JUDGEMENT SHEET

IN THE ISLAMABADHIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Criminal Original No.197-W/2023

The State
Vs.
Mr. Irfan Nawaz Memon, District Magistrate and three others.

The STATE BY:	Mr. Qaiser Imam, Prosecutor assisted by Mr. Ali Raza, Advocate. Mr. Ahmed Junaid, State Counsel.
RESPONDENTS BY:	Raja Rizwan Abbasi, Mr. Fawad Haider and Rana Samreen Akhtar, Advocates for respondent No.1. Mr. Shah Khawar and Mr. Babar Hayat Samore, Advocates for respondent No. 2. Mrs. Bushra Qamar and Mr. Muhammad Fahim Akhtar Gill, Advocate for respondent No.3. Mr. Imran Feroz Malik and Mr. M. Sajid Baloch, Advocates for respondent No.4. Respondents No. 1 to 4 in person. Mr. Qamar Abbas, Law Officer, Rural Zone, Islamabad.
DATE OF HEARING:	21.02.2024.

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BABAR SATTAR, J.- Is rule of law to be treated as a device capable of producing nothing other than feel-good rhetoric in Pakistan or is it to be regarded as a meaningful concept signifying a legal system that affords ordinary citizens the rights and liberties guaranteed by the Constitution? Does our legal system have the ability to give effect to the protections law affords citizens, while simultaneously operationalizing the obligations it imposes on the exercise of state power? Does our court system have the capacity to minimize the gap between black-letter law and its enforcement such that law serves a useful purpose in the everyday life and experience of citizens? Can

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Pakistan be described as a rule of law polity or is it administered by rule of men whose diktat trumps the rule of law?

2. These seemingly abstract questions lie at the heart of the controversy before this Court in the present matter where (i) Irfan Nawaz Memon, District Magistrate Islamabad, (ii) Malik Jameel Zaffer, Senior Superintendent of Police, Islamabad, (iii) Farooq Amjad Buttar, Divisional Police Officer, Islamabad, and (iv) Nasir Manzoor, Station House Officer P.S. Margalla, Islamabad, are facing contempt of court proceedings for abusing and disregarding High Court orders declaring detention orders passed under Maintenance of Public Order Ordinance, 1960 **("MPO")** illegal, for obstructing administration of justice and denying citizens access to justice, and for setting at naught the remedies afforded by the justice system.

3. Between 09.05.2023 and 02.11.2023, DC Irfan Memon issued some 69 detention orders in exercise of power under Section 3 of the MPO. The cumulative period of detention that he ordered those on the receiving end exceeded 1000 days. Over two dozen petitions were filed before Islamabad High Court ("**IHC**") challenging these orders. These cases were marked before 7 out of the 8 judges comprising IHC. Except for two cases, where detention orders were issued out of concern for sectarian violence, not one order detaining political workers on grounds of incitement of violence sustained judicial scrutiny. The first set of detention orders were set aside on 16.05.2023 for being illegal. Repeated judicial verdicts declaring that DC Irfan Memon was abusing authority and undermining fundamental

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rights of detainees had no sobering effect on the DC, who continued churning out detention orders one after another.

4. DC Irfan Memon ordered Shehryar Afridi's detention on 16.05.2023. It was challenged in ***Farrukh Jamal Afridi Vs. Federation of Pakistan*** **(W.P. 1639/2023)** and was set aside for being unconstitutional and illegal by order dated 02.06.2023. This Court put DC Irfan Memon and SHO Nasir Manzoor on notice that their conduct was tantamount to malice in law and could attract penal consequences. Unabashed, DC Irfan Memon continued issuing detention orders at will, primarily to imprison individuals who were associated with Pakistan Tehreek-e-Insaaf **("PTI")**. Meanwhile, Shehryar Afridi was kept behind bars, for a brief period in relation to FIRs registered against him on the allegation of inciting public to create anarchy, and after his release on bail by court, by virtue of detention orders under MPO issued by DC Rawalpindi.

5. On 03.08.2023, the detention order issued by DC Rawalpindi was set aside by Lahore High Court. DC Rawalpindi then issued a fresh detention order on 04.08.2023. When this order was challenged before Lahore High Court, that had already ordered the release of Shehryar Afridi by setting aside the detention order under MPO and by admitting Afridi on bail before arrest in relation to an FIR registered against him in Bahawalpur (also on charges of incitement of violence), DC Rawalpindi withdrew the fresh detention order on 08.08.2023. On the same day, DC Irfan Memon manufactured a second detention order against Shehryar Afridi on the same grounds on which his previous order was set aside by Islamabad High Court in

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Farrukh Jamal Afridi (i.e. he was inciting public to embrace anarchy and damage public buildings etc.).

6. The freshly-minted detention order came with a twist: now Shehryar Afridi was allegedly inciting public-at-large to cause destruction in Islamabad from Adiala Jail (where he had remained incarcerated since 16.05.2023 after being picked-up at 2.30 am by SHO Nasir Manzoor without a warrant on the expectation that DC Irfan Memon will issue a detention order later in the day, which he did). SHO Manzoor issued a request for detention under MPO on 08.08.2023, forwarded by DPO Farooq Amjad to SSP Jameel Zafar, who endorsed it and later reaffirmed it as part of the District Intelligence Committee **("DIC")** for Islamabad. Interestingly, the very day DIC Rawalpindi advised DC Rawalpindi that Afridi was no longer a threat to public order in Rawalpindi, where he was housed in Adiala Jail (recalling prior advice of him being a threat rendered on 04.08.2023), DIC Islamabad and DC Irfan Memon found Afridi to be a threat to public order in Islamabad and was pulling strings of public discord all the way from Adiala Jail.

7. This repeat detention order against Shehryar Afridi was issued on 08.08.2023, which meant that withdrawal of the detention order issued by DC Rawalpindi on 08.08.2023 (after having been summoned by Lahore High Court for issuing a new detention order on 04.08.2023 after the previous one was set aside on 03.08.2023) was of no consequence. Shehryar Afridi stayed put at Adiala Jail. As DCs for Rawalpindi and Islamabad continued playing musical chairs with the law and the courts, DC Irfan Memon's detention order dated 08.08.2023 was challenged

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before this Court in ***Shehryar Afridi vs. Federation of Pakistan*** **(Writ Petition No. 2491 of 2023).** On 15.08.2023 this Court issued DC Irfan Memon and the police officers who had solicited the latest detention order, show cause notices for obstruction of justice and contempt of court.

8. Even the issuance of the show cause notice and the order of this Court dated 15.08.2023 (putting DC Irfan Memon on notice that he may be liable for breach of fundamental rights of citizens and for obstructing justice), DC Memon's proclivity to curb the liberty of citizens in exercise of powers under the MPO could not be curbed. While facing contempt proceedings before this Court, he issued detention orders to incarcerate Chaudhary Pervaiz Elahi on 01.09.2023, after he had been set free by Lahore High Court. This court by order dated 06.09.2023, suspended the power of DC Irfan Memon to issue detention orders under Section 3 of MPO, after which the detention order minting business came to a halt in Islamabad. By judgment dated 29.12.2023, the detention order dated 08.08.2023 was set aside for being illegal and unconstitutional and for being a fraud on the statute, it was declared that powers under the MPO were not validly delegated to DC Irfan Memon, and the present contempt proceedings continued.

Summary of the proceedings

9. By order dated 15.08.2023 passed in ***Shehryar Afridi***, the respondents were issued show-cause notices in terms of Article 204(2)(a) and 204(2)(d) of the Constitution read together with section 6(1)(c) of the Contempt of Court Ordinance, 2003

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("Ordinance"). The show-cause notice issued to DC Irfan Memon is annexed as Annexure-A[1].

10. The respondents filed justificatory responses to the show-cause notices, which were found to be unsatisfactory. In order dated 07.09.2023, this Court recorded reasons as to why the responses were deemed unsatisfactory and further enumerated the basis for continuing proceedings against the respondents after framing of the charge in the following terms:

> *"4. Separation of powers and independence of the Judiciary are salient features of the constitutional order in place in Pakistan. Independence of the Judiciary is now understood to be a pre-requisite for upholding fundamental rights of citizens in Pakistan, as the Judiciary constitutes the constitutional machinery for enforcement of fundamental rights of citizens as guaranteed by the Constitution. It is the Judiciary that upholds and enforces the contract between the State and the citizens as manifest in the provisions of the Constitution and more particularly in the fundamental rights guaranteed by the Constitution, including the right to liberty, dignity, due process and to be treated in accordance with law. Simultaneously, the Executive is placed under an obligation to abide by law and uphold the fundamental rights of citizens guaranteed by the Constitution. Under Article 199 of the Constitution, the High Courts have been endowed with the responsibility to ensure that fundamental rights of citizens are not fettered and any excesses on part of the State that undermine the fundamental rights of citizens are brought under check. This constitutional scheme falls apart if the Executive refuses to abide by the provisions of the Constitution and remains doggedly determined to refuse the enforcement of fundamental rights as determined by the Judiciary, or if the Executive is able to disregard orders and judgments passed by the Judiciary to give effect*

[1] The SCNs issued to the remaining respondents are part of the record.

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to the entitlements and rights that the Constitution promises the citizens of Pakistan and the officials disregarding judicial orders go Scott-free.

5. Article 204 provides the mechanism through which judicial orders upholding the rights of the citizens are to be enforced and anyone refusing to do so is to be punished. Article 204(2)(a) vests in the High Court the power to punish anyone who "abuses, interferes with or obstructs the process of the court in any way or disobeys any order of the court". Article 204(2)(c) provides for punishment of anyone who "does anything which tends to prejudice the determination of a matter pending before the court". Article 204(2)(d) provides for punishment of any other act which by law constitutes contempt of court. The relevant law with regard to contempt of court is the Contempt of Court Ordinance, 2003 ("Ordinance"). Section 2(b) of the Ordinance defines "criminal contempt" as "the doing of any act with intent to, or having the effect of obstructing the administration of justice". Section 3 of the Ordinance provides that anyone who interferes with or obstructs or interrupts or prejudices the process of law or the due course of any judicial proceedings and anyone who does anything that "tends to bring the authority of a court or the administration of law into disrespect or disrepute" is liable for contempt of court. Section 6 of the Ordinance deals with criminal contempt and provides that anyone who commits any act with the intent to divert the course of justice is liable for criminal contempt.

6. When Article 204 of the Constitution read together with provisions of the Ordinance is juxtaposed with the facts of the instant case, it appears, prima facie, that actions and conduct of the respondents was a deliberate attempt to divert the course of justice, obstruct the administration of justice and bring the authority of the court and administration of law into disrespect and disrepute. It appears, prima facie, that the respondents (or someone on whose diktat the respondents were acting) had decided that

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notwithstanding any judgment or order passed by the High Courts, Shehryar Afridi shall not be released. When Shehryar Afridi was released by this Court after having declared that the detention order dated 16.05.2023 was illegal, detention orders of similar nature on the same grounds were passed by District Magistrates in Punjab. When the Lahore High Court set aside such detention orders for being illegal and violative of the fundamental rights of the detainee, the detention order in field was withdrawn by the District Magistrate Rawalpindi and on the very same day, ICT police officers manufactured reports and the District Magistrate Islamabad passed a fresh detention order under section 3 of MPO. The sequence of events, prima facie, project a picture where a message was being communicated to public-at-large that the detainee would not be released under any circumstances no matter what orders were passed by the constitutional courts of this country. There can be nothing more disconcerting than actions of public office holders serving within the Executive that deliberately seek to reduce constitutional guarantees and the machinery put in place to give effect to such guarantees to a farce. If public-at-large comes to believe that there is no functional and effective constitutional mechanism to uphold the rights of citizens to liberty, dignity, due process and protection of law, a polity run on the basis of rule of law immediately transforms into a polity run on the basis of brute force. This cannot be countenanced in any constitutional order. If there is ever a basis and an emergent need to exercise the power of contempt, it arises where public office holders act contumaciously to undermine public faith in the ability of the judicial organ to uphold fundamental rights of citizens by interfering with, undermining and diverting the course of justice. The actions of the respondents, prima facie, appear to have been intended to defeat the orders passed by two High Courts wherein it was explicitly declared that detention orders passed by the District Magistrates in Islamabad and Rawalpindi, respectively, are violative of fundamental rights

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of the detainee, who was ordered to be released from detention.

7. This Court has found that responses filed by the respondents are justificatory and are seeking to perpetuate their illegal acts in breach of clear declarations made by this Court in order dated 02.06.2023 in W.P No. 1639 of 2023. It appears that submissions of the respondents in Writ Petition No. 2491 of 2023 (Shehryar Afridi Vs. Federation of Pakistan) with regard to the detainee allegedly inciting people from behind prison walls is not backed by facts, which, if borne out in trial, would render them liable for contempt of court under section 6(1)(a) of the Ordinance. The Court has also taken note of the fact that the respondent police officers have continued to initiate reports requesting detention of citizens and the District Magistrate has continued to issue detention orders notwithstanding the fact that such orders have been challenged and have been set aside by this Court. Even after the issuance of show cause notices by this Court, the respondent police officers have continued to generate reports and the District Magistrate has audaciously issued fresh detention orders, which have also been suspended by this Court. Such conduct appears, prima facie, to be deliberate and part of an intentional design to frustrate and divert the course of justice and establish that rule of law can be trumped by rule of force at the command of the Executive. The charge is therefore being framed against the respondents under sections 2, 3 and 6 of the Ordinance read together with Article 204 of the Constitution."

11. The charge framed against DC Irfan Memon is annexed as Annex-B[2]. All the respondents pleaded not guilty to the charge framed against them and sought time to furnish affidavits and adduce evidence in their defence. On 11.12.2023 after several hearings and filing of miscellaneous applications, this Court

[2] Charge sheets reflecting the charge framed against the remaining respondents is part of the record.

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ordered that the matter be fixed for 16.01.2024 when it would proceed on day-to-day basis. The case was fixed on 19.01.2024 as the Bench was not available on 16.01.2024 and an adjournment was sought by learned counsels for the respondents. The Court had summoned the record keepers to produce the official record related to the proceedings for 22.01.2024. The order was not complied with and the matter was then fixed for 23.01.2024. On the said date, statements of Syed Waqar Ali Shah, Record Keeper of Deputy Commissioner's office Rawalpindi and Touseef Akhtar, Record Keeper of the office of Superintendent Central Jail, Rawalpindi were recorded. Later, the statements of Tariq Aziz, Record Keeper/Moharrer of Police Station Margalla, Qaiser Javed, Record Keeper/Moharrer of Industrial Area, Islamabad and Akhtar Zaib, Record Keeper/Moharrer of Police Station Aabpara, Islamabad were recorded. Subsequently, on the request of learned counsels for the respondents that the matter be adjourned till after the convening of General Election 2024, the matter was adjourned to 14.02.2024. On such date, learned counsels for the respondents sought further time to file affidavits on behalf of the respondents. Applications were also filed by the Prosecutor to produce certain record that had inadvertently been left out by the Record Keeper of the office of DC Rawalpindi. Likewise, respondent No.1 filed an application to summon individuals, who had authored security reports that respondent No.1 wished to be brought on record in his defence. On 19.02.2024, additional record was exhibited by Record Keeper of the office of DC Rawalpindi. Likewise, statements of Mr. Yasir Afridi, AIG, Special Branch, Islamabad (DW-1) and Mr. Riaz-ul-Haq, Incharge

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Control, Intelligence Bureau, Islamabad (DW-2) were recorded. The matter was adjourned to 20.02.2024 for final arguments. On such date, respondent No.1 failed to appear before the Court and instead travelled to Khairpur Sindh for onward journey to Saudi Arabia despite the fact that this Court had turned down his verbal request for exemption from personal appearance. This Court had to adjourn the matter and issue warrants for the production of respondent No.1, who then appeared before the Court on 21.02.2024 when final arguments were heard and the matter reserved for announcement of judgment.

The relevant record

12. The Court had directed DC Irfan Memon and Commissioner Islamabad to produce record of the detention orders issued by DC Irfan Memon under the MPO during the hearing in ***Shehryar Afridi***. This Court took judicial notice of such record, which was filed by the Deputy Commissioner and the Commissioner Islamabad. The Record Keeper of the office of District Magistrate Islamabad also produced an incomplete list of detention orders issued by Respondent No. 1. A list of detention orders issued between May 2023 and November 2023 is appended as Annex-C. The Court also took judicial notice of the judgments rendered by this Court deciding petitions filed by citizens against whom detention orders had been passed by DC Irfan Memon under the MPO. A list of such decisions is appended as Annex-D to this judgment. The record produced by the relevant record keepers and the defence witnesses summoned by respondent No.1 can be described as follows.

1. Syed Waqar Ali Shah, Record Keeper of Deputy Commissioner's Office Rawalpindi produced copies of

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detention orders, withdrawal of detention orders, and minutes of meeting of the District Intelligence Committee, Rawalpindi, in relation to the detention of Shehryar Afridi, which were exhibited as Ex-P9/1 to Ex-P9/7.

2. Muhammad Touseef Akhtar, Record Keeper of the office of Superintendent Central Jail, Rawalpindi produced a report bearing No. 2962 dated 22.01.2024 with regard to the details of detention of Shehryar Afridi together with a list of all visitors who visited him during his confinement at Adiala Jail Rawalpindi (Ex-P10).

3. Tariq Aziz Khan, Record Keeper of Police Station Margalla produced attested copy of report No. 2/38, dated 16-05-2023 recorded at 2.30 am and copy of initiation of request etc. for detention of Shehryar Afridi and his wife, Rabia Afridi, as Ex-P11 to Ex-P14.

4. Qaiser Javed, Record Keeper of Police Station Industrial Area, Islamabad produced attested copy of FIR No. 623, dated 10-05-2023 under sections 353, 186, 148, 149, 188, 427, 435, 440, 341, 290 and 153 of PPC registered in Police Station Industrial Area as Ex-P15.

5. Akhtar Zaib, Record Keeper of Police Station Aabpara, Islamabad produced copy of FIR No.728, dated 22.08.2022 under sections 188, 186, 506, 341 and 109 of PPC and sections 2 and 3 of the Amplifier Act, as Ex-P15/1.

6. Akhtar Ali, Record Keeper of the office of District Magistrate, Islamabad, produced an incomplete list of detention orders issued by Respondent No.1 under section 3 of MPO, from May 2023 to September 2023, which were exhibited as Ex-P16 to Ex-P47.

7. Mr. Qaiser Imam, learned Prosecutor recorded his statement and tendered copies of Writ Petition No. 2507 of 2023 along with complete order sheet of Lahore High Court, Rawalpindi Bench as Ex-P48 and copies of Writ Petitions No.1639 of 2023 and 1681 of 2023 along with

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order dated 02-06-2023 of Islamabad High Court, as Ex-P49.

8. Mr. Yasir Afridi, AIG, Special Branch, Islamabad appeared as DW-1 and recorded his statement on oath while producing a report he authored on the basis of source information exhibited as Ex-DW-1/A.

9. Mr. Riaz-ul-Haq, Incharge Control, Intelligence Bureau appeared as DW-2 and while recording his statement on oath produced his report which was exhibited as Ex-DW2/A.

10. The record keepers who produced official record were not cross-examined by the learned counsel for the respondents in view of Article 134 of Qanun-e-Shahadat Order, 1984. In any event they produced certified copies of public documents that were either issued by the respondents or were being relied upon by the respondents in their defence. Likewise, the learned Prosecutor produced certified copies of court orders. DW-1 and DW-2, produced by respondent No.1 in his defence, were cross-examined by the learned Prosecutor. Respondents No. 1 to 4 also filed their affidavits in defence.

13. After the issuance of show cause notices to the respondents and after they had filed responses to such show cause notices justifying their conduct, during an initial hearing learned counsels for respondents No. 1 and 2 submitted that the said respondents would wish to render an unconditional apology. Respondents No. 1 and 2, who were present before the Court, were informed by the court that in order to render an unconditional apology they would need to withdraw their justificatory responses and then furnish such unconditional

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apology. They were also advised that rendering an unconditional apology would amount to admission that the conduct in question that caused the initiation of show cause proceedings was indeed contemptuous. However, in the event that they sought to justify their conduct and defend themselves they would be afforded complete opportunity to do so in accordance with their rights guaranteed under Article 10A of the Constitution. None of the respondents filed any apology. They chose to justify and defend their actions by producing affidavits and relying on the record summarized above to justify their actions of soliciting and/or issuing detention orders under MPO.

Arguments of the counsels

14. Raja Rizwan Abbasi, ASC, learned counsel for respondent No.1, submitted that the actions of respondent No.1 in terms of issuing detention order dated 08.08.2023 did not amount to contempt in terms of Article 204(2)(a) and 204(2)(d) of the Constitution and also did not qualify as contempt under section 6(1)(c) of the Ordinance. He submitted that this Court in ***Farrukh Jamal Afridi*** by judgment dated 02.06.2023 had set aside the detention order issued against Shehryar Afridi dated 16.05.2023, but did not restrain respondent No.1 from reissuing another detention order against Shehryar Afridi. He emphasized that after the judgment of this Court in ***Farrukh Jamal Afridi*** dated 02.06.2023, the next detention order had been issued by DC Rawalpindi and to the extent that there was any contempt of the judgment of this Court in ***Farrukh Jamal Afridi*** it had been committed by DC Rawalpindi and not respondent No.1. He submitted that the facts on the basis of which detention order

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dated 16.05.2023 was issued and the grounds that prevailed with this Court in ***Farrukh Jamal Afridi*** while setting aside the order were distinguishable, as at the relevant time there were FIRs registered against Shehryar Afridi and the Court in ***Farrukh Jamal Afridi*** had directed that Mr. Afridi be proceeded against under the FIRs and not under the MPO. He submitted that Imran Khan, Chairman PTI, was arrested on 05.08.2023 after which there was an apprehension of breach of peace. DW-1 and DW-2 had appeared before the Court to confirm that they had issued reports, based on source information, that Shehryar Afridi was instigating individuals to threaten public order. These reports along with the report issued by respondent No.4 were considered in a meeting of the DIC which was attended by representatives from ISI, MI, IB, Special Branch, Rangers and 111-Brigade of Pakistan Army, amongst others, and on the basis of reports of DW-1 and DW-2 placed before DIC Islamabad, it recommended that a detention order be issued. He submitted that the recommendations of serving officers from the Armed Forces as well as those serving within intelligence agencies carried weight and respondent No.1 treated such individuals as his eyes and ears and acted accordingly. He submitted that the authors of the reports on the basis of which respondent No.1 had acted had appeared and acknowledged the content of their reports. Shehryar Afridi remained a threat to public order even when in jail as he would incite individuals who visited him and would also incite people when he was produced in courts. He submitted that certain videos had been included in a USB and had been exhibited as Ex-D1, D2 and D3, which reflected that Shehryar Afridi continued to threaten public officials, including Army

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Generals and even after his release he issued a threatening speech against public officials which confirmed his tendency to incite public. He submitted that respondent No.1 by issuing repeat detention orders under MPO had not obstructed justice. And such term was limited to threatening witnesses, etc. He contended that even if the actions of respondent No.1 were illegal or unconstitutional, they did not attract contempt proceedings due to the absence of *mens rea*. The actions of respondent No.1 were based on human error, due to lack of complete understanding of the writ issued by this court in ***Farrukh Jamal Afridi***. It was respondent no.1's duty to maintain public order and when he had formed reasonable belief based on intelligence reports that Shehryar Afridi was inciting public-at-large from Adiala Jail, he committed no wrong by ordering his detention under MPO for a second time on 08.08.2023. Learned counsel for respondent No.1 also submitted some case law for the proposition that it is only where a clear breach of the order of the court was made out that contempt proceedings can be brought against an individual. And further that any apology rendered by a person against whom contempt proceedings have been initiated should be generously accepted by the court.

15. Mr. Shah Khawar, ASC, learned counsel for respondent No.2, adopted the arguments of Mr. Rizwan Abbasi, ASC. He submitted that meeting of DIC Islamabad dated 08.08.2023 was attended by seasoned officers of the Armed Forces and intelligence agencies, who, on the basis of credible information, concluded that there was cause to take immediate action against Shehryar Afridi, which is why respondent No.2 endorsed the

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recommendation and solicited the issuance of a detention order against Shehryar Afridi on 08.08.2023. He submitted that the Court in ***Farrukh Jamal Afridi*** had issued no direction against respondent No.2. He submitted that provisions of Criminal Procedure Code, 1898 **("Cr.P.C")** whereby police officials could take cognizance of a threat to public order under section 107 and 151 of Cr.P.C was attracted in a case where there was a conflict between two private groups and not where one group was seeking to create a law-and-order situation in face of actions of the state. He submitted that respondent no.2 had an unblemished career and had no intention of obstructing justice.

16. Mrs. Bushra Qamar, ASC, and Mr. Muhammad Fahim Akhtar Gill, AHC, learned counsels for respondent No.3, adopted the arguments of Mr. Rizwan Abbasi, ASC. Mr. Gill submitted that respondent No.3 had been given acting charge of the position of DPO, who only forwarded a request for issuance of a detention order against Shehryar Afridi on 08.08.2023, which request had been issued by respondent No.4 and was forwarded to respondent No.2. He submitted that the case of respondent No.3 was distinguishable as he had no role to play in the issuance of detention order dated 16.05.2023 that was set aside by this Court in ***Farrukh Jamal Afridi***. Re the detention order dated 08.08.2023, respondent No.3 was caught at the wrong place at the wrong time only because the relevant DPO was on leave and respondent No.3 had been handed over additional charge of the office of DPO for four days, in which capacity he was obliged to forward the request initiated by respondent No.4 to respondent No.2 for his consideration.

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17. Mr. Imran Feroz Malik, AHC, learned counsel for respondent No.4 also adopted the arguments of Mr. Rizwan Abbasi, ASC. He submitted that respondent No.4 had been informed by his informants that Shehryar Afridi was instigating people-at-large to create a law-and-order situation in front of GHQ Chowk at F-10 while being lodged in Adiala Jail. As respondent No.4 was duty-bound to take measures to ensure maintenance of law-and-order in the area under his jurisdiction, he initiated a request seeking preventive detention of Shehryar Afridi on 08.08.2023.

18. Mr. Qaiser Imam, ASC, learned Prosecutor submitted that on 16.05.2023 Shehryar Afridi and his wife, Rabia Afridi, were taken into custody and it was noted in the daily diary of Police Station Margalla at 02.30 am (Ex-P11) that no warrants had been issued for arrest of the two and that a request would be initiated for issuance of detention order under MPO, which was subsequently issued later in the day on 16.05.2023 by respondent No.1. The sequence and timing of the events showed that even the first detention order issued against Shehryar Afridi on 16.05.2023 was a part of premeditated design to incarcerate Shehryar Afridi under the MPO. He submitted that respondent No.4 could not have arrested Shehryar Afridi on the basis of any source report unless a valid detention order under section 3 of MPO had already been issued, which was not the case, and this was one of the reasons why this Court in ***Farrukh Jamal Afridi*** concluded that the arrest of Shehryar Afridi on 16.05.2023 was illegal and detention order dated 16.05.2023 suffered from malice in law. He submitted that the writ issued in

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Farrukh Jamal Afridi was in the nature of a writ issued under Article 199(1)(c) of the Constitution in order to protect the fundamental rights of Shehryar Afridi on a continuing basis. He submitted that in para. 12 of the judgment in in ***Farrukh Jamal Afridi***, this Court had observed that actions of respondents No.4 and 1, in seeking and issuing a detention order under MPO, respectively, without recourse to legal remedies in relation to the criminal cases registered against him was sufficient to hold that such actions were based on *mala fide* and extraneous considerations. He submitted that the sequence of events since 16.05.2023 showed that after Shehryar Afridi was first detained and jailed under the MPO, source reports and intelligence reports were manufactured to ensure that Shehryar Afridi was kept behind bars, despite grant of bail orders by courts of competent jurisdiction in criminal cases registered against him, through issuance of recurring detention orders under MPO. He submitted that the detention orders and the legal basis on which they could be issued in exercise of powers under MPO were discussed by Islamabad High Court in ***Farrukh Jamal Afridi*** and by Lahore High Court in ***Shehryar Afridi Vs. Government of Punjab*** **(W.P No. 2507/2023)** and the detention orders were set aside. But notwithstanding the declarations issued by Islamabad High Court and Lahore High Court, the respondents, respectively, solicited or issued the detention order on 08.08.2023, in breach of the rights guaranteed under Articles 9, 10A, 14, 15, 18 and 19 of the Constitution to set at naught the effect of the judgments of Islamabad High Court and the Lahore High Court in relation to Shehryar Afridi. He submitted that Article 204 of the Constitution was an umbrella provision dealing with contempt of court and

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Article 204(2)(a) defined the contempt of court to include action that interfered with or obstructed the process of the court or amounted to disobedience of the order of the Court. Likewise, Article 204(2)(d) included within the scope of contempt any action that had been defined as falling within the definition of contempt of court under the Ordinance. He submitted that the actions of respondent No.1 in issuing a repeat detention order against Shehryar Afridi on 08.08.2023 interfered with the process of the court, which had declared the previous detention order solicited by respondent nos. 2 and 4 and issued by respondent no.1 dated 16.05.2023 illegal. The subsequent detention order was issued on the same ground i.e. incitement of public and threat to public officials and public buildings. The actions also amounted to disobedience of the order of the court, which had already declared the actions of respondent No.1 and 4 illegal and had also passed strictures against them in ***Farrukh Jamal Afridi***. He submitted that section 2(b) of the Ordinance defined criminal contempt as an act with the intent to or having the effect of obstructing the administration of justice, which is what the actions of respondent had done in relation to Shehryar Afridi. He submitted that the declaration issued by this Court in ***Farrukh Jamal Afridi*** had a continuing effect and could not have been frustrated or undone by subsequent actions of the respondents in seeking and/or issuing a fresh detention order under MPO based on freshly manufactured source reports. He submitted that actions of the respondents were undertaken with the intent to divert the course of justice within the meaning of section 6(1)(c) of the Ordinance. He submitted that public officials serving within the Executive branch of the state were

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bound by the law as interpreted by the courts. The respondents by their actions, however, sought to bring the Executive branch in confrontation with the Judicial branch. Even the notifications of detention orders issued under the MPO were largely copy pasted and reflected no application of mind. The detention orders under the MPO were passed to frustrate the right of those detained under such orders to access justice and to the procedural safeguards afforded in criminal cases where the accused were presented before the courts and had the right to seek grant of bail. He submitted that the phraseology being used by the respondents in claiming that the round-about between F-10 and E-10 is called GHQ Chowk also reflected *mala fide* on part of the respondents, who wish to drag the name of the Armed Forces into the matter to sensationalize the same. He submitted that the residential complex built in Sector E-10 for those serving in the Armed Forces was referred to as Defence Complex Islamabad and not as GHQ. He submitted that the actions amounted to obstruction of justice and a deliberate effort to divert the course of justice, as whenever High Court took cognizance of a detention order, it was either withdrawn, or once the detention order was set aside, a fresh detention order was issued to frustrate the orders of the High Court. He submitted that composition of the DIC in Rawalpindi and Islamabad was almost identical. It was therefore not possible that while DIC Rawalpindi was issuing an opinion that Shehryar Afridi while being held in Adyala Jail was causing no threat to public safety and public order and the detention order issued by DC Rawalpindi should be recalled, DIC Islamabad was issuing a contrary opinion that Shehryar Afridi while in Jail was a threat to

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public order in Islamabad and DC Islamabad should pass a detention order in Islamabad against him. Such contradictory opinions of the DICs were a device to provide cover to the illegal actions of DCs, meant to frustrate the orders of respective High Courts. He submitted that no circumstances had been brought on record to establish any threat posed by Shehryar Afridi to public order or public safety prior to the issuance of the detention order dated 08.08.2023. He submitted that at the time of issuance of detention order dated 08.08.2023, Shehryar Afridi had remained behind bars for over 80-days. No one could meet him in jail without the permission of Superintendent Jail and any meeting could only be convened in the presence of jail officials. He submitted that even in their cross-examination DW-1 and DW-2 had admitted that no individuals had been identified in any intelligence reports who had actually been incited by Shehryar Afridi or who were inciting public-at-large on behalf of Shehryar Afridi. He further submitted that neither in order dated 16.05.2023 nor in order dated 08.08.2023 had respondent No.1 mentioned the recommendations of DIC or other intelligence reports with regard to Shehryar Afridi and the reports produced by DW-1 and DW-2 were an afterthought that had been manufactured by executive authorities to afford some justification to respondent No.2 to solicit a detention order and to respondent No. 1 to issue one. He submitted that one justification for issuance of detention order dated 08.08.2023 was that Shehryar Afridi incited people when produced before courts. He submitted that the law required undertrial prisoners to be presented before the court in handcuffs while in police custody. The respondents had neither produced any evidence of

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when Shehryar Afridi was last presented before court and or any evidence of him inciting public-at-large during his court appearances. He submitted that DW-1 had acknowledged during cross-examination that there was no date or signature mentioned in the report he claimed to have authored. And further that at the relevant time when the report was initiated Shehryar Afridi was in jail and no one could meet him without the permission of Superintendent Jail. Likewise, DW-2 could hardly read the report in court that he claimed to have authored. He also acknowledged that Shehryar Afridi was in jail on 08.08.2023 when he initiated the report and that the report named no individual who had been incited by Shehryar Afridi. He submitted that the case of the respondent was one of no defence. They had acted deliberately to prevent the course of justice, to prevent Shehryar Afridi's access to justice and frustrate the orders of the courts. He submitted that the respondents were liable to be punished for contempt of court under Article 204 of the Constitution read together with sections 2(b) and 6(1)(c) of the Ordinance.

Rule of law versus rule of men

19. Before this Court considers the facts as established in the instant matter and applies the law of contempt to the defense brought forth by the respondents, it is imperative to revisit the foundational principles that regulate the manner in which power and responsibility are to be assumed and exercised by public officials in a rule of law system. This is essential in the instant case, as the facts that have emerged make it patent that in terms of evolution as a polity, the ethos of constitutionalism, rule

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of law and representative democracy are far from entrenched amongst public officials. It should require no repetition that public officials have no inherent power except that which flows from the Constitution and is vested in them by law. Such power is to be used to uphold citizen's rights and liberties and not scuttle them.

20. Back in 1690, in ***Two Treatise of Government***, John Locke defined tyranny as *"the exercise of power beyond right"*, driven by the will of the ruler as opposed to the law. He wrote: *"Wherever law ends, tyranny begins."* Likewise, Thomas Paine declared in 1776, *"that in America the Law is King. For as in absolute governments the King is law, so in free countries the law ought to be king, and there ought to be no other."* ***(Common Sense***, London 1994, p. 279) There can be no better articulation of the transformation from rule of men to rule of law than Paine's. It is not the will or diktat of individuals temporarily occupying public offices that can become the source of a legal order, but the command of law alone. The need to emphasize this basic characteristic of a rule of law polity in Pakistan in 2024 is both self-evident and distressing.

21. Tax authorities collect taxes under the laws enacted by Parliament. No citizen has the right or luxury to refuse to pay up. Highway robbers also forcefully extract property from their victims. The distinction between the two is that the former mandatory extraction is backed by the command of law and the latter is backed by threat of brute force. The incarceration of an individual against his will can be characterized as abduction or arrest, depending on the source of power. The act of taking a

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human life is called murder. But when the state takes a life by executing the death penalty, it is called delivering justice. What then is the distinguishing feature that completely changes the complexion of an action when in actual terms the outcome might be much the same?

22. In Pakistan, like other constitutional states, public authority flows from the Constitution and Constitution alone. There is no other source of authority. The feature distinguishing legal authority from brute force is legitimacy. In a polity functioning under the Constitution, the concept of de facto power is akin to the concept of brute force. It is devoid of legitimacy. The only power that is clothed with legality and legitimacy is that which flows from the law and the Constitution and is thus de jure. The existence and exercise of de facto power in a state administered under a constitution is the manifestation of weak constitutionalism and speaks to the need to reduce the gap between the law and its implementation. The courts of law established under the Constitution and exercising authority vested by law, can never recognize or legitimize de facto power (referred to as 'ground realities' in the vernacular). Doing so would delegitimize the courts themselves.

23. In a rule of law system, power and responsibility go hand-in-hand. Any public official who is vested with authority and exercises it in the name of the state and its citizens, cannot shun the responsibility that comes with exercise of power. A DC or police officer has no authority other than that vested by law and no jurisdiction to exercise it except as mandated by law. The actions of public officials are protected by law in so far as they

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are backed by it. Their source of authority over fellow citizens is the authority of law, not personal authority that be exercised at whim or on the basis of an illegal command. Public officials are responsible and accountable for their actions just as private citizens, if not more. The doctrine of agency underlying personal liability is fully applicable to the actions of public office holders.

24. While addressing civil servants in Peshawar in April 1948, Quaid-e-Azam Muhammad Ali Jinnah had said that, *"you should not be influenced by any political pressure, by any political party or individual politician… you must not fall a victim to any pressure, but do your duty as servants to the people and the State, fearlessly and honestly. You should have no hand in supporting this political party or that political party, this political leader or that political leader – this is not your business. Whichever government is formed according to the constitution, and whoever happens to be the prime minister or minister coming into power in the ordinary constructional course, your duty is not only to serve that government loyally and faithfully, but, at the same time, fearlessly, maintaining your high reputation, your prestige, your honour and the integrity of your service."*

25. In the context of determining how rule of law trickles into the lives of ordinary citizens, the enumeration of the concept of rule of law by Thomas Bingham, former Lord Chief Justice of England and Whales, is helpful[3]. He divides the concept into eight sub-rules, some of which are relevant in our present content, both, for purposes of understanding what rule of law

[3] See The Rule of Law, T.H. Bingham, London, 2011.

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encapsulates, and also the manner in which judges must exercise authority. He states as his second sub-rule, *"that questions of legal right and liability should ordinarily be resolved by application of the law and not the exercise of discretion."* The third sub-rule states, *"that the laws of the land should apply equally to all, save to the extent that objective differences justify differentiation."*

26. Lord Bingham's fourth sub-rule is, *"that the law must afford adequate protection of fundamental human rights."* He regards his sixth sub-rule as the *"core of the rule of law principle… that ministers and public officers at all levels must exercise the powers conferred on them reasonably, in good faith, for the purpose for which the powers were conferred and without exceeding the limits of such powers."* The rule that public officials must act in accordance with law and not on the basis of discretion is equally applicable to judges in exercise of their judicial functions. Judges of constitutional courts in Pakistan swear an oath to uphold the law and the Constitution without considerations of fear or favor, affection of ill-will[4].

27. In this context the dictum that contempt is a matter between the court and the contemnor ought not be misunderstood. The debates around Anglo-American legal philosophy in the cotemporary era have devoted considerable space to the Hart-Dworkin debate[5]. While the debate was essentially about the relationship between legality and morality, it also brought into focus the role judges play in a legal system.

[4] See Articles 178 and 194, read with Schedule 3 of the Constitution.

[5] See, for example, *The Hart-Dworkin Debate: A Short Guide for the Perplexed*, Scott J. Shapiro, Public Law and Legal Theory Working Paper Series, Working Paper 77, March 2007, University of Michigan Law School.

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H.L.A. Hart articulated his theory of legal positivism in ***The Concept of Law***.[6] At the risk of simplifying, part of his argument was that 'law' is a sum total of declared rules. And if a legal question or case is not covered by these rules, it is decided by an adjudicator/judge 'exercising his discretion'.

28. Ronald Dworkin contested this view and the argument that judges enjoyed considerable discretion[7]. He argued that judges are bound by law. And in a case where rules are not dispositive of a case, they must apply relevant legal principles to reach a conclusion. Thus, while judges can be argued to possess 'weak' discretion, in so far as they have to declare legal outcomes and have to balance competing principles, they are not vested with 'hard' discretion and have no ability to choose between competing arguments as a policy matter. Dworkin aptly appreciates the role of judges in a precedent-driven common law system like Pakistan. It is the duty of a judge to find the right answer to a legal question based on law and applicable legal principles and precedents. But once the answer emerges, it can't be forsaken. Judges have no unfettered discretion to determine whether or not liability for contempt of court is made out. They have an obligation to apply Article 204 of the Constitution and the provisions of the Ordinance, together with the objective tests formulated by the Supreme Court to determine intent and effect under provisions of the Ordinance, and rule accordingly. Judges are not kings who can pardon contemnors at their whim or haul

[6] Oxford University, 1961.

[7] See *Law's Empire*, Belknap Press, 1986.

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in someone for contempt whose actions don't qualify as such under the law.

Foundation of contempt jurisdiction.

29. The law of contempt has been used since antiquity to punish someone who exhibits contempt for the sovereign. As rule of law polities evolved from rule of men to rule of law, the focus of contempt law also shifted from manifestation of contempt for the authority of the King to contempt of the law and obstruction of justice. Lord Denning in his book, ***The Due Process of Law***[8] quotes Lord Hardwick, who had noted in 1742 that, *"there cannot be anything of greater consequence than to keep the streams of justice clear and pure, that parties may proceed with safety both to themselves and their characters."* Lord Duplock, observed in ***Attorney General vs. Leveler Magazine Limited, [1979] AC 440 at 449*** that, *"although criminal contempt of courts may take a variety of forms, they all share a common characteristic: they involve an interference with the administration of justice, either in a particular case or more generally as a continuing process. It is justice itself that is flouted by contempt of court, not the individual judge or judge who is attempting to administer it."*

30. Let us first consider the evolution of the law of contempt in other common law jurisdictions before reverting back to our own jurisprudence. Justice Field held in ***Ex Parte Robinson 86 U.S. (19 Wall.) 505, 510 (1873)*** that, *"the power to punish contempt is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings and to the… due*

[8] Baron Alfred Denning, Oxford University Press, 2005.

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administration of justice. The moment the courts of the United States were called into existence and invested with jurisdiction over any subject, they became possessed of the power." While there have been legislative instruments conferring contempt powers on courts in the United States, it has been acknowledged in US jurisprudence that even prior to the enactment of such statutes, courts of justice were vested with the power to punish for contempt by virtue of their very creation. As such power was integral to the functioning of the court and dispensing justice to those who came before the courts. In ***Gompers V. Bucks Stove & Range Company* 221 U.S. 418 (1911)** the U.S. Supreme Court held that, *"it is not the fact of punishment, but rather its character and purpose, that often serves to distinguish between two classes of cases. If it is for civil contempt, the punishment is remedial, and for benefit of the complainant. But if it is for criminal contempt, the sentence is punitive, to vindicate the authority of the court*." The US Supreme Court explained in ***Gompers*** that while a complainant might derive some incidental benefit from proceedings in criminal contempt, the object and purpose was punitive i.e. to vindicate the authority of the law. It was emphasized that, *"the power of courts to punish for contempt is a necessary and integral part of the independence of judiciary, and is absolutely essential to the performance of the duties imposed on them by law. Without it they are mere boards of arbitration, whose judgments and decrees are only advisory… without authority to act promptly and independently, the courts could not administer public justice or enforce the rights of private litigants".* The US Supreme Court with respect to the need to comply with injunctive orders held in ***United States vs. United***

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Mine Workers of America* 330 U.S. 258 (1947)** that, *"an order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties, until it is reversed by orderly and proper proceedings."* It also explained how the same facts could render a defendant liable for both civil and criminal contempt: *"common sense would recognize that conduct can amount to both civil and criminal contempt. The same acts may justify a court in resorting to coercive and to punitive measures. Disposing of both aspects of the contempt in a single proceeding would seem at least a convenient practice."* In ***United Mine Workers US Supreme Court further observed that, *"the interests of orderly government demand that respect and compliance be given to orders issued by courts possessed of jurisdiction of persons and subject matter. One who defies the public authority and willfully refuses his obedience, does so at his peril. In imposing a fine for criminal contempt, the trial judge may properly take into consideration the extent of willful and deliberate defiance of the court's order, the seriousness of consequences of the contumacious behavior, the necessity of effectively dealing with the defendant's defiance as required by the public interest, and the importance of deterring such acts in the future."*

31. The jurisprudence produced by English Courts with regard to the need to enforce judicial orders and deter obstruction of justice or defiance of the court process is not much different. In ***Re M. [1993] 3 W.L.R. 433*** the order of a judge was disregarded by the Secretary of State after receiving legal advice that the judge had exceeded his authority. While, subsequently,

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the judge himself came to the conclusion that he did not have the jurisdiction to make the order in question, contempt proceedings were initiated on the basis that the Home Office had defied the order while it was in the field. The House of Lords concluded that the Home Secretary was bound by the order personally and was responsible for compliance with it as head of the department, and upheld the finding of contempt. Lord Wolf, writing for the House of Lords cited a passage from Dicey on the Law of the Constitution 10th Edition, (1959), pp. 193 to193 as follows:

> "*When we speak of the 'rule of law' as a characteristic of our country, [we mean] not only that with us no man is above the law, but (what is a different thing) that here every man, whatever be his rank and condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals. In England the ideal of legal equality, or of the universal subjection of all classes to one law administered by the ordinary courts, has been pushed to its utmost limit. With us every official, from Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen. The reports abound with cases in which officials have been brought before the courts, and made, in their personal capacity, liable to punishment, or to pay damages, for acts done in their official character but in excess of their lawful authority. A colonial governor, a secretary of state, a military officer, and all subordinates, though carrying out the commands of their official superiors, are as responsible for any act which the law does not authorize as is any private and unofficial person… A purpose of the courts' powers to make findings of contempt is to ensure that the orders of the court are obeyed. This jurisdiction is required to be coextensive with the courts' jurisdiction to make the orders which need the protection which the jurisdiction to make findings of contempt provides…*"

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32. In ***Muhammad Aslam vs. Union of India*** **(AIR 1995 SC 548)** the question was whether the Chief Minister of the State of Uttar Pradesh had breached an injunctive order of the High Court of Allahabad in which the government had been restrained from raising any construction on the land where Babri Mosque had been demolished. The court found the Chief Minister liable for contempt while observing that it was an unhappy outcome, "*that a leader of a political party and Chief Minister has to be convicted of an offense of contempt of court. But it has to be done to uphold the majesty of law.*" The Supreme Court of India in ***T.N. Godavarman Thirumulpad vs. Ashok Kahot (AIR 2006 SC 207)*** explained the considerations informing the punishment for contempt. By noting that, "*this will set an example for those who have the propensity of disregarding the court's order because of their money power, social status or posts held.*" In the said case, the Secretary of the Department of Forest, of the Government of Maharashtra and the Minister in charge of the Department of Forest had been found in contempt and punished with a custodial sentence of one month imprisonment. In ***All Bengal Excise Licensees Association Vs. Raghabendra Singh (AIR 2007 SC 1386)***, where a license had been issued in breach of the order of the court, it was held that, "*as a matter of judicial policy, the court should guard against itself being stultified in circumstances like this by holding that it is powerless to undo a wrong done in disobedience of the court's orders… it is equally necessary to erase an impression which appears to be gaining ground that the mantra of unconditional apology is a complete answer to violations and infractions of the High Court or of this court.*"

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33. While much of the jurisprudence in our jurisdiction has focused on the offence of scandalizing the court, it has been emphasized time and again that the essential purpose of the law of contempt is to uphold the supremacy and majesty of the law. It was held in ***Sir Edward Snelson Vs. Judges of the High Court of West Pakistan (PLD 1961 SC 237)*** that, "the dignity *and authority of the courts has a link with the supremacy and majesty of the law. Any conduct which is calculated to diminish that dignity or authority is a criminal contempt which a court is under duty to punish*". It was held by the Supreme Court in ***Senator Haji Adeel vs. Raja M. Abbas*** **(2013 SCMR 346)** that, "*the ultimate purpose of proceedings for contempt is not the protection of a judge personally but in fact it is for the protection of the public-at-large, whose rights and interests would obviously be affected if by any act or omission of any party, the authority of the court is lowered and the confidence of the people in the administration of justice is diminished or weakened.*" The latest view of the Supreme Court with regard to the rationale of contempt law is reflected in ***Sultan Ahmad vs. Registrar Balochistan High Court (2023 SCMR 1955)***, where it was held that, "*unlike the popular belief that the law of contempt protects the courts and judges, the real purpose of this law, as observed by this court in State vs. Khalid Masood (PLD 1996 SC 42), is the protection of the public interest and more importantly public confidence in the justice system… anything which is intended to damage public confidence in the authority of courts is remedied by an action under the law of contempt.*"

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34. It is a settled principle in our jurisdiction that the law of contempt is not to be wielded readily as a weapon to attack minor infractions. It was emphasized by the Supreme Court in ***Imtiaz Ali vs. Abul Kalam*** ***(2005 SCMR 627)*** that the power to commit for contempt is *"to be exercised with great circumspection only where it is absolutely necessary in the public interest to do so."* The Lahore High Court in ***Abdul Aleem Khan vs. Election Commission of Pakistan*** ***(2017 MLD 173)*** explained that, *"criminal contempt is made out when a person willfully interrupts or interferes in the administration of justice such that it obstructs or hampers the course of justice."* In a case of criminal contempt, it is not the sensibilities of the court or the emotions of the presiding judge that are in danger but the authority of law to guide the conduct of the citizens and the state. And in such case the purpose of contempt proceedings is to secure public interest in reaffirming the fundamental tenant of a rule of law system that no man is above the law. In ***Feroz Akbar vs. Government of Pakistan*** ***(2002 SCMR 1623)***, while rendering a finding of contempt, the Supreme Court took into account the fact that the holder of a high administrative office could not be expected to act in ignorance of the law or disregard of the law. It observed that it is, *"high time that such acts and omissions on part of the administrative officers of the country should be taken note of and curbed so that such acts and omissions with regard to disobedience of lawful orders should not be repeated and that there should not be interference with the administration of justice, therefore, the action taken should be a deterrent against such person/official…"* In ***Baaz Muhammad Kakar vs. Federation*** ***(PLD 2012 SC 923)*** the

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Supreme Court explained the distinction between contempt through scandalization of the court and that through disobedience of a court order, while holding that in the latter case the court is under a duty to uphold the majesty of the law. The Supreme Court held that, "*in the unfortunate situation that a functionary of the executive refuses to discharge its constitutional duty, the court is empowered to punish him for contempt. Of course, this power of punishing contemnors for disobedience is meant more to be a deterrent than a weapon of aggression… in periods where the supremacy of the Constitution is contested as the dominant ethos of government, it is not surprising that cases do arise where a deterrent effect can be achieved only by an actual exercise of this power. In such cases, the courts are in fact constitutionally obliged not to shy away from the inevitable. Simply put, a government of laws cannot be created or continued with toothless courts and defiant or blithely non-compliant public functionaries.*"

35. There is also considerable case law on the obligation of public officials to abide by court orders while they are in field, even if it is the view of such public officials that the order lacks merit or suffers from legal infirmity. The most elaborate judgment on the issue of the need to implement orders and judgments, notwithstanding questions around their legality, is ***Dr. A.N.M. Mahmood versus Dr. M. O. Ghani* (PLD 1967 Dhaka 67)**. It cites Hallsbury's Laws of England, 2nd Edition, volume 18, Page 126, where it is noted that, "*the order cannot be disregarded so long as it stands, even though it has been irregularly or erroneously obtained*; *it must be obeyed until it is*

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discharged". ***A.N.M. Mehmood*** also cites ***Eastern Trust Company Vs. Mekenzie Mann & Co., Ltd. (AIR 1915 PC 106)***, wherein *"it was held that a party is required to approach a court whenever it is in doubt as to the true meaning of the order, as long as it subsists."* The law laid down in ***A.N.M. Mehmood*** makes abundant sense. The orders and judgments of courts can neither create legal certainty nor can result in a definitive resolution of disputes if the state or any of the private parties are allowed to sit in judgment over the judgment of the court. If constitutional courts were to allow the Executive to manufacture a fresh cause of action to do what it has already been prohibited from doing, it would sound the death knell to the sanctity and finality that attaches to judicial verdicts (unless of course they are set aside by an appellate forum).

36. The procedure for trying a contemnor is also a well-settled and substantially similar across common law jurisdictions. The procedure adopted takes a summary form and the requirements of the Code of Criminal Procedure, 1898, etc. are not attracted in contempt proceedings, which are characterized as being *sui generis*. It was held by the Supreme Court in ***State Vs. Khalid Masood (PLD 1996 SC 42)*** that contempt proceedings, *"are not criminal proceedings stricto senso but are sui generis in nature partaking of some elements of both civil and criminal proceedings*." It reaffirmed the law laid down in ***Saadat Khialy Vs. the state (PLD 1962 SC 457)***, where it was held that, *"the offense of contempt of court is by its nature purely sui generis. It is a power given to superior courts to punish summarily any attempt to interfere with the*

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administration of justice." The Supreme Court more recently observed in ***Suo Motu Contempt Proceedings against Mr. Daniyal Aziz*** **(*PLD 2018 SC 738*)** that while a trial for contempt of court proceedings was not a criminal trial, and provisions of Cr.P.C were not strictly attracted, in order to meet the ends of justice, it was desirable to put to the defendant the relevant allegations against him to enable him to defend himself. The same was held by the Supreme Court in ***Talal Ahmed Chaudhry Vs, The state.*** ***(2019 SCMR 542).*** A larger bench of this Court in ***State Vs. Imran Ahmed Khan Niazi*** ***(PLD 2023 Islamabad 145)*** held, while relying on law laid down by the Supreme Court, that "*there was no fixed formula for contempt proceedings and that technical accuracies were not required, nor was the court bound by the provisions of the Code of Criminal Procedure."* It was further held that, "*in contempt proceedings the matter of placing the onus is totally different from a case under criminal law, which presumes the innocence of the accused and places the burden on the prosecution to establish the charge against the latter beyond a reasonable doubt. However, in a contempt case the onus is entirely upon the person charged to prove his innocence."*

37. The pillar judgment enumerating the rationale and scope of contempt law is ***Syed Masroor Ahsan Vs Ardeshir Cowasjee*** **(1998 PLD Supreme Court 823*)***, which has been reaffirmed by the Supreme Court in subsequent cases. In ***Masroor Ahsan***, it was held that, "*unlike the popular belief and the first impression that the contempt law protects the courts and the judges, the real purpose or the raison d'etre of the law is*

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the protection of the public, as without respect and public faith the administration of justice would be undermined and the law itself would fall into disrepute."

38. The necessary ingredients for the offence of criminal contempt and the test to be applied by the court in relation to such ingredients was explained by this Court in ***State vs. Imran Ahmed Khan Niazi (PLD 2023 Islamabad 145)*** as follows:

> *30. In view of the interpretation of section 18 as provided in Contempt Proceedings against Syed Yousaf Raza Gilani (PLD 2012 SC 553) as well as the text of section 18(1) and 18(2) read together with section 5 of the Ordinance what emerges is that section 5(1) prescribes that the ingredients of the offence of contempt of court to include actus reus (i.e. the action constituting civil, criminal or judicial contempt as defined in the Ordinance) and mens rea in relation to criminal and judicial contempt (i.e. whether the action constituted an attempt or was accompanied by the intent to indulge in conduct that fell within the definition of criminal or judicial contempt). This is also evident from the definition of criminal contempt as provided under section 2(b) of the Ordinance which is defined to mean "the doing of an act with intent to, or having the effect of, obstructing the administration of justice". Thus, even if there is no intent to indulge in criminal contempt, where the effect of the act is such that it places the act within the definition of contempt of court, intent becomes irrelevant. The question of civil contempt is not before the Court. (Civil contempt deals with willful disregard of an order of the court. The use of the word 'willful' envisages the idea that the alleged contemnor knowingly and willing disregarded a court's order and it is in this context that knowledge of the order becomes relevant in determining whether or not the alleged contemnor possessed the necessary intent constituting civil contempt. This view was adopted by the august Supreme Court in Ahmed Shah Vs. State (PLD 1967 SC 42)).*
>
> *31. The determination of requisite intent in relation to criminal or judicial contempt is to be undertaken on an objective basis. The alleged contemnor may claim that his actions were not*

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backed by mens rea or the intent to commit contempt or may even be willing to lead evidence in support of his actual intent at the relevant time. The test applicable for purposes of construing intent is however not subjective, but is objective. The manner in which the question of mens rea or intent is to be considered in a contempt matter was elucidated by Justice A.R Cornelius in Sir Edward Snelson, KBE Secretary to the Government of West Pakistan Ministry of Law Vs. The Judges of High Court of Pakistan, Lahore and others (PLD 1961 SC 237).

32. In view of laid down in Sir Edward Snelson, as has now been reflected in section 2(b) of the Ordinance within the definition of contempt, the intent of an alleged contemnor is not to be determined by application of a subjective test. The determination of intent is to be undertaken by the court by application of an objective test while considering the effect of the speech or action… the definition of criminal contempt in section 2(b) augments this understanding of contempt law as it uses "effect" as an alternative to "intent" as an ingredient of criminal contempt. Once the effect places the action within the definition of criminal or judicial contempt, the ingredients of the offence of contempt are satisfied.

33. Section 18(1) as interpreted by the august Supreme Court in the case of Syed Yousaf Raza Gilani requires the court to determine whether "the contempt is one which is substantially detrimental to the administration of justice". In other words, a court can determine that the act attracting the provisions of contempt law satisfies the ingredients of the offence of contempt and find the act culpable. However, the court must then consider further whether the effect of the act is such that is substantially detrimental to the administration of justice. Once again, the question of substantial detriment is to be determined by the court itself on an objective basis…"

Shehryar Afridi vs. Federation of Pakistan

39. The detention order dated 08.08.2023 issued by DC Irfan Memon was challenged before the Court and was set aside by judgment dated 29.12.2023. This Court had emphasized that our parliamentary form of government cannot sustain and/or thrive

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unless the rights of citizens under articles 9, 15, 16, 17, 19 and 19A of the Constitution are protected. It was held that, *"in the context of preventive detention, if the state were allowed to adopt an over broad definition of public order or public safety, an attractive strategy for any political government in control of the state would be to use the notion of public order and public safety to scuttle political opposition, competition and dissent and wield the law of preventive detention as a weapon for such purpose. This cannot be allowed in a constitutional democracy founded on the basis of parliamentary form of government that guarantees the fundamental right of citizens to freedom and liberty to pursue their politics in accordance with their conscience."* In para 62 of the judgment the principles for exercise of the power to order preventive detention were summarized. In para 62(5) it was held that, *"exercise of preventive detention laws against an accused against whom a cognizable case is made out is in breach of provisions of Cr.P.C and also falls foul of the right of an accused to access justice guaranteed by Article 9 and 10A read with Article 175 of the Constitution."*

40. In relation to the actions of DC Irfan Memon in issuing the preventive detention order dated 08.08.2023 this Court observed the following:

> *"70. In the case of Shehryar Afridi, one of the petitioners before the court, initial detention order was passed on 16.05.2023 which was set-aside for being illegal through judgment of this Court in Writ Petition No. 1639/2023. Notwithstanding the judgment and the strictures passed against the District Magistrate for colorable exercise of authority, he passed another detention order on 08.08.2023, which forms the subject-matter in the present petition. The District Magistrate has informed the Court that repeated detention order had been passed on the*

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basis of reports generated by police authorities. Appearing in person, the District Magistrate stated before the Court that in passing the impugned detention orders, he relied solely on the recommendation of police officials. This is despite the plethora of case law wherein case after case it has been emphasized by courts that an order of arrest or detention under section 3(1) of MPO cannot be passed unless the competent authority has satisfied itself based on material before it that ordering the detention of an individual is necessary in the interest of public order or public safety. Despite grant of repeated opportunities, no material establishing the necessity of ordering arrest of the petitioners was produced before the court either by police officials who initiated the reports recommending such arrests or by the District Magistrate who issued the impugned detention orders. The case of Shehryar Afridi sticks out as Mr. Afridi had remained under arrest since May 2023 in various districts of Pakistan, under detention orders issued by District Magistrates of various Districts in a manner that was so synchronized that right before the expiry of an order or an order being set aside by a court, a fresh detention order was issued to prevent the release of Mr. Afridi. This Court has found that the manner in which the authority was exercised by District Magistrate in the instant matter was colorable and completely devoid of any rational basis aimed of achieving the objects of MPO i.e. to maintain public order or public safety.

71. In view of the record that has produced before the court it is evident that the conduct of District Magistrate/Deputy Commissioner constitutes a fraud on the statute and the Constitution and amounts to exercise of statutory authority in a manner that can be characterized as malice in law. As this court has found that the impugned detention orders are ultra vires the Constitution and have been passed in breach of provisions of MPO and are coram non judice and without jurisdiction, the court will restrain itself from dwelling further on the considerations that may have prevailed with the District Magistrate in passing the impugned detention orders. The District Magistrate is facing contempt of court proceedings for obstruction of justice and in order to uphold his right to fair trial and due process it is essential for this Court not to form a firm opinion with regard to his conduct and what inspired such conduct."

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41. In view of settled law, as already discussed above, this Court could have adopted summary procedure to decide the matter of contempt. The court, however, that it was in keeping with the Article 10-A rights of the respondents that they be provided every conceivable opportunity to defend their conduct. The respondents filed their responses to the show cause notices. The court finding the responses unsatisfactory formally framed the charge against them and also enumerated and explained, in order dated 07.09.2023, the nature and scope of the charge against them. After framing of the charge, they were invited to produce material in their defence. While this Court took judicial notice of the material brought on record by state authorities during the hearing of ***Shehryar Afridi***, it also summoned the record keepers of public offices to once again produce the relevant record before the Court. The respondents were also invited to produce evidence in their defence, if they so wished. Respondent No.1 availed the opportunity, and on his application, the court summoned DW-1 and DW-2, as well as the record keeper for the office of Deputy Commissioner, Rawalpindi. The respondents also filed sworn affidavits defending their actions as being legal and not amounting to contempt of court.

42. During the hearings, while the record keepers were recording their statements, learned counsels for the respondents raised certain objections with regard to the sequencing of the statements being recorded and the fact that the learned prosecutor had narrated the statements of some record keepers in English for the court's stenographer to type, in the presence of the Court. The objection was frivolous. The learned Prosecutor

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only helped translate the statements of the record keepers to assist those who had limited facility in English language. The court ensured that the statements were not mistranslated. Learned counsel for respondent No. 1 even objected to the production of record by the record keeper from the Office of DC Irfan Memon, who merely placed on record certified copies of the orders issued by DC Memon himself. The law of contempt as discussed above as well as principles of fairness require that a defendant be made aware of the charge against him and be given sufficient opportunity to defend himself. This was done in the instant case. The show cause notice as well as the charge sheet read together with the orders of the Court leave no manner of doubt that the respondents were repeatedly made aware that the charge against them was that they had obstructed the administration of justice by acting in a manner that nullified the judgment of this Court in ***Farrukh Jamal Afridi*** and the judgment of Lahore High Court in ***Shehryar Afridi vs. Government of Punjab*** **(WP No. 2507/2023 decided by Lahore High Court)** and continued to act in a manner that rendered the remedy afforded to citizens by the Constitution under Article 199 to have their fundamental rights enforced by constitutional courts redundant.

43. The detention orders dated 16.05.2023 and 08.08.2023 issued by DC Irfan Memon having been set aside for being illegal and unconstitutional was not the basis for initiation of contempt proceedings against him or any of the other respondents who solicited the issuance of such orders. Learned counsel for respondent No.1 was correct in arguing that the setting aside of

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the order of a public official or the declaration that such order is illegal is an insufficient basis to affix liability on such public official for contempt of court. In the instant case, it was the repeat solicitation of detention orders by respondents No.2 and 4 and the repeat issuance of the detention orders by respondent No.1 on 08.08.2023, when this Court in ***Farrukh Jamal Afridi*** had had already declared that the solicitation and issuance of detention order by respondents No.4, 2 and 1 was illegal and suffered from malice in law, that resulted in the initiation of contempt proceedings. While this Court in ***Farrukh Jamal Afridi*** set aside the detention order dated 16.05.2023 and warned respondents No.1 and 4 that they could be held liable for their actions, it did not issue a contempt notice to them. It is only in view of the continuing conduct of the respondents from 09.05.2023 to 08.08.2023, and the reissuance of a second detention order against Shehryar Afridi after the first was declared illegal and a product of extraneous considerations, that this Court was minded to issue them notices to show cause why they should not be held liable for obstruction of justice and contempt of court.

44. Shehryar Afridi was kept in jail from 16.05.2023 through 16.08.2023. The timeline of his confinement is reflected in Annex-E to this judgment. The report filed by Superintendent Adiala Jail manifests the contumacious manner in which Shehryar Afridi's right to access justice was breached and the judgment of this Court in ***Farrukh Jamal Afridi*** and judgment of the Lahore High Court in ***Shehryar Afridi vs. Government of Punjab*** **(WP No. 2507/2023)**, declaring that Shehryar

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Afridi must not be detained in exercise of power under the MPO, were nullified. The report of the superintendent states the following:

> *"It is submitted that detenu Mr. Shehryar Afridi s/o Haji Nadir Shah Afridi was admitted in this jail on 16.05.2023 by the orders of District Magistrate ICT Islamabad vide order No. 6(43)-RDM/2023/815 dated 16.05.2023 u/s 3(1) of the West Pakistan Maintenance of Public Order Ordinance, 1960, for the period of 15 days from the date of his entrance in Central Jail Rawalpindi (Annexure-A). The said detenu was released from this jail on 30.05.2023 on expiry of his detention period.*
>
> *It is further submitted that the said detenue was readmitted in this jail on 30.05.2023 by the orders of the Deputy Commissioner Rawalpindi vide No. 577/DC-Reader dated 30.05.2023 u/s 3(1) of the West Pakistan Maintenance of Public Order Ordinance 1960, for the period of 15 days from the date of his entrance in Central Jail Rawalpindi (Annexure-B). Whereas on 13.06.2023 his detention period was extended for 15 days by Deputy Commissioner Rawalpindi vide orders No. 637/DC-Reader dated 13.06.2023 (Annexure-C).*
>
> *He was taken on physical remand on 17.06.2023 by the orders of the learned court of Mr. Muhammad Naveed Khan, Civil Judge 1st Class Islamabad (West) and readmitted on judicial remand in case FIR No. 623 dated 10.05.2023 u/s 440/427/435/188 353/290/341/148/149 PPC P.S Industrial Area Islamabad on 19.06.2023. In the same case he got bail from the learned court of Mr. Muhammad Naveed Khan, Judicial Magistrate 1st class Islamabad (West) on 23.06.2023. He was again taken on physical remand on 21.06.2023 by the orders of the learned court of Mr. Hamid Hussain, Judge Special Court ATA Rawalpindi and readmitted on judicial remand. One more FIR No. 708 dated 09.05.2023 u/s 436/149/148/147/441/440/341/186/353, 7ATA P.S R.A Bazar Rawalpindi was registered against him and he was sent on judicial remand on 26.06.2023.*
>
> *On expiry of detention period on 28.06.2023 he was kept as under trial prisoner in case FIR No. 708 dated 09.05.2023 u/s 436/149/148/147/441/440/341/186/353, 7ATA, P.S RA Bazar Rawalpindi. At the same time, on 27.07.2023 he was detained*

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by the orders of the Deputy Commissioner Rawalpindi vide No. 710/DC-Reader dated 27.02.2023 u/s 3(1) of the West Pakistan Maintenance of Public Order Ordinance, 1960, for the period of 15 days from the date of his entrance in Central Jail Rawalpindi (Annexure-D). The said detenu was released from this jail on 03.08.2023 after his detention orders being suspended by the Hon'ble Lahore High Court Rawalpindi Bench, Rawalpindi vide order dated 03.08.2023 in Writ Petition No. 2507 of 2023 dated 03.08.2023 (Annexure-E) and he was also released on bail on the same date in case FIR No. 708 dated 09.05.2023 u/s 436/149/148/147/441/440/341/186/353, 7ATA P.S RA Bazar Rawalpindi as per orders of the learned court of Mr. Hamid Hussain, Judge Special Court ATA Rawalpindi.

It is further added that the said detenu was readmitted in this jail on 04.08.2023 as detenu by the order of the Deputy Commissioner Rawalpindi vide No. 768/DC-Reader dated 04.08.2023 u/s 3(1) of the West Pakistan Maintenance of Public Order, Ordinance 1960, for the period of 15 days from the date of his entrance in Central Jail Rawalpindi (Annexure-F). The said detenu was released from this jail on 08.08.2023 after withdrawal of detention orders by the orders of the Deputy Commissioner Rawalpindi vide No. 811/DC-Reader dated 07.08.2023 (Annexure-G).

The petitioner was again admitted in this jail on 08.08.2023 as detenu by the orders of the District Magistrate (ICT) Islamabad vide No. 6(43)-RDM/2023/1391 dated 08.08.2023 u/s 3(1) of the West Pakistan Maintenance of Public Order Ordinance, 1960, for the period of 15 days from the date of his entrance in Central Jail Rawalpindi (Annexure-H).

It is further added that the above said detenue has been released on 16.08.2023 by the order of Hon'ble Islamabad High Court vide order dated 16.08.2023 in Writ Petition No. 1491/2023.

The detail of all visitors who interviewed (ملاقات) *during the period of his confinement in jail is as under:-*

Sr. No.	*Name of Visitor*	*Relations*
	Dated 26.05.2023	
01	*Farrukh Jamal Afridi s/o Nadir Shah*	*Brother*

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02	Sher Afzal Khan s/o Muhammad Azeem Khan	Counsel
Dated 31.05.2023		
01	Farrukh Jamal Afridi s/o Nadir Shah	Brother
02	Maryam d/o Shehryar Afridi	Daughter
03	Zainab d/o Shehryar Afridi	Daughter
04	Nadir s/o Shehryar Afridi	Son
05	Hajira d/o Shehryar Afridi	Daughter
Dated 06.06.2023		
01	Farrukh Jamal Afridi s/o Nadir Shah	Brother
02	Ahsan Andleeb s/o Nadir Shah	Brother
03	Rabia w/o Shehryar Afridi	Wife
04	Maryam d/o Shehryar Afridi	Daughter
05	Zainab d/o Shehryar Afridi	Daughter
06	Hajira d/o Shehryar Afridi	Daughter
07	Ibrahim s/o Shehryar Afridi	son
Dated 10.06.2023		
01	Farrukh Jamal Afridi s/o Nadir Shah	Brother
02	Ahsan Andleeb s/o Nadir Shah	Brother
03	Sohail Iqbal Afridi s/o Nadir Shah	Brother
Dated 14.06.2023		
01	Muhammad Musawar Abbasi s/o Muhammad Boota Abbasi	Friend
02	Farrukh Jamal Afridi s/o Nadir Shah	Brother
03	Sher Afzal Khan s/o Muhammad Azeem Khan	Counsel
Dated 20.06.2023		
01	Muhammad Musawar Abbasi s/o Muhammad Boota Abbasi	Friend
Dated 04.07.2023		
01	Farrukh Jamal Afridi s/o Nadir Shah	Brother
02	Ashfaq s/o Mehrban	Counsel
Dated 10.07.2023		
01	Farrukh Jamal Afridi s/o Nadir Shah	Brother
Dated 12.07.2023		
01	Farrukh Jamal Afridi s/o Nadir Shah	Brother
Dated 14.07.2023		
01	Farrukh Jamal Afridi s/o Nadir Shah	Brother
02	Maryam d/o Shehryar Afridi	Daughter
03	Atsbeen d/o Shehryar Afridi	Daughter
04	Nadir s/o Shehryar Afridi	Son
05	Hajira d/o Shehryar Afridi	Daughter
Dated 21.07.2023		
01	Faiz ur Rehman s/o Saif ur Rehman	Friend
Dated 24.07.2023		
01	Ashfaq s/o Mehrban	Counsel
02	Farrukh Jamal Afridi s/o Nadir Shah	Brother
03	Rabia w/o Shehryar Afridi	Wife
04	Nadir s/o Shehryar Afridi	Son
05	Hajira d/o Shehryar Afridi	Daughter

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06	*Faiz ur Rehman s/o Saif ur Rehman*	*Friend*

45. The treatment meted out to Shehryar Afridi was not an isolated case. Attached as Annex-C is a list of MPO orders issued by DC Irfan Memon to incarcerate citizens in exercise of authority under section 3 of MPO. Other than a couple of orders where the apprehension of sectarian violence was the ground for ordering detention, the remaining orders were issued to arrest and jail workers and leaders of PTI on the basis that they were inciting public-at-large to engage in rioting and attack public buildings etc. Annex-D is the list of cases in which DC Irfan Memon's detention orders came before the court and other than two orders (involving individuals involved in sectarian violence) the remaining orders were either set aside for being illegal or petitions were rendered infructuous as the detainees had served out their detention period. The first set of detention orders passed by DC Irfan Memon was set aside by Bench-III of this Court on 16.05.2023. On the very same day, on the request of respondents No.2 and 4, DC Memon issued the first detention order against Shehryar Afridi and also his wife. He issued 56 detention orders after this court declared on 16.05.2023 that his detention orders issued against Asad Umar, Fawad Hussain and Shireen Mazari, on the ground that as PTI leaders they were inciting violence, were illegal.

46. Even if DC Irfan Memon had paid no attention to any previous orders of this Court, by judgment dated 02.06.2023 in ***Farrukh Jamal Afridi* (W.P No. 1639 of 2023),** this Court put respondents No.1 and 4 on notice by holding that, *"the arbitrary*

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exercise of authority on part of the District Magistrate, ICT and the Incharge Police Station Margalla, Islamabad is evident in the case in hand. Their conduct, as observed, is, therefore, deprecated. They have exposed themselves to legal consequences, inter alia, under the laws of discipline, at the option of the petitioners, at the appropriate forums." This Court, in the said judgment, declared that the detention orders were, "*result of arbitrary exercise of jurisdiction, excessive use of lawful authority and issued without applying judicious mind. The said detention orders, therefore, cannot be validated by this Court and are, therefore, declared unlawful."* This Court had also held that the correct course of action was to proceed against Shehryar Afridi in the criminal cases registered against him and produce him before the Judicial Magistrate forthwith and that preventive detention orders could not be passed where an accused was charged with an offence under any criminal law. The legality of the actions of police officers who sought detention order and the legality of the action of DC Irfan Memon in issuing the detention order was thus determined without ambiguity, the conduct of the respondents was deprecated and they were made aware that they could be held liable for their actions. Despite such clear declaration of illegality with regard to their actions and a warning issued to them, they obdurately continued with such illegal conduct.

47. As reflected in the list of detention orders issued by DC Irfan Memon, dozens of orders were issued within the jurisdiction of this Court even after issuance of the judgment in ***Farrukh Jamal Afridi*** on 02.06.2023. Meanwhile, Shehryar Afridi was

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produced before the trial court in the criminal cases registered against him. He was also granted bail in the criminal case. The bail granting order was frustrated by DC Rawalpindi who continued issuing and extending the detention order against Shehryar Afridi to keep him in jail. The rest of the story is evident from the report of the Superintendent Jail Adiala reproduced above. The detention order issued by DC Rawalpindi was challenged before the Lahore High Court. The Lahore High Court also held that the detention order was not sustainable in eyes of law. The Lahore High Court also granted Shehryar Afridi bail before arrest in a criminal case registered against him in the province of Punjab. To undo the effect of Lahore High Court's order dated 03.08.2023 to release Shehryar Afridi, on 04.08.2023 DC Rawalpindi issued another detention order on the basis of a report generated by a police station in Rawalpindi. When the detention order dated 04.08.2023 was challenged before Lahore High Court yet again, it was fairly evident that such repeat action by DC Rawalpindi would attract the ire of the Lahore High Court. It was therefore withdrawn by DC Rawalpindi on 07.08.2023. The resolve of executive authorities to not release Shehryar Afridi, however, stood unaffected by the orders of this Court and Lahore High Court. It was thus that fresh security advisories and apprehensions were manufactured by respondents No. 2 and 4 and detention order dated 08.08.2023 was issued by DC Irfan Memon. This was the most contumacious and audacious in the whole series of acts of DC Irfan Memon, having the effect of annulling the judgments of Lahore High Court and this Court in relation to Shehryar Afridi, which led to the initiation of the present proceedings.

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48. The Respondents claim that the basis for issuance of detention order dated 08.08.2024 was that Shehryar Afridi was inciting public-at-large from jail, indirectly, by inciting those who visited him in jail and by causing them to incite others. At the time of issuance of detention order dated 08.08.2023, Shehryar Afridi had already been in Adiala Jail for a continuous period of 85 days. He remained incarcerated and subject to the provisions of Prison Rules, 1978 ("**Prison Rules**") and Punjab Public Order Detenu Rules, 1979 ("**Detenu Rules**"). Under Chapter 22 of the Prison Rules, any meeting or interview of a prisoner is strictly regulated by the Superintendent Jail. Shehryar Afridi was subject to these rules while he was being held in judicial remand for purposes of the criminal cases registered against him.

49. For the major part of his incarceration however, he was held under MPO and was subject to Detenu Rules, which are even stricter than the Prison Rules in terms of allowing a detenu to meet with friends or family. Under Rule 12 of Detenu Rules, a list of friends or family of a detenu is to be provided to the government, which has the power to permit the detenu to meet with those on the list. Rule 18 provides that, "*all interviews shall take place in the presence of a person not below the rank of sub-inspector of police… and such officer may stop the interview if he considers that the conversation has turned on an undesirable subject and he shall also report the matter to the Superintendent, who may inflict on the detenu any of the punishments enumerated in rule 32*."

50. The Superintendent Jail Adiala has provided a list of visitors (Ex-P10) who were allowed to meet Shehryar Afridi while

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he was held in Adiala Jail from 16.05.2023 through 16.08.2023. During this time his detention orders under MPO were issued and extended and/or reissued by the DCs of Rawalpindi and Islamabad on the basis that he continued to incite public-at-large in a manner that posed a threat to public order and safety. According to the Superintendent Jail's report, Shehryar Afridi was allowed to see visitors 12 times. The visitors included his brother, wife, daughters and son. He was allowed 4 meetings with his counsel and 2 meetings with a friend. His counsel, Sher Afzal Marwat, also filed an affidavit during these proceedings stating that the two times he was allowed to meet Shehryar Afridi in jail, it was in the presence of a jail official. This is consistent with the requirement of Rule 18 of the Detenu Rules.

51. In other words, the handful of family members and friends who were allowed to meet Shehryar Afridi, other than his two counsels, were granted permission by the government and Superintendent Jail, pursuant to the Prison Rules and Detenu Rules. The police official present at such interviews did not report to the Superintendent Jail that Shehryar Afridi was inciting his visitors or encouraging them to incite others. No detention orders were issued against any of the visitors under MPO on the basis that they were inciting public-at-large on Shehryar Afridi's behest. The last interview that Shehryar Afridi was allowed while in jail was on 24.07.2023. After this, DC Rawalpindi issued two detention orders against him on 27.07.2023 and 04.08.2023, on the basis that Shehryar Afridi continued to incite the public.

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52. Thereafter, DC Irfan Memon issued the second detention order on 08.08.2024 on the basis that Shehryar Afridi continued to incite public-at-large from Adiala Jail. In view of the above details and timelines, there was no legal or factual possibility of Shehryar Afridi being able to incite anyone from Adiala Jail. DW-1, DW-2 and Respondents 1, 2 and 4 were asked by the court if they or their sources had identified the names of individuals who had been incited and were in turn inciting public-at-large to cause public disorder on Shehryar Afridi's instruction from jail. They answered in the negative. They were asked if any detention orders were issued against any individuals incited by Mr. Afridi, as they would have been the agents acting to incite disorder while Mr. Afridi remained imprisoned. Their answer was in the negative.

53. There was an argument faintly made by the respondents that Shehryar Afridi would incite public-at-large when he was presented in courts. The learned prosecutor rebutted it by stating that an undertrial prisoner is presented in the court in handcuffs while in police custody and has no ability to incite anyone. This court asked the respondents if there was any evidence of such incitement. They answered in the negative. This court asked the respondents as to the date on which Shehryar Afridi was presented in court in an FIR registered in Islamabad when he might have had an opportunity to speak to those present at the court. They did not have such details. No material was presented before the court to establish when Shehryar Afridi was presented before court and if he incited anyone at such time. The respondents filed a USB, which had

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three videos marked as Ex-D1, D2 and D3. In the first video (Ex-D1), Shehryar Afridi is expressing his anger at the possibility of arrest of Imran Khan, calling it a redline. He is not seen asking others to engage in rioting or to attack public buildings. In the second video (Ex-D2) he seems to be addressing generals and advising them that the laws of Pakistan apply to them just as they apply to Imran Khan. The third video (Ex-D3) is him warning DCs and SHOs to tighten their belts during the campaign for General Election 2024 and is not relevant for the present proceedings. The respondents have placed nothing on record to show Shehryar Afridi encouraging violence or inviting public-at-large or PTI workers to attack public buildings/property etc. It is also not the respondents' case that Mr. Afridi himself or anyone incited by him was found involved in attacking public buildings etc. since his release on the orders of this court on 16.08.2023.

54. The Respondents have contended that the detention order was sought on the basis of (i) a report initiated by Respondent No.4 dated 08.08.2023 (Ex-P-13), (ii) a special report issued by AIG, Special Branch dated 08.08.2023 (Ex-DW1/A), (iii) a report issued by Deputy Director, Intelligence Bureau, dated 08-08-2023 (Ex-DW2/A), and (iv) the recommendation of the District Intelligence Committee in meeting held on 08-08-2023 (Ex-D2). As stated already, these reports were initiated on a day when Shehryar Afridi had been behind bars for a continuous period of 85-days. The request initiated by respondent No.4 stated that public-at-large was causing destruction to public property on the incitement of Shehryar Afridi and was raising slogans against

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security agencies. No evidence was produced during the hearing of ***Shehryar Afridi*** or in the present proceedings of Mr. Afridi either inciting anyone or public-at-large damaging public property and causing breach of peace on 08-08-2023. Further, in terms of the underlying ground of the incitement, the request issued by respondent No.4 is no different from the request he issued on 16-05-2023 (Ex-P12), which was declared by this Court in ***Farrukh Jamal Afridi*** as constituting arbitrary exercise of power designed to inflict hardship on Shehryar Afridi and to deprive him of his right to avail legal remedies. The special report issued by AIG (Ex-D1/A) asserts that Shehryar Afridi was inciting his lawyers and party officials during their meetings in jail. As discussed above, according to the Superintendent Jail's report, no party leaders met Shehryar Afridi during his detention. It is extraordinary that an intelligence report has been issued by AIG Special Branch, which stands in complete contradiction of the facts with regard to the individuals who were allowed to meet Shehryar Afridi and with regard to his ability to incite anyone while being detained at Adiala Jail. The report issued by Deputy Director, Intelligence Bureau (Ex-D2/A) states that Shehryar Afridi is continuing a campaign against judiciary and inciting public to assemble in Islamabad and resort to violent acts through PTI social media team. During his cross-examination, the Deputy Director, IB, (DW-2), (who struggled to read the text of the report he claimed to have authored) also acknowledged that he was aware that at the relevant time Shehryar Afridi was in Adiala Jail. The request initiated by respondent No. 4 and the two reports authored by DW-1 and DW-2 mentioned no individual who was incited by Shehryar

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Afridi or through whom public-at-large was being incited. The reports seem to have been issued with the authors oblivious to the rules that governed meetings between an inmate at Adiala Jail with any visitor, as well as the actual details of individuals who met Shehryar Afridi at Adiala Jail. The content of these reports, if their bona fide were to be assumed, cannot be classified as anything other than conjecture. Notwithstanding the lack of substance and the fantastic claims in such reports, which, to be candid, smacks of either falsehood or sheer incompetence, on the basis of such reports DIC Islamabad recommended that Shehryar Afridi be detained under the MPO. The minutes of DIC Islamabad's meeting record that intelligence agencies opined that if Shehryar Afridi were released, there would be a likelihood of a campaign against state institutions, blockage of roads and attacks on government buildings. Shehryar Afridi was released by the order of this Court on 16-08-2023. His release resulted neither in any public disorder nor in any attacks on public buildings etc. in Islamabad or elsewhere. Subsequent events consequently exposed the lack of substance and merit in the opinion of the DIC as expressed in its meeting on 08.08.2023.

55. Learned counsel for Respondent No. 1 emphasized repeatedly that the District Intelligence Committee comprised heavyweights, such as respondents No.1 and 2, representatives of IB, ISI, MI, Rangers, Special Branch and the 111-Brigade. The only noteworthy aspect of the composition of the DIC, unfortunately, is the poverty of the opinion rendered by it based on conjectural reports issued by the Special Branch and IB, which any reasonable mind with no security and intelligence

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training would be able to identify as utterly lacking of substance. What is also interesting is that while the DIC, Rawalpindi, with composition similar to that of DIC Islamabad, advised DC Rawalpindi that Shehryar Afridi was no longer a threat to public order and safety, the very next day DIC Islamabad came to the opposite conclusion i.e. that Shehryar Afridi had become a threat to public order and safety in Islamabad, some 30 km away from Rawalpindi where he was no longer a threat to public order. The DIC Islamabad was constituted by Chief Commissioner Islamabad by notification dated 10.05.2018. Such committee is neither created under a statute nor is vested with any authority by law. The DIC is merely a means to coordinate action between different agencies that have their own legal mandate in Islamabad. Clause (xx) of the DIC's Terms of Reference (TOR) provides that, *"the committee members shall perform functions and duties within their respective organizational mandate."*

56. The emphasis of learned counsel for respondent No.1 that serving officers of the Armed Forces are included in the DIC is of no avail to the respondents. At the expense of repetition, the power to order preventive detention vests in the government, which is an elected entity that exercises the powers that flow from the Constitution and the laws enacted by the legislature. It is a settled proposition that the power to order preventive detention is to be exercised through the exercise of an independent judicious mind by the provincial government (or by the District Magistrate where such power is duly delegated to him). Respondents No.1, 2 and 4 were repeatedly reminded of the legal requirements re preventive detention (compliance with

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which must precede ordering a detention under the MPO) by over a dozen orders of this court setting aside detention orders solicited by respondents No.2 and 4 and issued by respondent No.1 from May 2023 onward. The DIC's opinion therefore doesn't feature even as a fig leaf to justify the illegal and contumacious conduct of respondents No.1, 2 and 4 in soliciting and issuing detention order dated 08-08-2023.

57. Even otherwise, Article 243 of the Constitution clearly provides that the Federal Government shall have control and command of the Armed Forces. Our system of governance, established under the Constitution, is that of representative democracy. The Armed Forces are a subset of the Executive, as a subordinate of the elected civilian government, which act in aid of civil power under Article 245 of the Constitution when asked to do so by the Federal Government. The emphasis of the learned counsel for Respondent No. 1 on the inclusion of military officers within the DIC that supported the issuance of detention order dated 08.08.2023, as if that is some magic wand that will miraculously get the respondents off the hook, is misconceived to put it politely. Neither the DIC nor any members of the DIC, whether serving in the Armed Forces or in intelligence agencies, had any authority over respondents No.1, 2 and 4. Neither the reports issued by the Special Branch or by Intelligence Bureau nor the opinion of DIC was binding on respondent No.1. In their capacity as the Deputy Commissioner and Senior Superintendent of Police (Operations), respondents No.1 and 2, respectively, were neither assets nor stooges of security agencies. They cannot hide behind members of intelligence or security agencies

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when found liable for dereliction of the duty, illegal conduct and obstruction of justice.

58. It was implicitly argued by the learned counsel for the respondents that DC Irfan Memon and SSP Jameel Zafar are not very high up within the echelons of power and had no option but to oblige higher authorities by issuing the detention orders and/or generating requests for issuance of such orders. This argument does not wash. As held above, in a rule of law system, power and responsibility flow together. It was not intelligence operatives or even ministers, who had authority to generate requests for issuance of detention orders that respondents No.2 and 4 did. And securities agencies had no power to issue the detention orders that respondent No.1 issued. If the demand for issuance of detention orders was illegal, as was repeatedly held by this Court in almost two dozen judgments setting aside detention orders passed by DC Irfan Memon, he was required by law to refuse issuing such orders even if asked to do so by a higher authority.

59. It was held by the Supreme Court in ***Zahid Akhtar Vs. Government of Punjab.*** **(PLD 1995 SC 530)** that, *"good governance is largely dependent on an upright, honest and strong bureaucracy. Therefore, mere submission to the will of superior is not a commendable trait in a bureaucrat… compliance of an illegal or an incompetent direction/order can neither be justified on the plea that it came from a superior authority nor it could be defended on the ground that its non-compliance would have exposed the concerned government servant to the risk of disciplinary action."* This was reiterated by the Supreme Court in

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Human Rights Case No. 4668 of 2006 ***(PLD 2010 SC 759).*** The Supreme Court revisited the issue of illegal orders and how law expects civil servants to deal with such orders in ***Syed Mehmood Akhtar Naqvi Vs. Federation of Pakistan*** ***(PLD 2013 SC 195)***, wherein it was held that, *"civil servants owe their first and foremost allegiance to the law and the constitution. They are not bound to obey orders from superiors which are illegal or are not in accordance with accepted practices and rule-based norms; instead, in such situations, they must record their opinion and, if necessary, dissent."*

60. Respondent No.3 submitted that he was holding additional charge of the office of DPO, in which capacity he forwarded the request for issuance of detention order dated 08-08-2023 generated by respondent No.4 for the consideration of respondent No. 2. There is no material before this Court to establish that respondent No. 3 had previously issued any request seeking the issuance of detention order, which was set aside by this Court. There is also no other evidence that respondent No.3 had remained engaged in a sequence of events to procure detention orders against citizens on the basis that they were inciting public-at-large, and using such orders to defeat the access of citizens to justice or to defeat the orders of courts. This Court finds that respondent No.3 is not liable for contempt of court. The show cause notice issued to him is therefore stands discharged.

61. In relation to respondents No. 1, 2 and 4, this Court has come to the conclusion that they have obstructed the process of this Court as well as the Lahore High Court and disobeyed the

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orders of this Court as well as the Lahore High Court in terms of section 204(2)(a) of the Constitution. They have taken actions with the intent to and which actions have had the effect of obstructing the administration of justice within the meaning of section 2(b) of the Ordinance, and their actions in soliciting and issuing detention orders under MPO, especially order dated 08.08.2023, had the effect of diverting the course of justice within the meaning section 6(1)(c) of the Ordinance read together with Article 204(1)(d) of the Constitution. This Court further finds that the actions of respondents No. 1, 2 and 4 that constitute contempt of court are such that they have caused substantial detriment to the administration of justice and have brought the court system, as a machinery for enforcement of fundamental rights, into ridicule in terms of section 18(1) of the Ordinance.

62. Except for one exception, in the judgments listed under Annex-D by which detention orders solicited by respondents No.2 and 4 and issued by respondent No.1 were set aside, this court had repeatedly held that detention orders were being passed without application of a judicious mind and in a manner that deprived detainees of their fundamental rights guaranteed by the Constitution. This Court in such orders repeatedly chastised respondents No.1 and 2 for relying on intelligence reports that were vague and lacked specificity and emphasized that detention orders under MPO could not be issued on the basis of conjecture. This court expressed its disquiet over detention of citizens without any evidence of them actually been involved in incitement and violence or involvement in acts of

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violence resulting in damage to public property. While declaring the detention orders passed by respondent No.1 illegal, the court noted that they had been issued in breach of law laid down by the Supreme Court in ***Government of West Pakistan Vs. Haider Bux Jatoi*** ***(PLD 1969 SC 210)*** and ***Arshad Ali Khan Vs. Government of the Punjab*** **(1994 SCMR 1532).** The declarations and directions issued by this court were disregarded by respondents No.1, 2 and 4. Not one judgments of this court, setting aside a detention order of Respondent No. 1, was challenged in appeal. The state could have challenged the judgments in an intra-court appeal and then before the Supreme Court, if it was of the view that judges-in-chamber were misapplying the law and keeping those detained under continuing detention was imperative for public order and safety. But this was not done. The executive authorities contrived an alternative plan: produce a fresh security report to have a fresh detention order issued to nullify a court judgment setting aside a previous detention order.

63. Respondents No.1, 2 and 4 disobeyed and disregarded the judgment of Bench-VII of this Court in ***Farrukh Jamal Afridi***. The Court unequivocally noted that respondents No.1 and 4 instead of seeking to arrest the petitioner in already registered criminal cases, "*registered on almost the same allegations, firstly arrested the Petitioners through report No. 02/38 and then managed the issuance of the detention order under the MPO*." It was held in Para 12 that the actions of respondents No.1 and 4 were *"based on mala fide and extraneous concentrations."* The Court could not have been clearer in para 16 when it held that,

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"what the executive authorities, prima facie, are trying to achieve is to curtail, at any cost, the liberty of the petitioner through preventive detention and that too in an arbitrary manner." In Para 17 it was held that, *"the acts and omissions of the respondents are prima facie designed to deprive the petitioner from his legal rights, which are otherwise available to every accused under the law when arrested in criminal cases."* After these damning observations, the Court declared that the arrest and detention of the petitioner was unlawful and a result of arbitrary exercise of authority. The Court specifically deprecated the conduct of respondent No.1 and respondent No.4 and put them on notice that they had *"exposed themselves to legal consequences, inter alia, under the laws of discipline, at the option of the petitioners, at the appropriate forms."* Notwithstanding the clear declarations, directions and strictures passed by this court, respondent No.4 who initiated a request for issuance of a detention order, respondent No.2 who supported and endorsed such request individually and as part of DIC Islamabad, and respondent No.1 who issued the detention order, once again took the exact same action on the exact same basis (i.e. allegations that Shehryar Afridi was inciting public, this time from jail).

64. Respondent No.1 in issuing detention order dated 08.08.2023 also disobeyed the order of Lahore High Court in **Shehryar Afridi Vs. Government of *Pakistan* *(W.P No. 2507 of 2023)*** (Ex-P48). On 03-08-2023, Lahore High Court had suspended the detention order issued by DC Rawalpindi and directed that Shehryar Afridi be released forthwith if not required

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in any criminal case. The detention order dated 08-08-2023 was aimed at frustrating such order by ordering Shehryar Afridi's detention under a fresh detention order issued outside the jurisdiction of Lahore High Court. Further, the actions of respondents No.1, 2 and 4 have also interfered with the process of the trial court seized with the case registered pursuant to FIR No. 623 of 2023. This Court in ***Farrukh Jamal Afridi*** had held the detention of Mr. Afridi under MPO illegal and that he would be deemed to have been arrested in relation to FIR No. 728 of 2022 and 623 of 2023. The allegations against Shehryar Afridi in FIR 623 of 2023, *inter alia*, were that he was liable for offences under sections 148, 149 and 153. The court of competent jurisdiction, after considering the material produced by the state, ordered the release of Shehryar Afridi on bail. The actions of respondents No.1, 2 and 4 in seeking further arrest and detention of Shehryar Afridi on the same charges in relation to which the previous detention order was passed and on the basis of which the trial court had admitted him to bail interfered with the process of the trial court in denying Shehryar Afridi his right to liberty guaranteed under Article 9 of the Constitution.

65. The actions of respondents No.1, 2 and 4 also fall foul of the provisions of Chapter 8 and Chapter 13 of the Cr.P.C., pursuant to which any likely threat to peace can be addressed by seeking the execution of a bond for maintaining peace. And further, any arrest in exercise of authority under provisions of such chapters then creates a remedy for the accused before the Magistrate. By relying on provisions of MPO, as opposed to the provisions of Cr.P.C., respondents No.2 and 4 not only acted in

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breach of provisions of Cr.P.C., but also in breach of the directions of this court in ***Farrukh Jamal Afridi*** with an intent to deny Shehryar Afridi his right to access justice. The repeated issuance of detention orders against Shehryar Afridi confirmed the finding of this Court in ***Farrukh Jamal Afridi*** that the respondents were hell bent on curtailing the liberty of the petitioner at all cost. The timeline of the detention orders as detailed in Annex-E manifests the synchronized manner in which detention orders were timed and issued by DC Irfan Memon and DC Rawalpindi to frustrate the orders of two High Courts that had ordered the release of Shehryar Afridi as the detention orders contravened his fundamental rights under Articles 9, 10A, 14, 15 and 25 of the Constitution and denied him the right to access to justice before courts of law established in terms of Article 175 of the Constitution.

66. The actions of respondents No. 2 and 4 in soliciting the detention orders and that of respondent No. 1 in issuing detention orders had the effect of ensuring that despite release orders issued by the High Court (and/or the trial court hearing a criminal case), the detenu is not released. Respondents 1, 2 and 4 not only acted in a mala fide manner with the intent to frustrate court orders and deny detainees their fundamental rights as well as the right to access justice, but their actions also had the effect of cultivating a view amongst public-at-large that even the constitutional courts of this country cannot protect the fundamental rights of citizens and have them released from the custody of the executive when found to be under illegal detention. The judiciary is the machinery created by the

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Constitution to uphold and enforce fundamental rights. The continuing arrest and detention of individuals that were released by courts cultivated the dangerous and deleterious impression that the constitutional courts of this country are impotent and the remedies they provide are ineffectual in face of the resolve of executive functionaries to continue to detain citizens, who can simply disregard judicial orders without consequence. The actions of respondents No. 1, 2 and 4 have therefore been substantially detrimental to the administration of justice, and have brought not only the law but also our entire justice system into ridicule, within the meaning of section 18(1) of the Ordinance and Article 204(2)(b) of the Constitution.

67. Within criminal law, the concept of liability is rooted in individual autonomy. Individuals as autonomous agents are capable of choosing their acts and omissions. By virtue of possessing human agency, they are also responsible for the normal consequences of their behavior. Law presumes that a person intended the natural consequences of his actions. Andrew Ashworth states in ***Principles of Criminal Law***, *"the general principle is that causation is established if the result would not have occurred but for D's [defendant's] conduct"*[9]. The fault requirement is ordinarily determined by asking whether a defendant intended or was reckless with regard to the consequences of his actions. Within the realm of contempt law, as was explained in ***State vs Imran Ahmad Khan Niazi***, the relevant intent is the intent to undertake an action which would then have its foreseeable consequence. Whether or not the

[9] Pp. 126, Oxford University Press, 1999.

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actions and their natural consequences amount to contempt is then to be considered in terms of the effect of such actions. The test for *mens rea* for purpose of contempt law is thus an objective test, which is satisfied in the present case in relation to Respondents 1, 2 and 4.

68. The actions of respondents No. 1, 2 and 4, that have resulted in these proceedings, are obviously admitted. The relevant intent for our present purpose is whether the actions were undertaken to prevent the release of Shehryar Afridi, whose release had been ordered in bail orders issued by courts of competent jurisdiction in criminal cases, and by the High Court while setting aside detention orders issued under the MPO. The natural consequence of actions of respondents No. 1, 2 and 4 was (i) disobedience of the orders of this Court and Lahore High Court, (ii) interference with the process of trial courts that granted Shehryar Afridi bail in criminal matters (where he has charged with incitement of public and causing provocation with intent to cause a riot, participating in unlawful assembly etc.), (iii) denying Shehryar Afridi his fundamental right to liberty, dignity, due process and access to justice before courts of law, and (iv) cultivating a view amongst litigants as well as ordinary citizens that the legal remedies afforded by the judiciary are ineffectual. This Court is, therefore, satisfied that the necessary ingredients (i.e. *actus reus* and *mens rea*) that comprise the offence of contempt co-exist in the instant case. As stated already, for purposes of establishing the charge of contempt, it is the effect of an act and not the subjective intent of the contemnor that is relevant. The effect of actions of respondents

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No. 1, 2, and 4 was not merely to exhibit blatant and contumacious contempt of court, but such contempt was of a nature that caused substantial detriment to the administration of justice. In drawing the conclusion that this court has, it has not focused on one isolated act or event. It has taken into account the whole range of actions of Respondent Nos.1, 2 and 4 across a few months that have been have been addressed hereinabove.

69. As this Court has come to the conclusion that respondents No. 1, 2 and 4 are guilty of contempt of court which has caused substantial detriment to the administration of justice, they are liable to be punished under section 5(1) of the Ordinance. As has been highlighted in the law discussed earlier in this judgment, the purpose of punishment in a matter of criminal contempt is to uphold public interest in fair and unfettered administration of justice. The guiding principle for purposes of sentencing etc. therefore is to deter conduct that is tantamount to contempt for law and the justice system. Respondents No.1, 2 and 4 not only failed to furnish any defence for their contumacious conduct, but their subsequent behavior creates no mitigating factors for this Court to take a lenient view. The only sense evident on part of the said respondents during these proceedings was that of impunity. There was no sense of penitence or of the damage they inflicted on fellow citizens by seeing and/or ordering their incarceration without cause. At the end of the proceedings this court had to issue warrants for production of Respondent No.1 after his deliberate absence from court, despite his verbal request from exemption from personal appearance having been denied by the court. That Respondent No. 1 issued orders to

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detain over 5 dozen citizens for almost 1000 days, which orders were found to be illegal, cannot without consequence.

70. In view of the principle of proportionality and the settled principle of fairness that higher the authority the greater his responsibility, this court holds that (i) Respondent No. 1, DC Irfan Nawaz Memon, is guilty of contempt of court and shall be punished with six months simple imprisonment and Rs. 100,000 in fine, (ii) Respondent No. 2, SSP Malik Jameel Zafar, is guilty of contempt of court and shall be punished with four months simple imprisonment and Rs. 100,000 in fine, and (iii) Respondent No. 4, SHO Nasir Manzoor, is guilty of contempt of court and shall be punished with two months of simple imprisonment and Rs. 100,000 in fine. Respondent Nos. 1, 2 and 4 will serve their sentence at Adiala Jail. The respondents have a right to appeal this verdict before a divisional bench of this court within 30 days pursuant to section 19 of the Ordinance. As the sentence awarded constitutes a short sentence and the convicted respondents being public servants do not pose a flight risk, the sentence awarded shall stay suspended for a period of 30 days to enable the respondents to avail their remedy of appeal. In suspending this sentence this court has also taken account the fact that Respondent Nos. 1, 2 and 4 occupy public offices and their sudden removal therefrom could adversely affect public convenience. The suspension of this sentence would enable the government to respond to this verdict without causing inconvenience to the citizens. If the right of appeal is not availed or if the sentence is not suspended in appeal, Respondents No.

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1, 2 and 4 will be taken into custody upon expiry of the 30-day period.

71. The amount payable as fine on part of Respondent Nos. 1, 2 and 4, shall be paid in equal parts to each individual against whom a detention order was passed by Respondent No.1 between May 2023 and September 2023, except the individuals against whom detention orders were passed on the basis of their involvement in sectarian violence. Law can never put a value on the loss of liberty or the damage inflicted on a citizen due to illegal incarceration. The payment of fine in lieu of illegal detention can therefore not be compensatory, but is merely a symbolic measure on part of state seeking to right a wrong inflicted on a citizen.

72. Representative democracy is a salient feature of our Constitution. Executive authority is vested in the elected representatives of the people. Article 2A of the Constitution provides that, *"the state shall exercise its authority through the chosen representative of the people."* A civil bureaucracy, that respondents No.1, 2 and 4 belong to, can only exercise such authority as vested in it by law. The Constitution and the law envisage that public officials, as representatives of the executive arm of the state, will exercise state authority as a trust to uphold and enforce the law in the interest of citizens of Pakistan. It cannot be countenanced that public officials would wield the law as a weapon to oppress their fellow citizens and deny them their fundamental rights guaranteed by the Constitution. It can also not be conceived that public officials serving as part of the executive branch of the state would wield their powers to

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undermine and frustrate decisions rendered by the judicial branch of the state. Based on the material before this Court, as discussed above at length, this Court is of the prima facie view that the synchronized issuance of detention orders by Deputy Commissioner Islamabad and those in other parts of the country was part of a deliberate policy measure executed by public officials in control of the executive branch of the state from May 2023 onward, with the object of establishing for the consumption of all and sundry that only state organ capable of allowing citizens access to their fundamental rights was the executive itself. Such policy and actions taken in its pursuit threaten the concept of separation of powers, which is a salient feature of the Constitution. They also threaten the existence of the Judiciary as an independent pillar of the state conferred with the responsibility of adjudicating grievances between the citizens and the state. If such policy of deliberate and calculated disregard for fundamental rights of citizens and rendering dysfunctional the machinery for enforcement of fundamental rights in the form of an independent Judiciary is allowed to persevere, there can be no rule of law in Pakistan. Further, the very existence and utility of the Constitution would come into question. This Court therefore feels that there is need to investigate whether there was an organized policy to use detention orders issued under the MPO to scuttle the fundamental rights of citizens and undermine the Judiciary. Such investigation, to be meaningful, must be undertaken and overseen by the head of the executive branch of the state. Let a copy of this judgment be sent to the Prime Minister of Pakistan, to investigate whether Deputy Commissioners across Pakistan

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who continued to issue detention orders under MPO in breach of the law and Constitution and judicial orders were acting in an organized manner on the basis of illegal orders, and if so, take appropriate remedial action to ensure that the authority of the state to be exercised through chosen representatives of people, continues to be exercised according to the Constitution and the law.

(BABAR SATTAR)
JUDGE

Announced in open Court on ***01.03.2024.***

JUDGE

Approved for reporting

Saeed*

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ANNEXURE-A

THROUGH SPECIAL MESSENGER

MOST IMMEDIATE

OUT TODAY

ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

No. 913/Writ

Dated 15.08.2023

Criminal Original No. 197 of 2023

The State

.....Petitioner

Vs

Irfan Nawaz Memon, District Magistrate, etc.

..... Respondent

From

The Deputy Registrar (Judicial),

Islamabad High Court, Islamabad.

To

Mr. Irfan Nawaz Memon,
District Magistrate,
Islamabad.

Subject: **SHOW CAUSE NOTICE IN TERMS OF ARTICLE 204(2)(a) & (d) OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973 READ TOGETHER WITH SECTIONS 5 AND 6(1)(C) of THE CONTEMPT OF COURT ORDINANCE, 2003.**

WHEREAS, you have passed order dated 08.08.2023 under section 3 of the West Pakistan Maintenance of Public Order Ordinance, 1960 **("MPO")** ordering the detention of *Mr. Shehryar Afridi* under the apprehension that he may disturb public order in Islamabad Capital Territory and have ordered that *Mr. Shehryar Afridi* be kept in Adyala Jail.

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2. **AND WHEREAS**, you had previously passed an order under section 3 of MPO ordering the preventive detention of *Mr. Shehryar Afridi* as well as the wife of *Mr. Shehryar Afridi,* which orders were challenged before this Court and by consolidated order dated 02.06.2023 in *Writ Petition 1639 of 2023 (Farrukh Jamal Afridi Vs. Federation of Pakistan through Secretary Ministry of Interior, etc.),* this Court had declared that the detention orders were illegal and ultra vires the law and the Constitution, and that by passing such orders you had exceeded your authority and acted in an arbitrary fashion that exposed you to disciplinary action.

3. **AND WHEREAS**, *Mr. Shehryar Afridi* was subsequently held under detention in the provinces of Khyber Pakhtunkhwa as well as Punjab under detention orders passed by the relevant District Magistrates in such provinces, which orders were challenged before respective High Courts and the Peshawar High Court as well as the Lahore High Court set aside such orders declaring them to be illegal.

4. **AND WHEREAS**, now after *Mr. Shehryar Afridi* having been kept in preventive detention for almost three months in different provinces and Islamabad Capital Territory which orders have been declared illegal and set aside by one High Court after another, you have yet again passed a detention order in exercise of authority under section 3 of MPO in disregard of the order of this Court passed in Writ Petition No. 1639 of 2023, and it thus appears, prima facie, that in passing order dated 08.08.2023 you have acted on the basis of extraneous considerations with the intent to obstruct the administration of justice and to divert the course of justice rendering yourself liable for Criminal Contempt of Court as defined under section 2(b) read together with section 6(1)(c) of the Contempt of Court Ordinance, 2003 **("Ordinance")** and Article 204 (2)(a) and (d) of the Constitution.

5. **THEREFORE**, you are hereby issued Show Cause Notice (SCN) under section 17 of the Ordinance as to why you should not be held liable for the offence of criminal contempt of court under section 6(1)(c) of the Contempt of Court Ordinance, 2003 read together with Article 204(2)(a) and (d) of the Constitution, punishable under section 5 of the Ordinance.

6. **YOU** are required to file a reply to the SCN within a period of 24 hours and also appear in person before the Court on **16.08.2023** at **09:30 am**.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT TODAY THE 15TH DAY OF AUGUST, 2023 AT ISLAMABAD.

Assistant Registrar (Writ)

FOR DEPUTY REGISTRAR (JUDICIAL)

Enclosed: **Certified Copy of Order dated 15.08.2023.**

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ANNEXURE-B

ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

CRIMINAL ORIGINAL NO. 197-W of 2023

The State

--V/S--

Mr. Irfan Nawaz Memon, District Magistrate & others

CHARGE SHEET

That you, ***Irfan Nawaz Memon*, District Magistrate Islamabad** issued an order in exercise of powers under section 3(1) of the West Pakistan Maintenance of Public Order Ordinance, 1960 **("MPO")** ordering the detention of *Mr. Shehryar Afridi* on 08.08.2023 on the basis that he was inciting general public through the content of his statements and was planning attacks on District Courts and other public buildings in Islamabad.

2. That you had passed a previous order under section 3(1) of MPO on 16.05.2023 ordering the detention of *Mr. Shehryar Afridi* also on the basis that *Mr. Afridi* was inciting the public through his conduct and speeches, and had played a role in attack on private and public buildings, the legality of which was challenged before this Court and was set aside by order dated 02.06.2023 passed in *Writ Petition No. 1639 of 2023* (*Farrukh Jamal Afridi Vs. Federation of Pakistan through Secretary Ministry of Interior, etc.)* in which the following was held:

> *12. …The facts and circumstances of the case in hand and the acts and omissions of the Incharge Police Station Margalla, Islamabad, the District Magistrate, Islamabad and the Superintendent Central Prison, Rawalpindi are, prima facie, inter-linked and raise doubts as to their bonafides. The omission of the District Magistrate to classify the detenu in terms of Punjab Public Detenue Rules, 1979, the arbitrary exercise of authority by the Superintendent Central Prison to keep the petitioner in security ward without any justification, his refusal to handover custody to Islamabad Police pursuant to production order issued by the learned Judicial Magistrate in case FIR No.626/2023 (623), P.S. Indutrial Area (as mentioned by the Incharge Police Station, Margalla in his report), the issuance of detention order under*

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the MPO by the District Magistrate Islamabad without recourse to other legal remedies i.e. causing arrest in the already registered criminal cases and the instrumental role of Incharge Police Station Margalla, are sufficient to hold that all these acts and omissions are based on malafide and for extraneous considerations.

16. … In essence, what the executive authorities, prima facie, are trying to achieve is to curtail, at any cost, the liberty of the petitioner through preventive detention and that too in an arbitrary manner.

18. In the case in hand, the Islamabad Police arrested the petitioner (Shehryar Afridi) but instead of investigating him in the criminal cases, requested the District Magistrate to detain him in preventive custody. The exercise of power and jurisdiction is arbitrary on part of the police officials and mechanical and without applying judicious mind on part of the District Magistrate, ICT.

19(ii) The detention orders issued by the District Magistrate, Islamabad under the MPO against the Petitioners was a result of arbitrary exercise of jurisdiction, excessive use of lawful authority and issued without applying judicious mind.

(vi). The arbitrary exercise of authority on part of the District Magistrate, ICT and the Incharge Police Station Margalla, Islamabad is evident in the case in hand. Their conduct, as observed, is, therefore, deprecated. They have exposed themselves to legal consequences, inter alia, under the laws of discipline, at the option of the Petitioners, at the appropriate forums.

3. That *Mr. Shehryar Afridi* was granted post arrest bail by Judicial Magistrate First Class, Islamabad West in the case registered under FIR No. 623/2023 by order dated 20.06.2023, on the charge that he had participated in an unlawful assembly, damaged public buildings and property and otherwise incited people to engage in violent activities.

4. That you were aware of detention orders passed by District Magistrates in other districts across Punjab ordering the detention of *Mr. Shehryar Afridi* under section 3 of MPO due to which he remained behind bars for over 85 days.

5. That Lahore High Court granted bail to *Mr. Shehryar Afridi* in *Criminal Misc. No. 1888-B/2023* (*Shehryar Afridi Vs. The State)* by order dated

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27.07.2023 in a case where the state alleged that he had made speeches and instigated public for commission of offences.

6. That *Mr. Shehryar Afridi* was detained pursuant to the detention order under section 3 of MPO, which was challenged before the Lahore High Court in *W.P No. 2507 of 2023 (Shehryar Afridi Vs. Government of Punjab, etc.),* and by order dated 03.08.2023 the Lahore High Court had observed that the detention order had been passed by District Magistrate Rawalpindi in a manner that amounted to depriving *Mr. Shehryar Afridi* of his fundamental rights and had suspended the said order and directed that *Mr. Afridi* be released.

7. That on 08.08.2023 the District Magistrate Rawalpindi withdrew the detention order under section 3 of MPO on the recommendation of District Intelligence Committee and determined that *Mr. Afridi* was no longer a threat to public order and required to be detained. That on the very same day i.e. 08.08.2023, you passed fresh detention order under section 3 of MPO ordering the detention of *Mr. Afridi* that has been impugned in *W.P No. 2491 of 2023 (Shehryar Afridi Vs. Federation of Pakistan)*.

8. That you have disregarded the law laid down by the Supreme Court in *Federation of Pakistan Vs. Mrs. Amatul Jalil Khawaja (PLD 2003 SC 442)* wherein the test for passing an order under section 3 of MPO laid down by the Sindh High Court in *Liaquat Ali Vs. Government of Sindh (PLD 1973 Karachi 78)* was reiterated. That you disregarded the judgment of this Court in *W.P No. 1639 of 2023 (Farrukh Jamal Afridi Vs. Federation of Pakistan)* wherein this Court had put SHO P.S Margalla and you on notice that disciplinary proceedings and criminal proceedings could be initiated against you. But in disregard of this Court's judgment and observations you passed the order dated 08.08.2023 under section 3 of MPO.

9. That you have through your conduct and through the act of passing the order dated 08.08.2023 under section 3 of MPO have attempted to obstruct the process of the court and disobeyed the order of the court passed in *W.P No. 1639/2023 (Farrukh Jamal Afridi Vs. Federation of Pakistan)* and have attempted to obstruct the administration of justice, brought the authority of this court and the administration of law into disrepute, and have failed to tell the truth in legal proceedings pending before the court and are liable to committing contempt of court within the meaning of Article 204 of the Constitution read with sections 2(b), 3 and 6

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of the Contempt of Court Ordinance, 2003 **("Ordinance")**, punishable under section 5 of the Ordinance, which is cognizable by this Court.

I, therefore, direct that you be tried by this Court for the above charges.

Certified that the Charge has been framed, read over and explained to the accused in open court. Let his statement be recorded.

(BABAR SATTAR)
JUDGE

Q.1: Have you heard and understood the charge against you?

Ans. Yes

Q.2: Do you plead guilty to the charge?

Ans. No.

Q. No. 3 Do you have any defence?

Ans. Yes, Will be provided if given time.

The charge was read over to Mr. Irfan Nawaz Memom in open court today i.e. on 07th September, 2023.

JUDGE

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ANNEXURE-C

DETENTION ORDERS UNDER MPO, 1960 AND THEIR GROUNDS

	Detinue	MPO Order date	Detention period	DC territory	Grounds for MPO
1-	Shehryar Afridi s/o Haji Nadir Shah Afridi	16-05-2023	15	Islamabad	- Incitement - Threat to law & order
2-	Shehryar Afridi s/o Haji Nadir Shah Afridi	08-08-2023	15	Islamabad	- Incitement - Threat to law & order
3-	Rabia Shehryar Afridi W/O Shehryar Afridi	16.05.2023	15	Islamabad	- Incitement/Instigation - Threat to law & order
4-	Ch. Pervaiz Elahi S/o Manzoor Elahi	01.09.2023	15	Islamabad	- Incitement/Provocation - Public/Private property, State symbols damaged - Threat to law & order
5-	Shandana Gulzar Khan d/o Gulzar Khan	09-08-2023	15	Islamabad	- Provocation/ Incitement - Threat to Public/Private property - Threat to law & order
6-	Sher Sikandar s/o Sikndar Iqbal	10-08-2023	15	Islamabad	- Instigation/Incitement - Threat to law & order - MPO issued after arrest
7-	Haider Mehmood s/o Mehmood Khan	10-08-2023	15	Islamabad	- Incitement - Threat to law & Order - MPO issued after arrest
8-	Balaj Khan s/o Yousuf Khan	10-08-2023	15	Islamabad	- Incitement - Threat to law & order - MPO issued after arrest
9-	Abdul Aziz s/o Shahid Abbasi	10-08-2023	15	Islamabad	- Provocation - Threat to law & order - MPO issued after arrest
10-	Ahmed Naeem s/o Naeem	10-08-	15	Islamabad	- Incitement - Threat to law & order

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	Khan	2023			- MPO issued after arrest
11-	Ismail Khan s/o Zahir Shah	10-08-2023	15	Islamabad	- Instigate - Threat to law & order - MPO issued after arrest
12-	Sanaullah Khan s/o Sardar Khan	10-08-2023	15	Islamabad	- Incitement - Threat to law & order - MPO issued after arrest
13-	Gul Hasnain s/o Noor Alam	10-08-2023	15	Islamabad	- Incitement - Threat to law & order - MPO issued after arrest
14-	Abdal Khan s/o Amin Khan	10-08-2023	15	Islamabad	- Provocation - Threat to law & order - MPO issued after arrest
15-	Hamza Latif s/o Abdul latif	10-08-2023	15	Islamabad	- Instigation/provocation/incitement - Threat to Public/Private property - Threat to law & order - MPO issued after arrest
16-	Muhammad Nadeem s/o M.Sharif	10-08-2023	15	Islamabad	- Instigation - Threat to law & order - MPO issued after arrest
17-	Muhammad Usman Qureshi s/o Zafar Iqbal	10-08-2023	15	Islamabad	- Incitement - Threat to law & order - MPO issued after arrest
18-	Sajjad Munir s/o M. Munir	10-08-2023	15	Islamabad	- Incitement - Threat to law & order - MPO issued after arrest
19-	Saifullah s/o Muhammad Gul	10-08-2023	15	Islamabad	- Provocation - Threat to law & order - MPO issued after arrest
20-	Nouman Faheem s/o M. Yaseen	10-08-2023	15	Islamabad	- Incitement - Threat to Public/Private property - Threat to law & order - MPO issued after arrest

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21-	Pirzada Shahbaz Nasir s/o Nasir Mashkoor Pirzada	10-08-2023	15	Islamabad	- Instigation - Threat to law & order - MPO issued after arrest
22-	Irshad s/o Gul Zaman	10-08-2023	15	Islamabad	- Incitement - Threat to law & order - MPO issued after arrest
23-	Ayaz Khan s/o Abdul Rehman	10-08-2023	15	Islamabad	- Incitement - Threat to law & order - MPO issued after arrest
24-	Raja Qamar Zaman s/o Sher Zaman	10-08-2023	15	Islamabad	- Provocation - Threat to law & order - MPO issued after arrest
25-	Farhad Ullah s/o Gran Mehmood Khan	10-08-2023	15	Islamabad	- Instigation/Provocation/Incitement - Threat to Public/Private property - Threat to law & order - MPO issued after arrest
26-	Muhammad Waqas Ahmed Khan s/o M. Binaras Khan	10-08-2023	15	Islamabad	- Instigation - Threat to law & order - MPO issued after arrest
27-	Khayam Ahmed s/o Aqeel Ahmed Kiani	10-08-2023	15	Islamabad	- Incitement - Threat to law & order - MPO issued after arrest
28-	Saad Jameel Abbasi s/o M. Jameel Abbasi	10-08-2023	15	Islamabad	- Incitement - Threat to law & order - MPO issued after arrest
29-	Khadim Hussain s/o Muhammad Hussain	10-08-2023	15	Islamabad	- Provocation - Threat to law & order - MPO issued after arrest
30-	Akmal Qadeer s/o Qadeer Ahmed	10-08-2023	15	Islamabad	- Incitement - Threat to Public/Private property - Threat to law & order - MPO issued after

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					arrest
31-	Muhammad Nabeel Arif s/o Arif Mehmood	10-08-2023	15	Islamabad	- Instigation - Threat to law & order - MPO issued after arrest
32-	Muhammad Amir s/o Muhammad Aslam Pervez	10-08-2023	15	Islamabad	- Incitement - Threat to law & order - MPO issued after arrest
33-	Qamar Zaman s/o M. Murtaza	10-08-2023	15	Islamabad	- Incitement - Threat to law & order - MPO issued after arrest
34-	Sadaqat Khan s/o Ayaz Khan	10-08-2023	15	Islamabad	- Provocation - Threat to law & order - MPO issued after arrest
35-	Asmat Ullah s/o Gul Zad	10-08-2023	15	Islamabad	- Instigation/Provocation/Incitement - Threat to Public/Private property - Threat to law & order - MPO issued after arrest
36-	Shahid Gul s/o Ghulam Mohi ud Din	10-08-2023	15	Islamabad	- Instigation - Threat to law & order - MPO issued after arrest
37-	Khadim Hussain s/o Abdullah	10-08-2023	15	Islamabad	- Incitement - Threat to law & order - MPO issued after arrest
38-	Munir s/o M.Younis	10-08-2023	15	Islamabad	- Incitement - Threat to law & order - MPO issued after arrest
39-	Mohsin Raja s/o Altaf Hussain	10-08-2023	15	Islamabad	- Provocation - Threat to law & order - MPO issued after arrest
40-	Ismaeel s/o Rashid	10-08-2023	15	Islamabad	- Incitement - Threat to Public/Private property - Threat to law & order - MPO issued after arrest

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41-	Allah Muhammad s/o Mastana Gul	10-08-2023	15	Islamabad	- Instigation - Threat to law & order - MPO issued after arrest
42-	Khalid Hussain s/o Ghulam Rasool	10-08-2023	15	Islamabad	- Incitement - Threat to law & order - MPO issued after arrest
43-	Akhtar Mehmood khan s/o Khan Muhammad	10-08-2023	15	Islamabad	- Incitement - Threat to law & order - MPO issued after arrest
44-	Faqeer Muhammad s/o M. Sikandar Khan	13-08-2023	15	Islamabad	- Incitement - Threat to law & order
45-	Syed Junaid Shah s/o Niaz Hussain Shah	13-08-2023	15	Islamabad	- Incitement - Threat to law & order
46-	Ghulam Nabi s/o Ghulam Rasool	13-08-2023	15	Islamabad	- Provocation - Public/Private property damaged - Threat to law & order
47-	M. Rafi Afridi s/o Fazal Ghani	13-08-2023	15	Islamabad	- Incitement - Nominated in FIRs - Threat to law & order
48-	Raja Faisal Nadeem s/o Raja Abdul Rasheed	07-7-2023	15	Islamabad	- Incitement - Threat to law & order
49-	Malik Pervaiz s/o Ghulam Muhammad	07-7-2023	15	Islamabad	- Instigation - Threat to law & order
50-	Afzal Khan Mandokhel s/o Sardar Abdul Salam	07-7-2023	15	Islamabad	- Incitement - Threat to law & order
51-	Riaz Ahmed s/o Ali Muhammad	20-07-2023	10	Islamabad	- Apprehension of Sectarian Violence - NOC for religious

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					gathering not obtained - Threat to law & order
52-	Saqlain Abbas s/o Riaz Ahmed	20-07-2023	10	Islamabad	- Apprehension of Sectarian Violence - NOC for religious gathering not obtained - Threat to law & order
53-	Zulfiqar Ali Raja s/o Adalat Hussain	21-07-2023	9	Islamabad	- Apprehension of Sectarian Violence - NOC for religious gathering not obtained - Threat to law & order
53(A)	Zulfiqar Ali Raja s/o Adalat Hussain	30-07-2023	5	Islamabad	- Apprehension of Sectarian Violence - NOC for religious gathering not obtained - Nominated in FIRs - Threat to law & order
54-	Israr Hussain s/o Altaf Hussain	21-07-2023	9	Islamabad	- Apprehension of Sectarian Violence - NOC for religious gathering not obtained - Threat to law & order
55-	Syed Waqar Ali Shah s/o Sardar Ali Shah	23-07-2023	10	Islamabad	- Apprehension of Sectarian Violence - Religious Miscreant - Organizes religious gatherings without NOC - Nominated in FIRs - Threat to law & order
56-	Raja Tahir Nawaz s/o Haq Nawaz	13-06-2023	15	Islamabad	- Instigation/Incitement - Public/Private property damaged - Threat to law & order
57-	Asad Umar s/o Ghulam Umer	10-05-2023	15	Islamabad	- Incitement - Public/Private property damaged - Threat to law & order
58-	Fawad Ahmed Hussain Chaudhry	10-05-2023	15	Islamabad	- Incitement - Public/Private property damaged - Threat to law & order

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59-	Ijaz Ahmad Chaudhry	11-05-2023	15	Islamabad	- Incitement - Threat to law & order
60-	Musarrat Jamshed Cheema	11-05-2023	15	Islamabad	- Incitement - Threat to law & order
61-	Jamshed Iqbal Cheema	11-05-2023	15	Islamabad	- Incitement - Threat to life and property - Threat to law & order
62-	Shah Mehmood Qureshi	11-05-2023	15	Islamabad	- Incitement/Endorsed Violence - Threat to Civil/Military Establishments - Threat to law & order
63-	Falak Naz Chitrali	11-05-2023	15	Islamabad	- Incitement - Threat to public lives - Threat to law & order
64-	Maleeka Bokhari	11-05-2023	15	Islamabad	- Instigation - Threat to law & order
65-	Ajmal Sabir Raja	11-05-2023	15	Islamabad	- Incitement - Public/Private property damaged - Threat to law & order
66-	Ali Muhammad Khan S/o Wali Muhammad Khan	11-05-2023	15	Islamabad	- Incitement - Public/Private property damaged - Threat to law & order
67-	Shireen Mahrun Nisa Mazari D/o Ashiq Muhammad Khan Mazari	11-05-2023	15	Islamabad	- Provocation - Public/Private property damaged - Threat to law & order
68-	Jamal Akbar Ansari S/o M. Akbar Ansari	11-05-2023	15	Islamabad	- Instigation/Incitement - Threat to law & order
69-	Saifullah Sarwar Khan Niazi S/o Imran Ahsan Khan Niazi	11-05-2023	15	Islamabad	- Incitement - Public/Private property damaged - Threat to law & order

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70-	Ch. Ishfaq Meharban S/o Ch. Meharban	29-05-2023	15	Islamabad	- Incitement - Public/Private property damaged - Threat to law & order
Total Number of Days			1,028/-days		

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ANNEXURE-D

DETAILS OF MPO ORDERS CHALLENGED IN ISLAMABAD HIGH COURT

Sr. No	Detenu	Date of Order	Number of days for detention	Case Title & Number of MPOs Challenged in Islamabad High Court
1	Shehryar Afridi s/o Haji Nadir Shah Afridi	08-08-2023	15	W.P. 2491 of 2023 Shehryar Afridi v. FOP through Secretary Ministry of Interior & others ***(allowed)*** Following Petitions were also decided along with instant petition through consolidated judgement dated: 29.12.2023 (i) W.P No. 2490 of 2023 "Sabahat Gulzar Khan Vs. Inspector General of Police" ***(allowed)*** (ii) W.P No. 2513 of 2023 "Sabahat Gulzar Khan Vs. Deputy Commissioner, Islamabad" ***(Became Infructuous)*** (iii) W.P No. 2536 of 2023 "Akseer Ahmed Vs. The State, etc." (iv) W.P No. 2833 of 2023 "Ch. Muhammad Junaid Akhtar Vs. Federation of Pakistan, etc." ***(allowed)*** (v) W.P No. 3159 of 2023 "Malik Bashir Ahmed Vs. Federation of Pakistan, etc." ***(allowed)*** ***Verdict: Petitions allowed***
2	Shandana Gulzar Khan d/o Gulzar Khan	09-08-2023	15	
3	Shehryar Afridi s/o Haji Nadir Shah Afridi	16-05-2023	15	W.P 1639 /2023 Farrukh Jamal Afridi v. Fed. of Pak., through Secretary Ministry of Interior & 4 others Following Petitions/Cases were decided in the above petition through consolidated judgement dated 02.06.2023: (i) W.P. No.1639/2023 "Farrukh Jamal Afridi v. Fed. of Pak. through Sec., Ministry of Interior & 05 others. (ii) W.P. No.1681/2023 "Shehryar Afridi v. Fed. of Pak. through Secretary
4	Rabia Shehryar Afridi W/O Shehryar Afridi	16.05.2023	15	

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				Ministry of Interior & 5 others" (iii) W.P. No.1775/2023 "Shehryar Afridi v. Chief Commissioner, Islamabad & another" (iv) Crl. Org. No.149/2023 "Farrukh Jamal Afridi v. Dr Akbar Nasir Khan, Inspector General Islamabad & 2 others" ***Verdict: Petition allowed***
5	Akhtar Mehmood Khan s/o Khan Muhammad	10-08-2023	15	W.P 2534/2023 Sajeel Akhtar v. The State through Advocate General etc. ***Verdict: Infructuous as MPO order Withdrawn***
6	Faqeer Muhammad s/o M. Sikandar Khan	13-08-2023	15	W.P 2536/2023 Akseer Ahmed v. The State through Advocate General, etc. Along with W.P. 2491 of 2023 ***Verdict: Petitions Allowed. MPO orders set aside***
7	Syed Junaid Shah s/o Niaz Hussain Shah	13-08-2023	15	W.P 2530/2023 Niaz Hussain Shah v. The State Along with W.P 2528/2023 ***Verdict: Petitions Allowed. MPO orders set aside***
8	Ghulam Nabi s/o Ghulam Rasool	13-08-2023	15	W.P 2528/2023 Ilyas Hussain v. The State through Advocate General etc. ***Verdict: Petitions Allowed. MPO orders set aside***
9	M. Rafi Afridi s/o Fazal Ghani	13-08-2023	15	W.P No.2531/2023 Syed Ghani v. The State ***Verdict: Petition Allowed***
10	Malik Pervaiz s/o Ghulam Muhammad	07-7-2023	15	W.P 2200/2023 Javed Iqbal v. The State through Advocate General etc. ***Verdict: Petitions Allowed. MPO orders set aside***
11	Afzal Khan Mandokhel s/o Sardar	07-7-2023	15	W.P 2199/2023 Sardar Feroz Khan Mandokhel v. The State

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	Abdul Salam			through Advocate General etc. ***Verdict: Petitions Allowed. MPO orders set aside***
12	Zulfiqar Ali Raja s/o Adalat Hussain	21-07-2023 and 30-07-2023	9 days and 5 days respectively	W.P 2351/ 2023 Zulfiqar Ali Raja v. Addl. District Magistrate, ICT, Islamabad etc. ***[This Petition involved apprehension of sectarian violence, backed by material on record]*** ***Verdict: Petitions dismissed*** W.P 2332/2023 Aqeel Ahmed v. Addl. District Magistrate, ICT, Islamabad etc. ***Verdict: Dismissed as Withdrawn***
13	Raja Tahir Nawaz s/o Haq Nawaz	13-06-2023	15	W.P 1969/2023 Zahid Nawaz v. FOP etc. ***Verdict: Petitions Allowed. MPO orders set aside***
14	Asad Umar s/o Ghulam Umer	10-05-2023	15	W.P 1588/2023 Asad Umar v. The State etc. ***Verdict: Petitions Allowed. MPO orders set aside***
15	Fawad Ahmed Hussain Chaudhry	10-05-2023	15	W.P 1569/2023 Chaudry Fawad Hussain etc. v. FOP etc. ***Verdict: Petitions Allowed. MPO orders set aside***
16	Ijaz Ahmad Chaudhry	11-05-2023	15	W.P 1592/2023 Saad Arif v. Federation of Pakistan etc ***Verdict: Petitions Allowed. MPO orders set aside***
17	Musarrat Jamshed Cheema	11-05-2023	15	W.P 1591/2023 Tanveer Ahmad v. Federation of Pakistan
18	Jamshed Iqbal	11-05-2023	15	***Verdict: Petitions Allowed. MPO orders set aside***

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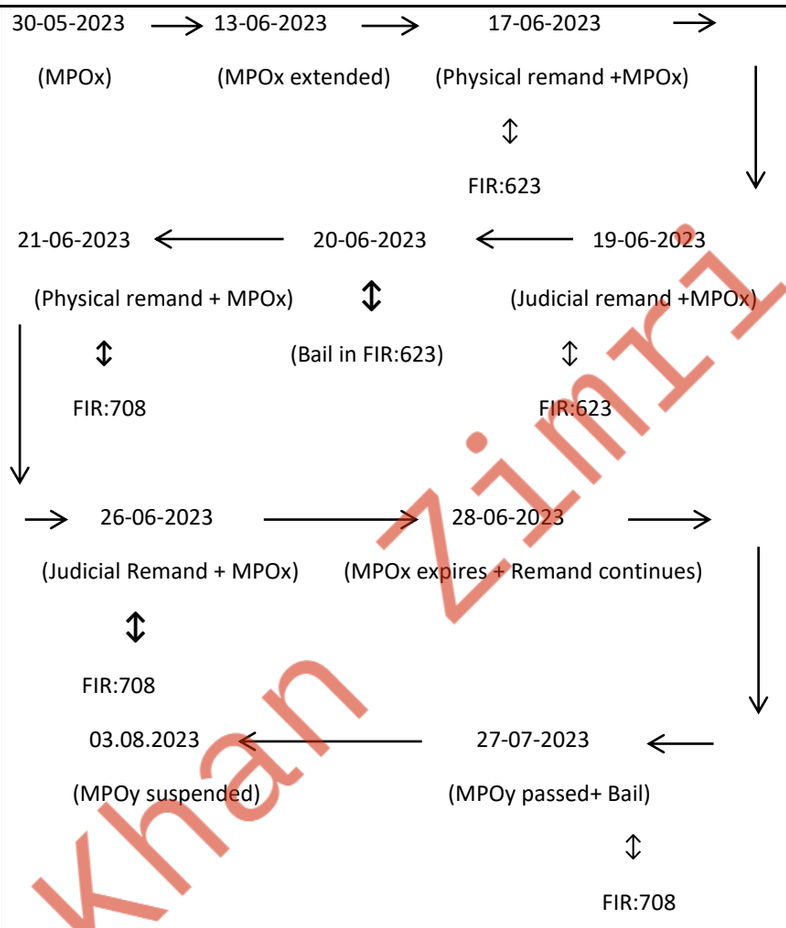
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	Cheema			
19	Shah Mehmood Qureshi	11-05-2023	15	W.P 1593/2023 Ahmaad Nawaz Khan v. Federation of Pakistan etc. ***Verdict: Petitions Allowed. MPO orders set aside***
20	Falak Naz Chitrali	11-05-2023	15	W.P 1610/2023 Ahmad Hassan Shah v. FOP etc. ***Verdict: Petitions Allowed. MPO orders set aside***
21	Maleeka Bokhari	11-05-2023	15	W.P 1594/2023 Asad Haider Khan v. Federation of Pakistan etc ***Verdict: Petitions Allowed. MPO orders set aside***
22	Ajmal Sabir Raja	11-05-2023	15	W.P 1623/2023 Haroon Ajmal Raja v. FOP ***Verdict: Allowed***
23	Ali Muhammad Khan s/o Wali Muhammad Khan	11-05-2023	15	W.P 1619/2023 Ghazanfar Ali v. FOP ***Verdict: Petitions Allowed. MPO orders set aside***
24	Shireen Mahrun Nisa Mazari d/o Ashiq Muhammad Khan Mazari	11-05-2023	15	W.P 1597/2023 Ms. Imaan Zainab Hazir v. FOP etc. ***Verdict: Petitions Allowed. MPO orders set aside***
25	Jamal Akbar Ansari s/o M. Akbar Ansari	11-05-2023	15	W.P 1611 / 2023 Mst. Uzma Jamal Ansari v. FOP etc. ***Verdict: Petitions Allowed. MPO orders set aside***
26	Ch. Ishfaq Meharban s/o Ch. Meharban	29-05-2023	15	W.P 1806/2023 Ishfaq Meherban- VS -The State etc. ***Verdict: Petitions Allowed. MPO orders set aside***

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ANNEXURE-E
SHEHRYAR AFRIDI DETENTION TIMELINE

	Detention/ release date	Detained or Released	Instrument
1-	16-05-2023	Detained	MPO dated 16-05-2023
2-	30-05-2023	Release ordered	MPO dated 16-05-2023 expires
3-	30-05-2023 (Detenue remains imprisoned due to various instruments as mentioned in the last column from 30-05-2023 to 03-08-2023)	Detained MPO dated 30-05-2023 **("MPOx")** MPO dated 27-07-2023 **("MPOy")** FIR 623 is dated 10-05-2023 FIR 708 is dated 09-05-2023	
4-	03-08-2023	Release ordered	Detention order dated 27-07-2023 suspended by the Lahore High Court (Rawalpindi bench)
5-	04-08-2023	Detained	MPO order passed by District Magistrate, Rawalpindi, dated 04-08-2023
6-	08-08-2023	Release ordered	Withdrawal of detention order dated 04-08-2023 by District Magistrate, Rawalpindi
7-	09-08-2023	Detained	MPO order dated 08-08-2023 by District Magistrate, Islamabad
8-	16-08-2023	Released	Released after orders from the Islamabad High Court in W.P 2491/2023

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