2019 P Cr. L J Note 154

[Lahore (Rawalpindi Bench)]

Before Raja Shahid Mehmood Abbasi, J

RAFAQAT ALI and others---Petitioners

Versus

DEPUTY COMMISSIONER, RAWALPINDI and 3 others---Respondents

W.Ps. Nos. 38, 39, 41, 43, 62, 63, 64, 71, 83, 94, 96, 97 and 102 of 2019, heard on 15th January, 2019.

(a) Punjab Maintenance of Public Order Ordinance (XXXI of 1960)---

----S. 3--- Preventive detention--- Requirements--- Non-availability of tangible evidence---Effect---Petitioners were detained on the ground that they, being activists of a political party, were instigating the followers of their party as well as the general public to create law and order situation by blocking roads/traffic, due to which any untoward incident was likely to occur---Validity---Detention orders were not based on any substantial piece of evidence, because, neither any material was produced before the detaining authorities nor was taken into consideration---Detention orders were passed only on the basis of police reports without assessing whether reports were backed by any tangible material or not---Strong and cogent reasons were required for the issuance of detention orders, but the authorities while issuing the detention orders had acted mechanically in the aid of police and had failed to apply their independent minds---No conclusive proof was available that detenus were previously involved in any anti-State/Government activities---Constitutional petitions were allowed and the detenus were set at liberty. [Paras. 4 & 6 of the judgment]

(b) Punjab Maintenance of Public Order Ordinance (XXXI of 1960)---

----S. 3---Constitution of Pakistan, Art. 199 & Chap-I, Part-II [Arts. 8 to 28]---Preventive detention--- Constitutional petition---Maintainability---Infringement of fundamental rights---Alternate and efficacious remedy, availability of---Effect---Petitioners assailed detention orders passed under Punjab Maintenance of Public Order Ordinance, 1960 through constitutional petitions---State contended that detention orders could not be questioned through constitutional petition as the detenus had alternate remedies of filing representation and thereafter appeal---Validity---Normally, aggrieved person had to exhaust the alternate remedies before invoking constitutional jurisdiction of High Court, but High Court while exercising constitutional jurisdiction could not refuse to safeguard the fundamental rights merely on technical grounds particularly when the matter entailed the right of liberty, security, dignity and freedom of any person, which had been fully protected and safeguarded by the provisions of Chapter-I, Part-II of the Constitution---High Court, being a constitutional court, had legal and Constitutional obligation to safeguard the fundamental rights guaranteed by the constitution to every citizen of the country and failure of the detenus to make representation to the executive was not a bar on the constitutional jurisdiction of High Court---High Court held that

alternate remedies were not as efficacious as that of filing constitutional petition for determination of validity of the detention orders and as such legal objection on the maintainability of writ jurisdiction was turned down. [Para. 4 of the judgment]

Federation of Pakistan through Secretary, Ministry of Interior, Islamabad v. Amatul Jalil Khawaja and others PLD 2003 SC 442 ref.

(c) Punjab Maintenance of Public Order Ordinance (XXXI of 1960)---

----S. 3---Preventive detention---Criteria to be satisfied.

Every preventive detention order has to satisfy the following criteria.

(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 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. [Paras 6 of the judgment]

Federation of Pakistan through Secretary, Ministry of Interior, Islamabad v. Mrs. Amatul Jalil Khawaja and others PLD 2003 SC 442 fol.

Sajjad Akbar Abbasi, Siddique Akbar Abbasi, Sajid Ali Malik, Tanweer-ul-Islam, Muhammad Nazar-ul-Islam, Ch. Nasir Abbas Minhas for Petitioners.

Irfan Khan Niazi, Assistant Advocate-General for the State.

Date of hearing: 15th January, 2019.

JUDGMENT

RAJA SHAHID MEHMOOD ABBASI, J.---Through this single judgment, I intend to decide Writ Petition No. 38 of 2019 along with Writ Petition No. 39 of 2019, Writ Petition No. 41 of 2019, Writ Petition No. 43 of 2019, Writ Petition No. 62 of 2019, Writ Petition No.63 of 2019, Writ Petition No. 64 of 2019, Writ Petition No. 71 of 2019, Writ Petition No. 83 of 2019, Writ Petition No. 94 of 2019, Writ Petition No. 96 of 2019; Writ Petition No. 97 of 2019 and Writ Petition No. 102 of 2019 as the petitioners in all these petitions have sought release of their close relatives detained by law-enforcing agencies under the provisions of West Pakistan Maintenance of Public Order Ordinance 1960 with the apprehension that they would create law and order situation by instigating general public to participate in the protest against the government. The description of the detenues, in each case, is as under:

Sr. No.	Case No.	Name(s) of Detenue(s)
1.	Writ Petition No. 38 of 2019	Kamran Masood
2.	Writ Petition No. 39 of 2019	Azeem Tariq
3.	Writ Petition No. 41 of 2019	Muhammad Younas
4.	Writ Petition No. 43 of 2019	Usman Zafar
5.	Writ Petition No. 62 of 2019	Ali Hassan
6.	Writ Petition No. 63 of 2019	Qasim Ramzan
7.	Writ Petition No. 64 of 2019	Ilyas Javaid alias Awais Mughal
8.	Writ Petition No. 71 of 2019	Adnan Qayyum
9.	Writ Petition No. 83 of 2019	Amir Ali
10.	Writ Petition No. 94 of 2019	Muhammad Qadeer
11.	Writ Petition No. 96 of 2019	Muhammad Saleem
12.	Writ Petition No. 97 of 2019	Shehzad Hussain
13.	Writ Petition No. 102 of 2019	Muhammad Asif

2. Briefly, the facts of the case are that the above said detenues were arrested by law-enforcing agency in pursuance of their detention orders bearing different numbers and dates, issued by the Deputy Commissioners of Districts Rawalpindi and Jhelum under section 3(1) read with section 26 of the Maintenance of Public Order Ordinance, 1960 on the ground that they, being the activists of Tehreek-e-Labbaik Ya Rasool Allah, were instigating the followers of their party as well as the general public to create law and order situation by blocking roads/traffic, due to which any untoward incident was likely to occur. Later on, the detention period of detenues was further extended by the Home Department, Government of the Punjab for 30-days vide Notification No. SO(IS-I) 3-1/2018 dated 21.12.2018.

3. Learned counsel for the petitioners emphatically contended that the detaining authorities have miserably failed to follow and obey the settled provisions of law as well as the principles laid down by the Hon'ble Supreme Court of Pakistan while passing the impugned detention orders, which caused grave miscarriage of justice towards the detenues and their poor families as well; that the detenues are law-abiding citizens of the country and they could never think to create unrest in the society because neither they belong to any activist group nor are involved in any illegal activity; that liberty of the detenues has been curtailed without assigning any plausible reason and bringing on record any substantial piece of evidence or material against the detenues, which negates the sanctity and legal worth of the impugned detention orders; that the whole proceedings in respect of issuance of detention orders as well as the notification of extension in period of detention are based on mala fide intention and ulterior motive; that the authorities have violated the law and deprived the detenues from their fundamental rights as guaranteed by Articles 2-A, 3, 4, 9, 10, 10-A, 14, 15 and 25 of the Constitution of Islamic Republic of Pakistan; that the keeping the detenues behind the bars without any valid reason is of no avail rather it amounts to miscarriage of justice; that the detenues had no concern whatsoever with any illegal activities, but they have been made scapegoats by the respondents in order to show unwarranted efficiency and to please their high ups. Lastly prayed that the impugned detention orders passed by the Deputy Commissioners of Districts Rawalpindi and Jhelum as well as the

notification issued by the Secretary, Government of the Punjab, Home Department, for the extension of period of detention may be declared illegal and consequently be set aside and the detenues may be directed to be released forthwith from the custody of police/jail.

3.(sic.) Learned Assistant Advocate General, while appearing on behalf of the State, converted the contentions raised by learned counsel for the petitioners and submitted that the detaining authorities have exercised the powers vested in them in a proper way and have passed the well-reasoned detention orders which need no interference by this Court. Goes on to maintain that validity of the impugned detention orders as well as the notification of extension cannot be questioned through constitutional petition and if the detenues are aggrieved by their detention orders, they have the alternate remedies of filing, representation and thereafter appeal before the Secretary, Govt. of the Punjab, Home Department, Lahore. He next contended that the detenues are active members of Tehreek-e-Labbaik Ya Rasool Allah () and they instigated the general public to protest against the government and to create law and order situation; that the activities of the detenues were highly detrimental to the social fabric, public peace and tranquility and under the prevailing situation created by none other than the detenues themselves, the authorities were quite justified to pass the detention orders after adopting the due process of law, hence, prayed that the writ petitions, having no force, may be dismissed.

4. The arguments pro and cons have been heard and the reports submitted by the Deputy Commissioners of Districts Rawalpindi and Jhelum have been perused with care and caution. As far as the legal objection raised by learned Law Officer that the petitioners have purposely skipped to avail the alternative remedies of filing representations before the Deputy Commissioners concerned against the impugned detention orders and thereafter they may have had filed appeals/representations before the Secretary, Government of the Punjab, Home Department, Lahore and without availing these legal remedies, their writ petitions are not maintainable is concerned, I may observe here that in normal course of circumstances, the aggrieved person should exhaust the alternate remedies, if any available to him, before knocking the doors of this Court, but this Court while exercising writ jurisdiction cannot refuse to safeguard the fundamental rights merely on technical grounds particularly when the matter entails the right of liberty, security, dignity and freedom of any person, which has been fully protected and safeguarded by the provisions of Chapter-I, Part-II of the Constitution of Islamic Republic of Pakistan, 1973. This Court being a constitutional Court has legal and constitutional obligation to safeguard the fundamental rights guaranteed by the Constitution to every citizen of the country and -failure of the detenues to make representation to the executive authorities is no bar on the constitutional jurisdiction of this Court. In this regard, reference is respectfully made to the case of "Federation of Pakistan through Secretary, Ministry of Interior, Islamabad v. Mrs. Amatul Jalil Khawaja and others" (PLD 2003 Supreme Court 442), wherein the Hon'ble Supreme Court of Pakistan, has been pleased to observe as under:

S. 3(1)---Constitution of Pakistan (1973), Arts. 199 & 10---Preventive detention---Judicial review---Scope---Right of a person to a petition for habeas corpus---Extent---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---Jurisdiction of High Court it is always by means of judicial review and cannot be treated as appeal or revision---Court cannot substitute its discretion for that of administrative agency and the only function of the Court in such cases is to see whether or not order of detention is reasonable and objective.

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 legislation. 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 un-Constitutional 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."

The above guidelines laid down by the Apex Court as well as the facts and circumstances of the case according to which the detaining authorities have already acted against the detenues by issuing their detention orders and thereafter further extending the same for a period of one-month, calls for interference into the matter by this Court and if the detenues are again left at the mercy of said authorities, no fruitful purpose is expected except that their detention period would expire in the meantime. I am, therefore, of the view that alternate remedies are not as efficacious as that of filing constitutional petition for determination of validity of the impugned detention orders and as such the legal objection raised by learned Law Officer on the maintainability of writ petitions is turned down.

5. Adverting to the merits of the case, it is worthwhile noticeable that the supra-referred judgment i.e. PLD 2003 Supreme Court 442, the apex Court has set a criteria that every preventive detention order has to satisfy the following requirements:-

(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 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.

There is no cavil to the proposition that the legality and propriety of the detention orders impugned in these writ petitions are to be seen on the touchstone of above settled principles. In this case, it appears from the reports of the respondents that stereotype detention orders passed by the detaining authorities/Deputy Commissioners are not based on any substantial piece of evidence, because, neither any material was produced before the detaining authorities nor was taken into consideration and apparently the impugned orders were passed only on the basis of police reports without assessing that whether those reports were backed by any tangible material or not. The only reason available with the respondents for the detention of detenues is that they, being the active members of Tehreek-e-Labbaik Pakistan, had instigated its followers as well as the general public to participate in the protest against the Government and to create unrest in the society, but the respondents have not brought on record any material to establish connection of the detenues with Tehreek-e-Labbaik Pakistan, which otherwise is a political party registered with the Election Commission of Pakistan. Suffice to observe here that strong cogent and convincing evidence was required for the issuance of detention orders, but the respondents/authorities, while issuing the impugned detention orders, have acted mechanically in the aid of police and they were miserably failed to apply their independent minds while curtailing the fundamental right of liberty of the detenues that too without any specific allegation or proof that they were involved in any sort of agitation or had any means or influence upon the general public to instigate them for creating law and order situation and as such the impugned detention orders amount to misuse of the authority and use of powers bestowed to the detaining authorities in the wrong way. Even while addressing arguments, learned Assistant Advocate General frankly conceded that except the police reports wherein apprehension had been shown that the detenues were likely to create law and order situation by blocking the roads/traffic, no other material whatsoever is available against them which could be justifiably made basis to curtail their liberty. It is not out of place to mention here that according to learned Law Officer, the detenues are involved in a criminal case but it is equally an admitted fact that they have been allowed post-arrest bail in that criminal case and none of them has ever been convicted by any Court of law, so unless any detenue is proved guilty of the offence, his liberty cannot be curtailed merely due to the registration of criminal case against him. It is also an admitted position of the case that no conclusive proof is available that the detenues were previously involved in any anti-State/Government activities. Likewise, the respondents have failed to bring on record any material whatsoever which infer that the detenues have links with any proscribed organization or they had been instigating the followers of any political party or the general public to create law and order situation by blocking the roads/traffic.

6. As a result of above discussion, I have come to the conclusion that the respondents have failed to bring on record any material in support of the impugned detention orders of the detenues-mentioned in Paragraph No. 1 above. On the other hand, the petitioners have successfully established that the impugned detention orders had been passed without observing the basic requirements of law and the principles laid down by the Apex Supreme Court of Pakistan in this regard. Resultantly, these writ petitions are allowed and the impugned detention orders as well as the notification for the extension of detention period for further one-month to the extent of the detenues named in paragraph No. 1 above are hereby set aside and they are ordered to be released forthwith, if not required to be detained in connection with any other case.

SA/R-14/L Petitions allowed.

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