JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.1588 of 2023
Asad Umar
Versus
The State and another

Date of Hearing / Decision:	24.05.2023.
Petitioner by:	Dr. Babar Awan, Ms. Amna Ali and Malik Tariq Noon, Advocates.
Respondents by:	Mr. Arshid Mahmood Kiani, learned Deputy Attorney General. Malik Abdur Rehman and Mr. Fahad Ali Malik, learned State Counsel. Mr. Muhammad Riaz, DSP (Legal), Islamabad Police.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition the petitioner, Asad Umar, has impugned the 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"**) authorizing his detention for a period of fifteen days at Central Jail Adyala, Rawalpindi. It was on the basis of the said order that the petitioner was arrested on 10.05.2023 and is presently lodged in the said Jail.

2. This petition was first taken up for hearing on 12.05.2023. On the said date, this Court issued notices to the respondents. On 17.05.2023, the learned Advocate General tendered appearance and placed on record the material on the basis of which the District Magistrate, Islamabad Capital Territory (**"ICT"**) had passed the said order dated 10.05.2023.

3. Today, the learned State Counsel while making his submissions placed reliance on the material upon the record on the basis of which the said 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.1429/C dated 10.05.2023. The

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position taken in the said letter was that consequent upon the arrest of Imran Ahmad Khan Niazi (**"Imran Khan"**) on 09.05.2023, the petitioner 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 protestors causing damage to public and private property and creating a law and order situation by unruly mob.

4. The SSP (Operations) had requested for the petitioner'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 the petitioner'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 (**"SHO"**), 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, the petitioner had incited the general public against the present Government and had thereby created a law and order situation. It was also stated that on the petitioner's incitement, the general public had damaged public property and chanted slogans against security agencies.

5. More importantly, the record produced by the learned Advocate General included copies of tweets made by the petitioner, and a special report dated 10.05.2023 from the Special Branch of the Office of the Assistant Inspector General of Police, Islamabad.

6. 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,*

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may, extend from time to time the period of such detention, for a period of not exceeding six months at a time."

7. 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 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."

8. 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 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 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."

9. 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 the petitioner have to be examined in order to determine whether he posed a threat to the maintenance of public order. In the said tweets, the petitioner had

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stated that in all cities of Pakistan, citizens had taken to the streets / roads in large numbers and the number was still increasing; that the nation can provide proof that it is alive; that Pakistan's most popular political leader has been arrested after being attacked at the High Court and the entire world is being shown that there is no law in this country; and that the six member committee constituted by Imran Khan and chaired by Mr. Shah Mahmood Qureshi will soon announce the future course of action.

10. None of the copies of the tweets produced by the learned Advocate General show that the petitioner had incited the general public to commit acts of violence or to disrupt public order or vandalize or damage public property. The petitioner is a former Federal Minister. His political affiliations are with Pakistan Tehreek-i-Insaf. 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 Criminal Petition No.519/2023. Had the petitioner incited the general public to commit acts of violence, he would have deserved no indulgence from this Court.

11. The learned State Counsel also relied on a special report dated 10.05.2023 from the Special Branch of the Office of the Assistant Inspector General of Police, in which it was stated that in the recent past, the leadership of Pakistan Tehreek-i-Insaf had spread hatred against the military leadership which had created political unrest in the country. In the said report, it was also stated that after the arrest of Imran Khan, public property had been damaged and monuments erected for the martyrs had been defaced. The petitioner's name was mentioned in the list of people belonging to Pakistan Tehreek-i-Insaf who were alleged to have made the provocative statements.

12. The special report dated 10.05.2023 on which the learned State Counsel placed reliance is totally vague and general in nature. The said report lacks specificity and does not impute any particular statement made by the petitioner against the armed forces. On the basis of this material, I am of the view that an order

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under Section 3 of the MPO could not be issued so as to deprive a citizen of his or her fundamental right of liberty.

13. It ought to be borne in mind that neither does the order dated 10.05.2023 passed by the District Magistrate, ICT nor do the letters dated 10.05.2023 from the SSP (Operations) and SHO, Police Station Secretariat Islamabad make reference to any tweets made by the petitioner or the report dated 10.05.2023 of the Special Branch.

14. 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 the 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.

15. 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.

16. In these proceedings, I am not deciding whether or not the petitioner has committed any offence. The question is whether the petitioner (who has already been incarcerated for fifteen days) can be kept incarcerated for a further period for the purpose of maintaining public order. In order to satisfy this Court that the petitioner shall show deference and respect to the order passed by the District Magistrate, ICT under Section 144 Cr.P.C., the

petitioner's counsel, after taking instructions from the petitioner, has sworn an undertaking in the following terms:-

> ***"I, Amna Ali, AHC, counsel for the petitioner in Writ Petition No.1588/2023, hereby undertake on behalf of the petitioner that:-***
>
> ***i. That the detainee, Asad Umar, condemns any and all acts of violence perpetrated against public property, public installations and police officials;***
>
> ***ii. That the detainee, Asad Umar, will abide by Section 144 order currently in place and shall not take part in any public procession conducted by his political party;***
>
> ***iii. That the detainee, Asad Umar, will not, in any way, instigate or incite, any violence or in any way abet or assist any individual or any organization to act in violation of the Section 144 order;***
>
> ***iv. That the detainee, Asad Umar, will abide by any and all directions issued by this Honourable Court to ensure that he is not a threat to public peace/stability;***
>
> ***v. That the detainee/petitioner shall abide by the said undertaking and if it is found that he has violated the said undertaking, proceedings for contempt of court against him shall ensue."***

17. A breach of the said undertaking would amount to contempt of Court. In the event the petitioner violates the said undertaking, proceedings in contempt of Court shall be initiated against him.

18. 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 instant petition is allowed; the said order dated 10.05.2023 is set-aside; and the respondents are directed to forthwith release the petitioner from detention.

(MIANGUL HASSAN AURANGZEB)
JUDGE

*Sultan**
24.05.2023