Form No.HCJD/C-121

ORDER SHEET

# LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

**Writ Petition No.31145/2021**

Ameer Hussain Vs Government of Punjab etc.

| S.No. of Order/ Proceedings | Date of order/ proceedings | Order with signature of Judge and that of parties or counsel where necessary |
|---|---|---|

24.05.2021 Mr. Ehsan Ali Arif, Advocate for the Petitioner.
Mr. Ahmad Awais, Advocate General, Punjab.
Mr. Akhtar Javed Additional Advocate General, Punjab.
Rai Shahid Saleem, Assistant Advocate General.
Dr. Ahsan Munir Bhatti, Deputy Secretary (Internal Security) and Asif Ali/ASI.

Brief facts giving rise to this petition are that the Deputy Inspector General Police (Operations) addressed Letter No.2048/DSP-L-Ops dated 12.04.2021 to the Deputy Commissioner, Lahore (Respondent No.2), for detention of the Petitioner's nephew, Hafiz Saad Hussain Rizvi son of Hafiz Khadim Hussain Rizvi, under section 3 of the Punjab Maintenance of Public Order Ordinance, 1960 (the "Ordinance"). The relevant excerpt from the said letter is reproduced hereunder:

> "2. As per reports of SP Iqbal Town Division, Lahore & District Intelligence Branch, the activities of Hafiz Saad Rizvi s/o Khadim Hussain Rizvi are prejudicial to the public safety and maintenance of Public Order 1960.
>
> 3. SP Iqbal Town Division, Lahore & District Intelligence Branch has further reported that the above said person is the Ameer of *Tehreek-e-Labaik Ya Rasool Lallah*.[1] He is in habit to harass the general public and oftenly takes part in activities against Government. There is credible information that in his meeting at 36-G Sabzazar on 11.04.2021 on Saturday, he has announced in the presence of members of TLP that they will hold a country-wide protest including road blocking processions and rallies in case the Government does not send back the French diplomat from Pakistan. The above-named activist alongwith his accomplices will create law & order situation and cause chaos amongst the general public. In this way, he has become a potential danger to public peace, law & order situation. Such like activists will give rise to a situation prejudicial to public safety and

[1] Also called *Tehreek-e-Labaik Pakistan* (TLP)

maintenance of public order, if they are not controlled. SP Iqbal Town Division, Lahore & District Intelligence Branch have recommended his detention under 03-MPO 1960 for a period of 90 days in order to keep the law & order situation in the city.

4. In order to prevent the above-mentioned activist from acting in manner prejudicial to public safety, maintenance of public order and tranquility, it is requested that his Detention Order u/s 03 Maintenance of Public Order Ordinance, 1960 for a period of 90 days may be issued. Reports of SP Iqbal Town Division & District Intelligence Branch, Lahore alongwith their enclosures are enclosed for perusal and necessary action."

2. Keeping in view the sensitivity of the matter, Respondent No.2 immediately convened a meeting of the District Intelligence Committee (DIC) and on its recommendations, vide Order No. RDM/35 dated 12.04.2021, directed that Hafiz Saad Rizvi should be arrested and detained in the Central Jail, Kot Lakhpat, Lahore, for 30 days. Subsequently, vide Order dated 11.5.2021, the Additional Chief Secretary (Home Department) extended his detention for a further period of 30 days on the following grounds:

"i) The detenue [Hafiz Saad Rizvi] and other leadership of the organization namely Tehreek-e-Labaik Pakistan which was banned under the provisions of Anti-Terrorism Act, 1997 by the Ministry of Interior was involved to create chaos in the province of Punjab by blocking, destruction of public and private properties, injury and harm to police officials, harassing general public, instigating people against Government, etc.

ii) He, being the head of the proscribed organization has advocated and ensured such agitational course of action, instead of displaying responsibility. He has not shown any remorse on such actions, which has caused loss of lives and inflicted damage and pain on society.

iii) Under the leadership of detenue, the proscribed organization TLP has emerged as a negative group striving hard to dictate foreign policies and internal affairs of the country causing international and national pressure for the State and government.

iv) Credible information has been brought on record which has led the Provincial Intelligence Committee to believe that the said banned organization under his command, plans to restart the same agitation after the release of the said individual from jail. This act on the

> part of detenue re-affirms the apprehension of law enforcement agencies that if he is released, is likely to repeat and glorify his activities for the said proscribed organization, which would create law & order situation in the province thus giving rise to situation prejudicial to public safety and maintenance of public order."

3. Through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the "Constitution"), the Petitioner has challenged the detention of Hafiz Saad Rizvi.

4. Respondents No.2 and 3 have submitted report and parawise comments to this petition which are placed on record.

***Arguments***

5. The learned counsel for the Petitioner contended that Hafiz Saad Rizvi was the Ameer of *Tehreek-e-Labaik Pakistan* (TLP), a party duly registered under the law. He was a peaceful and law abiding citizen of the country and he had never engaged in any activity which could disturb public peace and tranquility. He maintained that the allegations against him were *malafide*, false and vexatious and there was no material to substantiate them. The learned counsel further contended that the grounds of detention were not communicated to Hafiz Saad within the prescribed period which rendered his incarceration unlawful.

6. The learned Advocate General, Punjab, vehemently opposed this petition. He contended that it was not maintainable because Hafiz Saad had not availed the statutory remedy provided under section 3(6) of the Ordinance. On merits he contended that no exception could be taken to Hafiz Saad's detention. He was a big threat to public peace and the Federal Government had even proscribed his party, Tehreek-e-Labaik Pakistan, and

enlisted it in the First Schedule of the Anti-Terrorism Act, 1997.

***Opinion of the Court***

7. Article 4 of the Constitution stipulates that every citizen, wherever he may be, and every other person for the time being in Pakistan has an inalienable right to enjoy the protection of law and to be treated in accordance with law. In particular, no action detrimental to his life, liberty, body, reputation or property shall be taken except in accordance with law. Then, Article 9 commands that no person shall be deprived of life or liberty save in accordance with law and Article 10 provides safeguards as to arrest and detention. Articles 9 and 10 are contained in Part-II Chapter-I of the Constitution which relates to Fundamental Rights. In ***Ismaeel v. The State*** (2010 SCMR 27) the Hon'ble Supreme Court of Pakistan observed that the rights guaranteed under Articles 4, 9 and 10 are sacrosanct and jealously guarded by our courts.

8. Preventive detention is "a form of administrative detention, ordered by the executive authorities, usually on the assumption that the detainee poses future threat to national security or public peace."[2] Article 10 of the Constitution empowers the legislature to enact preventive detention laws to deal with persons acting in a manner prejudicial to the integrity, security or defence of Pakistan, or any part thereof, or external affairs of the country, or public order, or the maintenance of supplies or services subject to the safeguards and protections provided by clauses (4) to (9) of the said Article. In ***Begum Nazir Abdul Hamid v. Pakistan (Federal Government) through the Secretary, Interior Division, Islamabad and another*** (PLD 1974 Lahore 7) this Court observed that "the object of the

[2] Reema Omer, *No more preventive detention*, www.dawn.com

framers of the Constitution in giving constitutional status to preventive detention was to prevent anti-social and subversive elements from imperiling the welfare of the State."

9. Ordinance XXXI of 1960 is one of the laws in force providing for preventive detention and control of persons and publications for reasons connected with public safety, public interest and the maintenance of public order in the Province of Punjab.[3] Section 3(1) is relevant for our present purpose which is reproduced below for ease of reference:

> **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 sub-section (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.
>
> Explanation I …
>
> Explanation II …

Section 3(6) of the Ordinance stipulates that the authority making the detention order shall communicate the grounds of detention to the detainee within 15 days and he would be entitled to make a representation thereagainst to the government. Section 3(6-a) lays down that if such a representation is made the government would duly consider it and, after giving an opportunity of hearing to the detainee, modify, confirm or rescind that order.

10. The question as to whether a representation under section 3(6) can be considered to be an "adequate remedy" within the meaning of Article 199 of the Constitution so as to bar a person from filing a constitutional petition straightaway before the High Court without availing the

[3] Preamble of Ordinance XXXI of 1960.

said remedy has generated a lot of debate. The learned Advocate General has also raised an objection regarding maintainability of this petition on that basis so I take up this issue first.

11. In England the law is that judicial review is a remedy of last resort: it is not a substitute for an appeal. In ***R v. Inland Revenue Commissioners, Exparte Preston***, [1985] BTC 208, the House of Lords observed:

> "A remedy by way of judicial review is not to be made available where an alternative remedy exists. This is a proposition of great importance. Judicial review is a collateral challenge: it is not an appeal. Where Parliament has provided by statute appeal procedures, as in the taxing statutes, it will only be very rarely that the courts will allow the collateral process of judicial review to be used to attack an appealable decision."

12. Similarly, in ***Glencore Energy UK Ltd. v. Commissioners of HM Revenue and Customs***, [2017] EWHC 1476 (Admin), High Court (Queen's Bench Division) held:

> "The basic principle is that judicial review is a remedy of last resort such that where an alternative remedy exists that should be exhausted before any application for permission to apply for judicial review is made. Case law indicates that where a statutory alternative exists, granting permission to claim judicial review should be exceptional. The rule is not however invariable and where an alternative remedy is nonetheless ineffective or inappropriate to address the complaints being properly advanced then judicial review may still lie."

13. In the English law, the doctrine of "other adequate remedy" is vigorously followed only in relation to *mandamus* but is frequently relaxed in respect of *certiorari*.[4]

14. In India, Article 226 of the Indian Constitution empowers the High Courts to issue such writs, directions or orders for enforcement of the fundamental rights or "for any other purpose." However, the remedy provided for in Article 226 is discretionary and availability of an alternative

[4] Fazal Karim, *Judicial Review of Public Actions*, Second Edition, p. 1453.

remedy is one of the considerations which the High Court may take into account to refuse to exercise its discretion. In ***Union of India v. T.R. Varma*** (AIR 1957 SC 882), the Supreme Court of India observed:

> "It is well-settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of another remedy does not affect the jurisdiction of the Court to issue a writ; but … 'the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs.' And where such remedy exists, it will be a sound exercise of discretion to refuse to interfere in a petition under Article 226, unless there are good grounds therefor."

15. Similarly, in ***Thansingh v. Superintendent of Taxes*** (AIR 1964 SC 1419) the Supreme Court ruled:

> "The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy which, without being unduly onerous, provides an equally efficacious remedy … Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit, by entertaining a petition under Article 226 of the Constitution, the machinery created under the statute to be by-passed, and will leave the party applying to it to seek resort to the machinery so set up."

16. Under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the High Court can exercise power of judicial review only if it is satisfied that no other adequate remedy is provided by law. In other words, "the High Court can exercise the constitutional jurisdiction only on the proof of non-availability of adequate remedy."[5] The purpose of writ jurisdiction is not to create a competing remedy. It is rather an additional remedy in the absence of

[5] *Abdur Rehman v. Haji Mir Ahmad Khan and another* (PLD 1983 SC 21). Also see: *Adamjee Insurance Company Ltd. v. Pakistan through the Secretary to Government of Pakistan in the Ministry of Finance, Islamabad and 5 others* (1993 SCMR 1798); *Khalid Mehmood v. Collector of Customs, Customs House, Lahore* (1999 SCMR 1881); *Commissioner of Income Tax v. Messrs Eli Lilly Pakistan (Pvt.) Ltd.* (2009 PTD 1392); and *Indus Trading and Contracting Company v. Collector of Customs (Preventive) Karachi and others* (2016 SCMR 842).

an alternative adequate remedy subject to the satisfaction of the higher court.[6] In ***Tariq Transport Company v. Sargodha Bhera Bus Service*** [PLD 1958 SC (Pak) 437], Muhammad Munir, CJ. held:

> "It is wrong on principle for the High Court to entertain petitions for writs, except in very exceptional circumstances, when the law provides a remedy by appeal to another tribunal fully competent to award the requisite relief. Any indulgence to the contrary by the High Court is calculated to create a distrust in statutory tribunals of competent jurisdiction and to cast an undeserved reflection on their honesty and competency and thus to defeat the legislative intent."

It is, however, important to point out that cases of absence of excess of jurisdiction stand on a different footing and are treated as an exception to the general rule stated above.[7]

17. In ***Dr. Sher Afgan Khan Niazi v. Ali S. Habib and others*** (2011 SCMR 1813) the Hon'ble Supreme Court of Pakistan held that the expression "adequate remedy" in Article 199 of the Constitution connotes an efficacious, convenient, beneficial, effective and speedy remedy which should also be inexpensive and expeditious. Further, the question as to whether a remedy is adequate or not depends on the circumstances of each case. The apex Court laid down the following tests for determination of the adequacy of relief:

> "(i) If the relief available through the alternative remedy in its nature or extent is not what is necessary to give the requisite relief, the alternative remedy is not an 'other adequate remedy' within the meaning of Article 199.
>
> (ii) If the relief available through the alternative remedy, in its nature and extent, is what is necessary to give the requisite relief, the 'adequacy' of the alternative remedy must further be judged, with reference to a comparison of the speed, expense or convenience of obtaining that relief through the alternative remedy, with the speed, expense or convenience of obtaining it under Article 199. But in making this comparison those factors must not be taken into

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[6] *Naeem Jaffar v. Senior Superintendent of Police and 2 others* (1997 MLD 1198).
[7] Fazal Karim, *Judicial Review of Public Actions,* Second Edition, p. 1451.

account which would themselves alter if the remedy under Article 199 were used as a substitute for the other remedy.

(iii) In practice the following steps may be taken:

(a) Formulate the grievance in the given case, as a generalized category;

(b) Formulate the relief that is necessary to redress that category of grievance;

(c) See if the law has prescribed any remedy that can redress that category of grievance in that way and to the required extent;

(d) If such a remedy is prescribed the law contemplates that resort must be had to that remedy;

(e) If it appears that the machinery established for the purposes of that remedy is not functioning properly, the correct step to take will be a step that is calculated to ensure, as far as lies in the power of the Court, that that machinery begins to function as it should. It would not be correct to take over the function of that machinery. If the function of another organ is taken over, that other organ will atrophy, and the organ that takes over, will break down under the strain;

(f) If there is no other remedy that can redress that category of grievance in that way and to the required extent, or if there is such a remedy but conditions are attached to it which for a particular category of cases would neutralize or defeat it so as to deprive it of its substance, the Court should give the requisite relief under Article 199;

(g) If there is such other remedy, but there is something so special in the circumstances of a given case that the other remedy which generally adequate, to the relief required for that category of grievance, is not adequate to the relief that is essential in the very special category to which that case belongs, the Court should give the required relief under Article 199.

If the procedure for obtaining the relief by some other proceedings is too cumbersome or the relief cannot be obtained without delay and expense, or the delay would make the grant of the relief meaningless this court would not hesitate to issue a writ if the party applying for it is found entitled to it, simply because the party could have chosen another course to obtain the relief which is due."

18. Having discussed the law, let us turn to Ordinance XXXI of 1960. There are a host of Single Bench cases which hold that availability of alternative remedy by way of representation to the government under section 3(6) of the Ordinance does not fetter constitutional jurisdiction of the

High Court under Article 199 of the Constitution.[8] However, the learned Advocate General has referred to two judgments of larger Benches of this Court, ***Muhammad Siddiq Khan v. District Magistrate*** (PLD 1992 Lahore 140) and ***Sheikh Rashid Ahmad v. D. M. Rawalpindi etc.*** (PLJ 2004 Lahore 1221), which take a contrary view. The first case was decided by a Division Bench on a reference by a Single Judge. The Court held that the right to make representation is a vital right and cannot be whittled down. It reasoned:

> "From a reading of sub-Article (5) of Article 10 of the Constitution of the Islamic Republic of Pakistan, 1973 it becomes obvious that the Constitution insists not only that the grounds for detention be communicated to the detenu but also that he shall be afforded the earliest opportunity of making a representation against the order. The right to make representation is thus not only statutory in nature but also finds recognition in the Constitution itself, and therefore stands on much higher padestal. The importance of this right cannot be whittled down and it must be given effect to. Subsection (6) of section 3 has been enacted to give effect to sub-Article (5) of Article 10 of the Constitution and it must be viewed in that context. It is also to be noticed that subsection (6-a) requires the Government to hear the person concerned before deciding the representation."

However, the learned Division Bench ruled that in exceptional cases the constitutional jurisdiction of the High Court can be rightfully invoked. It held:

> "As already held that Article 10(5) of the Constitution and section 3(6) and (6-a) of the Punjab Maintenance of Public Order Ordinance, grant a right to detenu to make a representation which must be decided by the Government. That being so we are of the view that the remedy provided by Article 10(5) and sub-sections (6) and (6-a) of section 3 of the Ordinance is adequate within the meaning of Article 199 of the Constitution. By so observing we do not find to lay down an inflexible rule and we should not be taken to have held that in no case a constitutional petition can be filed without filing a representation. There may be cases where it can be demonstrated that it is not possible to file a representation for example, where no grounds of detention are communicated to the detenu or where the filing of the representation would be a

[8] See for example: *Messrs Azad Papers Ltd. and another v. Province of Sindh through Secretary, Home Department, Karachi and another* (PLD 1974 Karachi 81); *Maulana Shah Ahmad Noorani v. Government of the Punjab* (PLD 1984 Lahore 222); *Maulana Abdul Latif Shamshad Ahmad v. District Magistrate, Kasur* (1999 PCr.LJ 2104); *Mamoona Saeed v. Government of Punjab through Secretary, Home Department and 2 others* (PLD 2007 Lahore 128) *Rafaqat Ali and others v. Deputy Commissioner, Rawalpindi and 3 others* (2019 PCr.LJ Note 154); and *Muhammad Abdaal alias Abdali v. Government of Punjab and others* (PLD 2020 Lahore 471).

> mere exercise in futility. Similarly, there may be other cases like complete lack of jurisdiction in the authority passing the order of detention where the filing of representation may not be necessary. In the ultimate analysis the question as to whether it would be necessary to file a representation in a given case would depend upon the facts of that case."

19. *Sheikh Rashid Ahmad's* case was decided by a Bench of five Hon'ble Judges. It held that the jurisdiction of the High Court under Article 199 of the Constitution is subject to law and when the statute itself provides a remedy it must be exhausted in the first instance.

20. It, however, appears that the view expressed in the above-mentioned two cases is at variance with the dictum laid down by the Hon'ble Supreme Court in ***Federation of Pakistan through Secretary, Ministry of Interior, Islamabad v. Amatul Jalil Khawaja and others*** (PLD 2003 SC 442). This was a case of preventive detention under the Security of Pakistan Act, 1952. The apex Court ruled that if the right of a person to a petition for *habeas corpus* could not be syncopated. The relevant excerpt is reproduced below:

> "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 no 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 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)."

21. The law laid down in *Amatul Jalil Khawaja's* case is binding on all courts under Article 189 of the Constitution.

Hence, the objection of the learned Advocate General regarding maintainability of this petition is overruled.

22. Inasmuch as "preventive detention makes an inroad on the personal liberty of a citizen without the safeguards of a formal trial before a judicial tribunal, it must be jealously kept within the bounds fixed by the Constitution and the relevant law."[9] Let us, therefore, examine the merits of the case.

23. In *Amatul Jalil Khawaja's* case, *supra*, the Hon'ble Supreme Court laid down that an order of preventive detention must conform to 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) the 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;
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> (iii) the initial burden lies on the detaining authority to show the legality of the preventive detention;
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> (iv) 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;
>
> (v) 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 and that every requirement, of the law relating to preventive detention had been strictly complied with;
>
> (vi) the 'satisfaction' in fact existed with regard to the necessity of preventive detention of the detenue;

[9] *The Government of East Pakistan v. Rowshan Bijaya Shaukat Ali Khan* (PLD 1996 SC 286).

(vii) the edifice of satisfaction is to be built on the foundation of evidence because conjectural presumption cannot be equated with satisfaction; it is subjective assessment and there can be no objective satisfaction;

(viii) the grounds of detention should not be vague and indefinite and should be comprehensive enough to enable the detenue to make representation against his detention to the authority, prescribed by law;

(ix) 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'."

24. Hafiz Saad Hussain Rizvi is the Ameer of TLP. He has been demanding expulsion of the French diplomat from Pakistan as a mark of protest against publication of irreverent caricatures in France. The government was moved when he held a meeting with his party's top leaders at Sabzazar on 11.4.2021 and announced country-wide agitation, including march to Islamabad, to press for the aforesaid demand. The DIC met, discussed intelligence reports and unanimously recommended an action under section 3(6) of the Ordinance for public safety, maintenance of public order and tranquility. Consequent thereupon Respondent No.2 issued Hafiz Saad's detention order dated 12.04.2021. Although he was arrested, the TLP activists came out on the streets and resorted to vandalism. They also protested against his detention. The following week saw complete breakdown of law and order in the province. According to the report submitted by Respondent No.3, three police officials were killed, 303 were injured, 28 were abducted in various incidents. Besides, 16 police vehicles, two oil tankers and the Orange Train Stations were damaged. Roads were blocked and private property worth crores of rupees, including cars and motorcycles, were also set ablaze. Thus, the government's intelligence reports regarding Hafiz Saad Rizvi and his activists proved correct.

25. The Federal Government has issued S.R.O. 479(I)/2021 dated 15.4.2021 proscribing TLP and placing it in the First Schedule of the Anti-Terrorism Act, 1997. The learned Advocate General has submitted reports of the law enforcement agencies and the recommendations of the Provincial Intelligence Committee which show that the TLP has plans to restart agitation as soon as Hafiz Saad is released. His activists would also glorify him and their organization. This would again cause mayhem and disrupt public life.

26. It is trite that when the order of an executive authority regarding detention of a particular person is challenged under Article 199 of the Constitution the High Court has limited jurisdiction because the remedy of judicial review cannot be treated as appeal or revision. The Court cannot substitute its discretion for that of the administrative authority. It can only see whether the order of detention is reasonable and objective. On the touchstone of these principles and those enumerated in paragraph 23, above, I have found Hafiz Saad's detention orders unexceptionable.

27. The Petitioner contends that the incarceration of Hafiz Saad is unlawful because the grounds of detention were not communicated to him within the prescribed period. The learned Advocate General has placed on record the detainee's written acknowledgement which negates this contention.

28. Clinton Rossiter writes that there is "no happiness without liberty, no liberty without self-government, no self-government without constitutionalism, no constitutionalism without morality, and none of these great goods without

stability and order".[10] And in ***Niharendu Dutt Majumdar v. Emperor*** (AIR 1942 FC 22) Gwyer CJ. said that "the first and most fundamental duty of every government is the preservation of order since order is the condition precedent to all civilization and the advance of human happiness.[11] The Provincial Government's action against Hafiz Saad seeks to preserve peace. This petition has no merit and is, therefore, **dismissed**.

**(Tariq Saleem Sheikh)**
Judge

Approved for reporting

Judge

*Naeem*

[10] Clinton Rossiter, *Introduction to the Federalist*, cited by Fazal Karim in *Judicial Review of Public Actions*, Second Edition, at p. 865
[11] Also cited by Fazal Karim in *Judicial Review of Public Actions*, at p. 865