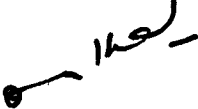


**JUDGMENT SHEET**  
**IN THE PESHAWAR HIGH COURT,**  
**MINGORA BENCH (DAR-UL-QAZA), SWAT**  
*(Judicial Department)*

- 1) **W.P No. 375-M/2018**  
**With Interim Relief**  
*(Abid Vs. District Magistrate and others)*
- 2) **W.P No.378-M/2018**  
**With Interim Relief**  
*(Jehanzeb Sharif Vs. District Magistrate and others)*
- 3) **W.P No. 379-M/2018**  
**With Interim Relief**  
*(Hassan Vs. District Magistrate and others)*
- 4) **W.P No. 380-M/2018**  
**With Interim Relief**  
*(Sabir Hussain Vs. District Magistrate and others)*
- 5) **W.P No. 381-M/2018**  
**With Interim Relief**  
*(Abdullah Vs. Govt. of KPK and others)*
- 6) **W.P No. 382-M/2018**  
**With Interim Relief.**  
*(Aslam Vs. Govt. of KPK and others)*
- 7) **W.P No. 383-M/2018**  
**With Interim Relief**  
*(Sahib Bahadar Vs. Govt. of KPK and others)*
- 8) **W.P No. 384-M/2018**  
**With Interim Relief**  
*(Gul Hamriz Vs. Govt. of KPK and others)*
- 9) **W.P No. 385-M/2018**  
**With Interim Relief**  
*(Gulzar Jehan Vs. Govt. of KPK and others)*
- 10) **W.P No. 389-M/2018**  
**With Interim Relief**  
*(Muhammad Sohrab Vs. District Magistrate and others)*
- 11) **W.P No. 390-M/2018**  
**With Interim Relief**  
*(Irfan Uddin Vs. District Magistrate and others)*
- 12) **W.P No. 391-M/2018**  
**With Interim Relief**  
*(Abdul Ali Vs. District Magistrate and others)*

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- 13) **W.P No. 392-M/2018**  
**With Interim Relief**  
*(Wajid Ali Vs. District Magistrate and others)*
- 14) **W.P No. 393-M/2018**  
**With Interim Relief**  
*(Sana Ullah Vs. District Magistrate and others)*
- 15) **W.P No. 394-M/2018**  
**With Interim Relief**  
*(Hazrat Islam Vs. District Magistrate and others)*
- 16) **W.P No. 395-M/2018**  
**With Interim Relief**  
*(Fayyaz Hasan Vs. District Magistrate and others.)*
- 17) **W.P No. 396-M/2018**  
**With Interim Relief**  
*(Zafar Ali Vs. District Magistrate and others)*
- 18) **W.P No. 405-M/2018**  
**With Interim Relief**  
*(Khurshid Ali Vs. District Magistrate and others)*
- 19) **W.P No. 406-M/2018**  
**With Interim Relief**  
*(Muhammad Siraj. District Magistrate and others)*
- 20) **W.P No. 407-M/2018**  
**With Interim Relief**  
*(Asmat Ali Vs. District Magistrate and others)*
- 21) **W.P No. 413-M/2018**  
**With Interim Relief**  
*(Navid Ali Vs. District Magistrate and others)*
- 22) **W.P No. 414-M/2018**  
**With Interim Relief**  
*(Noor Rahman. District Magistrate and others)*
- 23) **W.P No. 425-M/2018**  
**With Interim Relief**  
*(Nasib Rawan Vs. District Magistrate Swat and others)*

 **Present:** Mr. Aziz Ahmad Hashmi  
Advocate for the Petitioner.

Mr. Arshad Ahmad,  
A.A.G for the official Respondents.

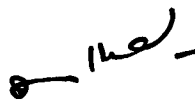
Date of hearing: **10.04.2018**

**CONSOLIDATED  
JUDGMENT**

**MOHAMMAD IBRAHIM KHAN, J.-**

Through this singled-out judgment, we propose to decide this writ petition bearing No. 375-M/2018 as well as the connected writ petitions bearing Nos. 378-M,379-M,380-M,381-M,382-M,383 M,384-M,385-M,389-M,390-M,391-M,392-M,393-M,394-M,395-M,396-M,405-M,406-M,407-M,413-M 414-M and 425-M of 2018 as common questions of law and facts are involved in all these connected writ petitions.

2. Allegations against the Petitioners in all these connected writ petitions are that they are involved in selling of drugs/narcotics being habitual drug peddlers and indulged in other Anti-State activities in their respective localities.

 Therefore, the learned Deputy Commissioners concerned of their respective Districts in the capacity of District Magistrates had issued their detention orders in exercise of powers

conferred upon them under Section 3 of the Maintenance of Public Order Ordinance, 1960, so, as consequence thereof they have been detained in jail. The Petitioners being aggrieved have challenged their detention orders issued by the learned Deputy Commissioners concerned through these connected Constitutional petitions.

3. Learned counsel for the petitioners argued that bogus and frivolous reports have been furnished to Deputy Commissioners Dir Upper, Shangla and Swat by the concerned police of respective Districts and on its basis the impugned orders have been issued against the Petitioners without any rhyme and reason. They further contented that against majority of the Petitioners alternate remedies have already been availed by the local police in shape of First Information Reports, so their detention under the Maintenance of Public Order Ordinance, 1960 is without any legal authority and the present detention orders of the

Petitioners by the learned District Magistrate concerned amount to "double jeopardy". They added that not even an iota of evidence is available in support of the allegations leveled against the Petitioners. They argued that liberty of a citizen is protected and guaranteed by Constitution of Pakistan which cannot be curtailed under the garb of 3 M.P.O without legal justification. Learned counsel concluded that the impugned orders being against law and without any legal authority be set aside and the Petitioners be released from jail with immediate effect.

4. On the other hand, learned A.A.G appearing on behalf of the official Respondents submitted that most of the Petitioners are drug peddlers/ suppliers and have remained involved in drug trafficking which is adversely affecting the young generation of our society in particular. He further submitted that Petitioners have repeatedly been warned by local police to mend their ways but they are not ready to quit

these activities, therefore, their detention by District Magistrate in exercise of their powers under Section 3 MPO is in accordance with law.

5. Having heard arguments of learned counsel for the Petitioners and learned A.A.G appearing on behalf of the official Respondents, available record of each petition was delved deep into with their valuable assistance.

6. Before delivering any findings in respect of the issue in question it would be more appropriate to reproduce section 3 of the West Pakistan Maintenance of Public Order Ordinance 1960, on the basis of which the impugned detention orders of the Petitioners in all these connected writ petitions have been issued, it reads:-

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

In the light of above-quoted provision of law the first and foremost reality of all these connected matters which need to be clarified that the assertions of the Respondents that majority of the Petitioners are involved in drug peddling activities being suppliers coupled with the fact that they are indulged in Anti-State activities are not appealable to prudent mind for simple reason that there is nothing on record in black & white in shape of an iota of evidence which could justify issuance of these detention orders under Section 3 of the Maintenance of Public Order Ordinance, 1960. Even otherwise, the powers bestowed upon the learned Deputy Commissioners in the

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capacity of District Magistrates are not ordinary in nature and on all counts it come within the category of "special powers". So before passing order under section 3(1) of West Pakistan Maintenance of Public Order, 1960, the authority is required to satisfy itself that the activity of a person directed to be detained is prejudicial to the society or maintenance of public order and mere oral allegation or recommendation of the local police in shape of letters/reports without any proof against a person is not sufficient to make it basis of issuance of detention order under the above-referred provision of law.

7. We have thoroughly perused the impugned orders and found that the same have been rendered by the learned Deputy Commissioners Dir Upper, Swat and Shangla without satisfying themselves with regard to requests of local police and prima facie orders of detention were passed without considering the material available before them, which is against the mandate and spirit of West



Pakistan Maintenance of Public Order Ordinance, 1960. Therefore, the impugned orders are nullity in the eye of law.

8. Apart from above, detention warrants of the Petitioners before us in different petitions would divulge that they can even be prosecuted under the respective laws enacted for the commission of offences. In most of the cases the detenues/Petitioners can be prosecuted under the Control of Narcotic Substances Act or under the ordinary sections of law within the purview of Pakistan Penal Code or for that matter under Anti Terrorism Act. Now, the law is very much settled that powers under 3 MPO are to be exercised where there is imminent apprehension and that too based on some solid grounds i.e. when **“a person is acting or is about to act in a manner prejudicial to public safety or the maintenance of public order”**. In our humble view, all these connected matters pertain to different spheres and do not qualify the above mentioned criteria as envisaged by the *ibid*

Ordinance rather as stated earlier, the detenués/Petitioners can be prosecuted under the relevant laws.

9. In support of similar ratio reliance can be placed on an unreported judgment of this Court decided on 16.01.2018 delivered in **W.P No.24-M/2018** titled as *“Suliman Khan Vs. Govt. of KPK and others”*, wherein it has been enunciated:-

**“Petitioner has been detained in jail on the ground that he is habitually involved in narcotics related activities which are adversely affecting the society especially the young generation of the area but no evidence in support of the said allegations is available before us. Whether the same allegations can be considered as a “valid ground” for detaining a person in exercise of powers under Section 3 of the West Pakistan Maintenance of Public Order Ordinance, 1960 or not, is the crucial point which needs determination by this Court. The expression ‘ground’ has been defined in Black’s Law**

Dictionary according to which 'ground' means *'a foundation or basis, points relied upon; for example 'ground' for bringing civil action or charging criminal defendant or foundation for admissibility of evidence.* For the purpose of Section 3 of the Ordinance, 'ground' means factual constituent of the grounds on which the subjective satisfaction of the authority issuing the detention order is based. In the present case, the petitioner has been detained on the ground that he is a drug peddler and is not ready to stop the said activities being harmful and injurious to the public but neither any documentary evidence is available on the case file to this effect nor the learned A.A.G. could assist this Court that what is the specification of the charge against him and in what manner the local police warned him to give up the narcotic related activities or other bad habits. In our view, mere allegations against the petitioner regarding his

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**involvement in drugs promotion in the area without supportive evidence or proof is not a valid ground for issuance of an order against him under Section 3 of the Ordinance *ibid*.**

10. It must be inculcated in an unequivocal terms that detention order tantamounts to curtailing fundamental rights of liberty of a citizen guaranteed by the Constitution and perhaps due to this reason the legislature in their know-how vested such powers with the Deputy Commissioners who are expected to be unbiased as compared to the police agency and in this way the Deputy Commissioners are not supposed to react on the report of the police agency until and unless they satisfy themselves about the correctness of the same and are supported by tangible material.

11. Last but not the least, it would be in the fitness of things to give reference of this Court consolidated judgment dated 22.01.2018 rendered in W.P. No. 37-M of 2018 titled "Muhammad Imad V/S Govt: of

KPK & others", wherein on the basis same rational as highlighted above seventeen (17) connected writ petitions have been accepted accordingly. Para 7 of the *ibid* judgment speaks of:-

"Detention warrants of the petitioners before us in different petitions would show that they can be prosecuted under the respective laws enacted for the commission of offences. In most of the cases the detenues can be prosecuted under the Control of Narcotic Substances Act, Forest Act as well as under Prohibition of Hadd Order, 1979. Now the law is settled that powers under 3 MPO are to be exercised where there is imminent apprehension and that too based on some solid grounds i.e when "a person is acting or is about to act in a manner prejudicial to public safety or the maintenance of public order". In our view, all these cases do not qualify the above mentioned criteria as provided by the *ibid* Ordinance rather, as discussed above, the

**detenués can be prosecuted under  
the relevant laws."**

12. In the above backdrop, we are of the unanimous view that the impugned orders have been rendered without lawful authority, therefore, upon acceptance of all these Constitutional petitions, the impugned orders are set aside and the Petitioners of all these connected matters be released from jail forthwith if not required in any other case.

Announced.  
Dt: 10.04.2018

  
JUDGE

  
JUDGE

Office  
11/04/18