

Form No.HCJD/C-121
ORDER SHEET

**LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT**

Case No. W. P. No.33181 of 2023

Rukhsana Bibi

Vs. Federation of Pakistan, etc.

S.No. of order/ proceedings	Date of order/ Proceeding	Order with signature of Judge, and that of parties of counsel, where necessary
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23.05.2023 Mian Shahid Mehmood, Advocate for the petitioner.
Mr. Muhammad Mansoor Ali Sial, Assistant Attorney General for Pakistan.
Mian Shafiq Ahmed, Advocate for the complainant.

The petitioner has invoked the constitutional jurisdiction of this Court for issuance of a direction to respondents No.2 and 3 to remove her husband's name from the blacklist so that he may be able to renew his passport and return to Pakistan to face trial in the criminal case registered against him.

2. The petitioner is wife of Shahid Mahmood against whom a case FIR No.347 dated 11.06.2018 under section 22 of Emigration Ordinance, 1979 at Police Station FIA, Faisalabad was registered for having received an amount of Rs.7,960,438/- and five passports for sending the complainant, his two relatives and two friends to Canada for employment purpose but did not fulfill his commitment. During pendency of trial of the said criminal case, husband of the petitioner left Pakistan and his name was placed in the blacklist, hence, this petition.

3. Learned counsel for the petitioner contends that period of passport of the petitioner's husband has expired on 11.10.2021 and he is in urgent need of renewal of his passport. Maintains that the

petitioner's husband wants to face trial in the case registered against him and in case his name is not removed from the blacklist he will suffer an irreparable loss. Further contends that the Constitution of the Islamic Republic of Pakistan, 1973 guarantees protection of life, liberty and fundamental rights of every citizen but the same have been denied to the petitioner's husband.

4. Conversely, learned Law Officer as well as learned counsel for the complainant contends that name of the petitioner's husband has rightly been placed in the blacklist as he is fugitive from law. Further contends that there is an apprehension that after removal of his name and renewal of passport the petitioner's husband would again proceed abroad.

5. Heard. Record perused.

6. The name of petitioner's husband has been placed in the blacklist for having been involved in a criminal case under section 22 of Emigration Ordinance, 1979. Clause 51 of the Passport & Visa Manual, 2006 provides procedure for blacklisting, which is reproduced hereunder: -

"51. Procedure for blacklisting

(A) *If any Passport Issuing Authority finds that a certain citizen of Pakistan is fit to be blacklisted for passport facilities, it would refer the matter to the Director General, Immigration and Passports giving such person's full particulars and reasons for his blacklisting. The Director General, Immigration and Passports will obtain the orders of the Ministry of Interior in the matter, where necessary.*

(B) *Federal Government is vested with powers to regulate the departure from Pakistan and visit abroad of its citizens under the provisions of "Passport Act, 1974" and "The Exit from Pakistan (Control) Ordinance, 1981." In order to*

check the exit of individuals from Pakistan, Black List / Exit Control List are maintained. The inclusion into and deletion from Exit Control List is the sole prerogative of the Ministry of interior. Brief description of Black List categories 'A' & 'B' is as under: -

(i) **Category 'A':** Under this category the names of those persons are placed who are believed to be involved in anti State activities or whose visit to foreign countries is considered to be prejudicial to the State interest, or, whose visit abroad is banned from security point of view. The names in this list are included or removed by the Ministry of Interior.

(ii) **Category 'B':** Under this category the names of those persons are placed who are involved in the offences punishable under section 6 of the Passport Act 1974 or those who were refused passport under Para 21 of Passport & Visa Manual. The names of persons are also included in this list on the recommendations of government agencies / departments as well as those who are deported / repatriated from abroad. Director General, Immigration and Passports is competent to place and remove names in this list.

(C) Normal period of retaining a person on the blacklist is five years. However, a person can be kept on blacklist even beyond five years provided the referring department recommends for further retention having full justification in this regard. The competent authority viz Additional Secretary, Ministry of Interior in case of category 'A' and Director General, Immigration and Passports in case of category 'B' may consider deletion of any person from such list on his appeal even before the normal period of five years. Both the blacklist categories 'A' & 'B' are subject to periodical review in consultation with the relevant agency / department on

whose instance the individual was blacklisted.

(D) *The above lists reviewed periodically by the Review Committees category 'A' & 'B'."*

The perusal of above provisions of law clearly manifests that the same can only be invoked if any citizen of Pakistan wants to leave the country but this is not the case in the matter in hand where the petitioner's husband is desirous of entering Pakistan. Additionally, the aforementioned authority is subject to certain conditions and proceedings which have not been pleaded to have been satisfied in this case. Even otherwise, it is quite astonishing that on one hand name of the petitioner's husband has been placed in the blacklist due to his involvement in a criminal case who left Pakistan to avoid trial in the said case whereas on the other hand his entry in Pakistan has been refused.

7. Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973 guarantees that it is inalienable right of every citizen to enjoy the protection of law and to be treated in accordance with law whereas Article 9 ibid assures that no person be deprived of life or liberty except in accordance with law and Article 15 ibid gives every citizen the right to remain in, enter and move freely throughout Pakistan and to reside and settle in any part thereof subject to any reasonable restriction imposed by law in the public interest.

8. There is no cavil with the proposition that being a fugitive from law, the accused loses some of his rights such as right to audience as well as right to have an Advocate to defend him, as held in the case of Hayat Bakhsh and others vs. The State

(PLD 1981 Supreme Court 265). However, loss of such rights is till such time the accused surrenders himself before the Court, as held in the case of "Lahore High Court Bar Association and others vs. General (Retd.) Pervez Musharraf and others (2019 SCMR 1029)". The right to return to the homeland to surrender before the Court or the concerned law enforcement agency to face proceedings in accordance with law is something a citizen is not deprived of owing to his abscondance. Reliance in this regard is placed on the case of Pakistan Muslim League (N) through Khawaja Muhammad Asif, M.N.A. and others vs. Federation of Pakistan through Secretary Ministry of Interior and others (PLD 2007 Supreme Court 642).

9. In the circumstances mentioned above, name of petitioner's husband has wrongly been placed in the blacklist, which is accordingly ordered to be removed. However, since the petitioner's husband is involved in a criminal case for allegedly having fraudulently received a huge amount for sending the complainant and others abroad, therefore, he has to face trial in the same. This issue seeks resolution from Clause 33 of the Passport and Visa Manual 2006, which is reproduced hereunder for ready reference:-

“33. *Emergency Passport for repatriation from abroad.*

(1) *Single sheet emergency passports valid only for return to Pakistan, withholding the passport of such persons, may be issued by Pakistan Missions abroad to:-*

(a) *Undesirable Pakistan nationals residing abroad, such as forgers/racketeers in*

passports, smugglers, and human traffickers etc.

(b) *Persons who fall destitute abroad.*

(c) *Persons to be deported by foreign governments.*

An emergency passport is meant only to enable its holder to return to Pakistan. In no circumstances should it be endorsed for any other country.

(2) *In cases where verification of Pakistan nationality is necessary before the repatriation of the above mentioned individuals, references for this purpose should be made by the concerned Pakistan Mission abroad direct to the District Police Officer of the districts in Pakistan, to which they belong and copies of such references should be endorsed to the Ministry of Interior, the Director General, Immigration and Passports and the concerned Provincial Government. The District Police Officer will similarly send verification reports direct to the referring missions endorsing copies of the same to the above mentioned authorities. The District Police Officer will, however, refer doubtful cases to the Director General, Immigration and Passports, under intimation to all concerned for decision. The latter will take a decision in the matter where necessary in consultation with the Ministry of Interior and convey it to the missions concerned, under intimation to the Ministry of Interior, the Provincial Government and the District Police Officer concerned.*

(3)

(4)

(5)

(6)

(7)”

10. For the foregoing reasons, respondents are directed to issue single sheet emergency passport to the petitioner's husband for fifteen days only under Clause 33 of Passport and Visa Manual 2006 so that he may be able to return to Pakistan and face trial in the criminal case registered against

him. With this arrangement, this writ petition stands **disposed of.**

(RAHEEL KAMRAN)
JUDGE

APPROVED FOR REPORTING

JUDGE

Saeed Akhtar