Khalid, Naheed Awan, Qurat ul Ain Ayesha and Saeed Khan Sadozai, Advocates. Petitioner No.1 in police custody.
Respondents by:	Mr. Munawwar Iqbal Duggal, learned Additional Attorney General along with M/s Muhammad Iqbal Kalluh and Malik Shaukat Nawaz, learned Assistant Attorney General. Barrister Jehangir Khan Jadoon, learned Advocate General, Islamabad along with Malik Abdur Rehman, Rabi Bin Tariq, Mian Zain-ul-Abidin Qureshi, Malik Fahad Ali, Kashif Hussain Shah, learned State Counsel. Mr. Irfan Nawaz Memon, Deputy Commissioner, ICT. Mr. Tahir Kazim, Law Officer, ICT Police. Mr. Khalid Mehmod Awan, DSP, ICT Police. Mr. Imran Riaz, Assistant Superintendent, Central Jail Adyala, Rawalpindi.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioners, Chaudry Fawad Hussain, etc., had sought a direction to the respondents, which includes the Inspector General of Police, Islamabad Capital Territory (**"IG, ICT"**), not to arrest them or take any illegal or unlawful action against them until they approach a competent Court of law.

2. This petition was filed on 09.05.2023 and taken up for hearing at 07:30 p.m. on the same day. Vide order dated 09.05.2023, notices were issued to the respondents and they were restrained from *"arresting the petitioners or taking any action in violation of the law."* Petitioner No.1's stance is that the said order was reported in the electronic media and he obtained

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a certified copy of the said order on 09.05.2023. The certified copy of the said order was produced before this Court which shows that the same was prepared and delivered on 09.05.2023. Petitioner No.1's grievance was that despite the fact that this Court had restrained the respondents from arresting him, he was arrested by the Islamabad Police in the late hours of 10.05.2023 after he left the premises of the Hon'ble Supreme Court.

3. Petitioner No.1 was arrested pursuant to order dated 10.05.2023 issued by the District Magistrate, Islamabad Capital Territory (**"ICT"**) under Section 3 of the West-Pakistan Maintenance of Public Order Ordinance, 1960 (**"the MPO"**). Petitioner No.1 had filed application (C.M. No.1664/2023) seeking the suspension of the order dated 10.05.2023 issued by the District Magistrate, ICT under Section 3 of the MPO. Vide order dated 15.05.2023, this Court directed respondent No.3 / IG, ICT to produce petitioner No.1 before this Court on 16.05.2023. The primary reason why this order was passed because petitioner No.1 was arrested during the subsistence of the order dated 09.05.2023. Furthermore, the District Magistrate, ICT was directed to tender appearance before this Court and produce the record on the basis of which the said order dated 10.05.2023 was passed.

5. Today, the learned Advocate General tendered appearance along with the District Magistrate, ICT and produced the record on the basis of which the order dated 10.05.2023 was passed under Section 3 of the MPO. The said order makes reference to information provided to the District Magistrate, ICT by the Senior Superintendent of Police (Operations), Islamabad (**"SSP (Operations)"**) through letter No.1432/C dated 10.05.2023. This letter was brought on record by the learned Advocate General, Islamabad. The position taken in the said letter was that consequent upon the arrest of Imran Ahmad Khan Niazi (**"Imran Khan"**) on 09.05.2023, petitioner No.1 had *"incited general public to take law into their own hands, block the roads and destroy public property and infrastructure."* It is this incitement which according to the SSP (Operations), resulted in violence by the

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protestors causing damage to public and private property and creating a law and order situation by unruly mobs. The SSP (Operations) had requested for petitioner No.1's "arrest and detention" under Section 3 of the MPO for a period of ninety days. The District Magistrate, ICT, however, vide order dated 10.05.2023, issued an order for petitioner No.1's detention for a period of fifteen days in order to avoid any likelihood of breach of peace or unlawful assembly in the ICT. The record produced also includes letter dated 10.05.2023 from the Station House Officer, Police Station Secretariat, Islamabad. In the said letter dated 10.05.2023, the position taken was that after the arrest of an important political figure, petitioner No.1 had incited the general public against the present government and was thereby created a law and order situation. It was also stated that on petitioner No.1's incitement, the general public had damaged public property and chanted slogans against security agencies.

6. More importantly, the record produced by the learned Advocate General included copies of tweets made by petitioner No.1. The contents of these tweets are reproduced in Schedule-A hereto.

7. The said order dated 10.05.2023 has been issued under Section 3(1) of the MPO which reads thus:

> *"3. Power of 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 custody as may be prescribed under subsection (7) of such person for such period as may, subject to the other provisions of this section, be specified in the order, and Government, **if satisfied** that for the aforesaid reasons it is necessary so to do, may, extend from time to time the period of such detention, for a period of not exceeding six months at a time."*

8. The Hon'ble Mr. Justice Sardar Muhammad Iqbal as he then was speaking for the Hon'ble Lahore High Court in the case of Maulvi Farid Ahmad Vs. Government of Pakistan (PLD 1965 Lahore 135) interpreted the term "satisfied" employed in Section 3 of the MPO and also laid guidelines regarding the scope of judicial review by the High Court of an order passed under the

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said Section. In paragraph 7 of the said report, it was *inter alia* held as follows:-

> ***"The word "satisfaction" is undoubtedly a condition precedent to the exercise of powers under section 3. It is, therefore, open to the Court to look into the grounds supplied to the detenue in order to determine whether the detention is proper or improper. It can examine the grounds to ascertain whether they are definite and precise. Although the Court cannot question the sufficiency or otherwise of the cause which is the basis of the satisfaction of the competent authority, yet the Court is well within the exercise of its judicial authority to satisfy itself that on the grounds which are the basis of the detention, the detaining authority could be satisfied as to the correctness of the order passed by it. If the grounds are not relevant to the object which the legislation has in view, namely, maintenance of public order etc., there could be no basis for the satisfaction of the competent authority and the Court in that case can hold that the condition precedent for the passing of the order is non-existent."***

9. Additionally, in the case of Federation of Pakistan Vs. Amatul Jalil Khawaja (PLD 2003 S.C. 442), it was held as follows:-

> ***"An order of preventive detention has to satisfy the requirements laid down by their Lordships of the Supreme Court hat 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 necessary 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 grounds is shown to be bad, non-existent 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."***

10. Since this Court has to satisfy itself as to the grounds on which the order under Section 3 of the MPO was made were correct or not, the tweets made by petitioner No.1 have to be examined in order to determine whether petitioner No.1 posed a threat to the maintenance of public order. In the said tweets, petitioner No.1 had called upon the general public to get out of their homes and to protest against the arrest of Imran Khan from the premises of this Court. It was also tweeted that the rangers have occupied the Islamabad High Court and the lawyers had been subjected to torture. Furthermore, it was tweeted that the coward government had shut down the internet and the

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reporting on television was being censored; that Islamabad had been turned into a fortress in order to sever the ties of the public from their leadership; that if Imran Khan was arrested, it would result in a movement which would have no leader, and that such a movement had started; that every citizen is duty bound to join the protest at the Accountability Court where Imran Khan was to be produced after his arrest. None of the copies of the tweets produced by the learned Advocate General show that petitioner No.1 had incited the general public to commit acts or violence or to disrupt public order or vandalize or damage public property. Had petitioner No.1 incited the general public to commit acts of violence, he would have deserved no indulgence from this Court.

11. It is well settled that an order under Section 3 of the MPO cannot be based on conjectures and surmises. It should be based on concrete and tangible evidence. The grounds on the basis of which detention order of a person is issued must be supported by sufficient and cogent material of the nature as would satisfy an ordinary prudent person to justify the issuance of an order of preventive detention. It is only where there is sufficient and cogent material against a person that the issuance of a preventive detention order could be justified. This essential prerequisite for issuing an order under Section 3 of the MPO is lacking in the case at hand.

12. Article 9 of the Constitution provides that no person shall be deprived of life or liberty save in accordance with the law. Powers under Section 3 of the MPO cannot be invoked for detention of persons on the grounds other than those provided for by the law. The authority which issues a preventive detention order under Section 3 of the MPO, must satisfy itself that the material / evidence produced before him is sufficient to justify the detention order, failing which the detention order shall be violative of Article 9 of the Constitution.

13. Petitioner No.1 is a former Federal Minister. His political affiliations are with Pakistan Tehreek-i-Insaf. What petitioner No.1 had called upon the general public to do was to protest and in doing so exercise their fundamental right enshrined in Article

16 of the Constitution. The above referred tweets were made in the aftermath of Imran Khan's arrest on 09.05.2023 from the premises of this Court. This arrest has already been declared as illegal by the Hon'ble Supreme Court vide order dated 11.05.2023 passed in Crl. Petition No.519/2023.

14. In these proceedings, I am not deciding whether or not petitioner No.1 has committed any offence. The question is whether petitioner No.1 (who has already been incarcerated for six days) can be kept incarcerated for a further period for the purpose of maintaining public order. In order to satisfy this Court that petitioner No.1 shall show deference and respect to the order passed by the District Magistrate, ICT under Section 144 Cr.P.C., petitioner No.1 has sworn an undertaking in the following terms:-

> *"1. That the titled case was fixed for hearing before the Honorable Justice Miangul Aurangzeb, and as was desired by His Lordship, this undertaking is furnished as follows:-*
>
> > *"The undersigned believes in upholding of law and the constitution and condemns any and all acts of violence. He firmly believe in acting in accordance with the law while exercising any of his rights. The will in no manner resort to violence or incite any violence, and that I will not join violent protests and he will abide by the restrictions placed under Section 144 order currently in place and shall not take part in any public procession conducted by her political party in violation thereof;*
> >
> > *That the undersigned is under legal obligation to abide by any and all directions issued by this Honorable Court."*

15. A breach of the said undertaking would amount to contempt of Court. In the event petitioner No.1 violates the said undertaking, proceedings in contempt of Court shall be initiated against him.

16. Another vital aspect of this case is that petitioner No.1 was arrested and detained during the subsistence of the order dated 09.05.2023 passed by this Court. It is reiterated that vide the said order, this Court had restrained the respondents, which included IG, ICT from arresting petitioner No.1. Petitioner No.1 was nonetheless arrested by none other than the Islamabad Police.

Petitioner No.1 had filed a contempt petition (Crl. Org. No.128/2023) before this Court against *inter alia* the IG, ICT. Order dated 12.05.2023 passed in the said petition shows that it was to be treated as a petition under Section 491 Cr.PC read with Article 199 of the Constitution. This order was passed with the consent of petitioner No.1's counsel.

17. I have no reason to disbelieve petitioner No.1 when he submits that when he was being arrested in the late hours of 10.05.2023, he had informed those arresting him that this Court had, vide order dated 09.05.2023, restrained the respondents in this petition from arresting him. The District Magistrate, ICT is in attendance and submitted that the said order dated 09.05.2023 had not been brought to his notice when he issued the order dated 10.05.2023 under Section 3 of the MPO. At this juncture, it would not be appropriate for me to comment on whether this statement of the District Magistrate, ICT is correct or not. What I am inclined to believe is that the Islamabad Police flouted the said order dated 09.05.2023 when petitioner No.1 was arrested. This has caused me to hold that petitioner No.1's arrest was illegal.

18. It ought to be borne in mind that the instant writ petition was filed because of petitioner No.1's apprehension of being arrested in unknown cases or undisclosed FIRs. This is apparent from paragraph 3 of the writ petition. During the course of the hearing, the learned Advocate General was asked to provide a list of all the FIRs in which petitioner No.1 had been nominated as an accused. He provided copies of two FIRs i.e., (i) FIR No.67 dated 24.01.2023 registered under Sections 124A, 153A, 505, 506, PPC at Police Station Kohsar, Islamabad, (ii) FIR No.728 dated 20.08.2022 registered under Sections 186, 188, 506, 341, 109 PPC and Sections 2 and 3 of Amplifier Act at Police Station Aabpara, Islamabad, in which petitioner No.1 has been nominated as an accused. Since copies of only two FIRs have been provided, this Court assumes that there is no other criminal case registered against petitioner No.1. Therefore, the order dated 09.05.2023 passed by this Court, whereby the

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respondents were restrained from arresting petitioner No.1 shall continue for two days only during which period petitioner No.1 may apply for bail before arrest from the relevant Court.

19. No other petitioner (other than petitioner No.1) has come forward to pursue the instant writ petition. Therefore, the instant petition to the extent of the remaining petitioners is dismissed for non-prosecution.

20. Keeping in view the above stated facts and circumstances of the case, this Court has reached the conclusion that the preventive detention order dated 10.05.2023 issued by the District Magistrate, ICT is unlawful and issued without application of independent mind. Hence, the same is liable to be set-aside.

21. The above are the reasons for the short order dated 16.05.2023, which is reproduced herein below:-

> ***"For detailed reasons to be recorded, the instant petition is allowed; the order dated 10.05.2023 issued by the District Magistrate, Islamabad Capital Territory under Section 3(1) of the West-Pakistan Maintenance of Public Order Ordinance, 1960 is set-aside; arrest of petitioner No.1 (Chaudry Fawad Hussain) in the early hours of the morning of 11.05.2023 is declared to be unlawful in the presence of the order dated 09.05.2023 passed by this Court; and the respondents are directed to forthwith release petitioner No.1 (who is present in the Court pursuant to the order dated 15.05.2023 passed by this Court) from custody.***
>
> ***2. Petitioner No.1 has already submitted an undertaking to the effect that he will, in no manner, resort to violence or incite any violence, and that he will not join any violent protest and abide by the restrictions placed under the Section 144 Cr.P.C. Order, currently in place in the Islamabad Capital Territory and shall also not take part in any public procession conducted by his political party in violation thereof.***
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> ***3. The learned Advocate General has informed the Court that petitioner No.1 is nominated as an accused in (i) FIR No.67 dated 24.01.2023 registered under Sections 124A, 153A, 505, 506, PPC at Police Station Kohsar, Islamabad, (ii) FIR No.728 dated 20.08.2022 registered under Sections 186, 188, 506, 341, 109 PPC and Sections 2 and 3 of Amplifier Act at Police Station Aabpara, Islamabad.***
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> ***4. The order passed by this Court on 09.05.2023 restraining the respondents from arresting petitioner No.1 shall continue for two more days only during which period petitioner No.1 may apply for bail before arrest from the relevant Court."***

(MIANGUL HASSAN AURANGZEB)
JUDGE

*Ahtesham**
16.05.2023

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Schedule -A

عوام گھروں سے با ہر نکلیں، اسلام آباد ہایکورٹ پر حملہ کیا گیا ہے عمران خان کی گرفتاری عدلیہ کو بند کر نے کے مترادف ہے۔

اسلام آباد ہایکورٹ پر رینجرز نے قبضہ کر لیا ہے، وکلائ کو تشدد کا نشانہ بنایا جا رہا ہے، عمران خان کی گاڑی کے گرد گھیرا ڈال لیا گیا ہے۔

مورخہ-10 مئ 2023

بزدل حکومت نے انٹرنیٹ بند کر دیا ، ٹی وی پر بدترین سنسر شپ عائد کر دی گئ اور اسلام آباد کو قلعے میں تبدیل کر دیا اس کا مقصد یہ تھا کہ لیڈر شپ عوام سے کٹ جائے، میں نے کل ہی کہا تھا اگر عمران خان کو گرفتار کیا گیا تو ایسی تحریک چلے گی جس کا کوئ لیڈر نہیں ہوگا اور آج یہ تحریک شروع ہوگئ ہے۔

مورخہ-10 مئ 2023

ہر پاکستانی شہری کا فرض ہے کہ احتجاج میں شریک ہو۔ کل صبح انشااللہ عمران خان کی نیب کورٹ پیشی ہوگی، تمام لیڈرشپ اور کارکنان نیب کورٹ راولپنڈی پہنچیں- فواد چوہدری

مورخہ-09 مئ 2023

"اگر عمران خان کو گرفتار کیا گیا تو ایسی تحریک چلے گی جس کا کوئ لیڈر نہیں ہوگا" نائب صدر تحریک انصاف فواد چوہدری

مورخہ-06 مئ 2023

آئین اور عدلیہ کے ساتھ یکجہتی کیلئے آج قوم عمران خان کی کال پر باہر نکلے، اس وقت آپ کے حقوق مکمل طور پر سلب ہونے کو ہیں امپورٹڈ سرکار عوام کیلئے خطرہ بن چکی ہے چیف جسٹس اور عدلیہ کے خلاف سازشیں عروج پر ہیں عوام اپنے اداروں کے دفاع کیلئے با ہر نکلیں

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