JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.1610 of 2023
Ahmad Hassan Shah
Versus
Federation of Pakistan and others

Date of Hearing /Decision :	16.05.2023.
Petitioner by:	Barrister Ahsan Jamal Pirzada, and Ms. Zainab Janjua, Advocate.
Respondents by:	Mr. Munawwar Iqbal Duggal, learned Additional Attorney-General along with Malik Shaukat Nawaz Awan and Muhammad Iqbal Kalluh, learned Assistant Attorney-General. Barrister Jahangir Khan Jadoon, learned Advocate General, Islamabad along with M/s Rabi Bin Tariq, Malik Fahad Ali, Malik Abdur Rehman, Mian Zain-ul-Abidin Qureshi, Kashif Hussain Shah, learned State Counsel. Mr. Irfan Nawaz Memon, Deputy Commissioner, ICT. Mr. Imran Riaz, Assistant Superintendent, Central Jail, Adyala, Rawalpindi. M/s Muhammad Riaz, DSP (Legal) and Tahir Kazim, Law Officer, ICT Police.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition the petitioner, Ahmed Hassan Shah, seeks a declaration to the effect that the detention of his mother, Senator Falak Naz Chitrali, by the respondents is illegal and unconstitutional.

2. This petition was first taken up for hearing on 15.05.2023. On the said date, learned counsel for the petitioner submitted that the petitioner's mother was arrested on 10.05.2023 by the Islamabad Police; and that at no material stage was any order produced on the basis of which she was arrested.

3. On 15.05.2023, this Court issued notices to the respondents. Furthermore, the District Magistrate, Islamabad Capital Territory (**"I.C.T."**) was directed to produce the order and all the record on

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the basis of which the petitioner's mother was arrested and kept in detention.

4. Today, when the petition was taken up for hearing, the learned Advocate-General, I.C.T. produced copies of orders dated 10.05.2023 and 11.05.2023 issued by the District Magistrate, ICT under Section 3 of the West-Pakistan Maintenance of Public Order Ordinance, 1960 (**"the MPO"**). The learned Advocate-General was also asked to produce the material on the basis of which the District Magistrate, I.C.T. had issued the said orders. For this purpose, the matter was adjourned for a little while. When the case was called for hearing again, the learned Advocate General, I.C.T. produced a copy of letter No.1435/C, dated 11.05.2023 from the Senior Superintendent of Police (Operations) (**"S.S.P (Operations)"**), Islamabad to the District Magistrate, I.C.T. requesting for the petitioner's mother to be detained for a period of three months under Section 3(1) of the MPO.

5. The order dated 11.05.2023 was passed by the District Magistrate, I.C.T. on the basis of letter No.1435/C, dated 11.05.2023 from the S.S.P. (Operations), Islamabad. Other than this letter, no material was produced on the basis of which the said order dated 11.05.2023 was passed. As regards the order dated 10.05.2023 passed by the District Magistrate, ICT under Section 3(1) of the MPO, no material whatsoever was produced to justify the issuance of the said order. Although the said order dated 10.05.2023 makes reference to letter No.626/P, dated 10.05.2023 from the S.S.P. (Operations), Islamabad, a copy of this letter was not produced before this Court.

6. Perusal of the orders dated 10.05.2023 and 11.05.2023 show that the S.S.P. (Operations), Islamabad felt the need of seeking the petitioner's mother's detention on the ground that she had *"incited general public to take law into their own hands"* consequent upon the arrest of Imran Ahmad Khan Niazi on 09.05.2023. The said orders also show that the Additional Inspector General of Police (Special Branch), Islamabad had reported on 11.05.2023 that the petitioner's mother had *"been*

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found inciting the public to attack the office of Superintendent of Police, Industrial Area, and set it on fire." Vide the said orders, the District Magistrate, I.C.T. had ordered for the petitioner's mother to be detained for a period of fifteen days in order to avoid any likelihood of breach of peace or unlawful assembly in the I.C.T.

7. The said orders dated 10.05.2023 and 11.05.2023 have 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. Even though sufficient time was given to the respondents to produce material on the basis of which it was apprehended that the petitioner's mother would cause disruption of public order or had been involved in the offence of attacking the office of Superintendent of Police, Industrial Area, Islamabad, no material was brought on record. On the basis of a bare request from the S.S.P. (Operations), Islamabad, an order under Section 3 of the MPO could not be issued so as to deprive a citizen of his or her fundamental right of liberty.

9. 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 order could be justified. This essential prerequisite for issuing an order under Section 3 of the MPO is lacking in the case at hand.

10. Article 9 of the Constitution provides that no person shall be deprived of life or liberty save in accordance with the law.

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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.

11. In order to satisfy this Court that the petitioner's mother shall show deference and respect to the order passed by the District Magistrate, ICT under Section 144 Cr.PC, learned counsel for the petitioner has, after taking instructions from the petitioner's mother, submitted an undertaking in the following terms:-

> ***"I, Ahsan Jamal Pirzada, counsel for the Petitioner in Writ Petition No. 1610/2023, hereby undertake on behalf of the Petitioner that:***
>
> ***i. That the detainee, Senator Falak Naz, condemns any and all acts of violence perpetrated against the public property, public installations and police officials;***
>
> ***ii. The detainee, Senator Falak Naz, will abide by Section 144 order currently in place and shall not take part in any public procession conducted by her political party;***
>
> ***iii. That the detainee, Senator Falak Naz, 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, Senator Falak Naz, will abide by any and all directions issued by this Honourable Court to ensure that she is not a threat to public peace/stability."***

12. The petitioner's mother shall abide by the said undertaking and if it is found that she has violated the said undertaking, proceedings for contempt of Court against her shall ensue.

13. Keeping in view the above stated facts and circumstances of the case, this Court has reached the conclusion that the preventive detention orders dated 10.05.2023 and 11.05.2023 issued by the District Magistrate, I.C.T. are unlawful and issued without application of independent mind. Hence, the same are liable to be set-aside.

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

> ***"For detailed reasons to be recorded later, the instant writ petition is allowed and the detention order dated 11.05.2023 issued by the District Magistrate is set aside for not being compliant with the law laid down inter alia in the judgments reported as PLD 1969 SC 210, 1994 SCMR 1532, PLD 1963 Lahore 109. Consequently, the respondents are directed to forthwith release the petitioner's mother / detenue from detention."***

(MIANGUL HASSAN AURANGZEB)
JUDGE

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16.05.2023

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