

HCJDA-38

JUDGMENT SHEET

IN THE LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

Intra Court Appeal No. 71740 of 2023

Faraz Iqbal Jamil and another

versus

The Federation of Pakistan and 04 others

JUDGMENT

<i>Date of hearing</i>	25.04.2024
<i>Appellants by</i>	<i>Mr. Muhammad Azhar Siddique, Ms. Salma Riaz and Ms. Amna Liaqat, learned Advocates.</i>
<i>Respondents by</i>	<i>Mr. Muhammad Mansoor Ali Sial, learned Assistant Attorney General for Pakistan.</i> <i>Mr. Muhammad Nawaz Shah, learned Additional Advocate General, Punjab.</i>

SULTAN TANVIR AHMAD, J:—In Constitution Petition No. 45436 of 2023 direction was given to the Secretary Ministry of Interior, Government of Pakistan, Islamabad to consider the case of the appellants and decide it in fair manners within 15 days. As a result thereof, request for removing names of the appellants from Passport Control List (**PCL**) was considered but the same was declined with the direction to retain the names of the appellants on PCL, vide order No. 12/230/2023-ECL dated 17.10.2023. This order of the Secretary Ministry of Interior, Government of Pakistan, Islamabad was called into question through Constitution Petition No. 69901 of 2023, however, it

could not find favour and the petition was dismissed vide order dated 23.10.2023, which has been assailed through the present Intra Court Appeal, filed under section 3(2) of the law Reform Ordinance, 1972 (the '**Ordinance**').

2. We have heard the arguments of the learned counsel for the parties and perused the record.

3. In pursuance of order dated 06.11.2023, the Home Department / respondent No. 5 and Anti-Corruption Establishment / respondent No. 4 have filed reports. Home Department has referred to letter dated 26.06.2023 of Anti-Corruption Establishment (the '**Establishment**') and FIR No. 11 / 2023 registered under sections 161, 162 and 34 of Pakistan Penal Code, 1860 read with section 5(2) of the Prevention of Corruption Act, 1947 at Police Station DACE Punjab, Lahore (the '**FIR**') lodged by the *Establishment*, against Farhat Shahzadi alias Farrah Gogi, Usman Buzdar, Tahir Khursheed, Ahmad Aziz Tarar, Saleha Saeed, Usman Moazzam, Sohail Khawaja, Muhammad Asif and Ibrahim Maneka. Admittedly, the *FIR* is against the mother of the appellants and other accused persons. The appellants are not even nominated in the *FIR*.

4. The Federal Government is vested with the powers to regulate the departure from and entry within Pakistan under rule 22 of the Passport Rules, 2021 (the '**Passport Rules**'). Sub rule 2 of the same requires the Division concerned and Directorate General of Immigration and Passport to maintain PCL for placement of names in category "A" & "B" with the following description:-

(a) *under category 'A', the names of those persons are placed who are 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 shall be placed and removed by the Additional Secretary of the Division concerned;

(b) under category 'B', the names of those persons are placed who have been refused passport under these rules other than anti-state activities specified in clause (a). The names of persons included in the category under this clause may also be placed on the recommendations of government agencies or departments;

Category 'A' admits names of persons involved in anti-state activities. No allegation against the appellants for anti-state activities is leveled by the respondents. Under category 'B', list of the names of those who have been refused passport but not falling in category 'A' is to be maintained. It is not the case of the respondents that the appellants were ever refused passports under the *Passport Rules*.

5. The Supreme Court of Pakistan in "The Federal Government through Secretary Interior, Government of Pakistan versus Ms. Ayyan Ali and others" (2017 SCMR 1179) observed that liberty of a citizen cannot be curtailed on the basis mere registration of a criminal case. The following paragraph of the said judgment is highly relevant:-

"13. Reverting to the third Notification/Memorandum it is crucial to note that like the earlier two Notifications/Memorandums, the third Notification/Memorandum was issued purportedly for the reasons which do not conform to the criteria as laid down in the relevant rules and the exit control policy. It was not only in the case of Wajid Shamsul Hassan v. Federation of Pakistan through Secretary Ministry of Interior, Islamabad

(PLD 1997 Lahore 617), where it was held that the liberty of a citizen cannot be curtailed by mere registering a criminal case, and that mere registration of FIR would not be a ground for depriving a citizen of the exercise of his constitutional right and further that registration of a criminal case has no nexus with and is extraneous to the object of the Exit from Pakistan (Control) Ordinance 1981, but even in the case of respondent No.1, in relation to the second Notification/Memorandum, this Court, while dismissing the petitioner's petition for leave, through judgment dated 13.4.2016, has held as follows:-

“5. Respondent No.1, no doubt, has been charged in a case mentioned above which is still pending adjudication in the competent Court of law. But mere pendency of a criminal case cannot furnish a justification for prohibiting her movement. It has never been the case of the petitioners that the respondent is involved in any of the cases listed in Rule 2 of the Exit from Pakistan (Control) Rules, 2010 in general or Rule 2(1)(b) in particular, inasmuch as she has not been charged to have embezzled a large government's fraud or committed institutional fraud.”

However, as noted above the third Notification/Memorandum was issued on the ground clearly not falling within the parameters as prescribed by the relevant law, rules, and the above unequivocal pronouncement of this Court.”

6. This Court in case titled “Sheikh Shan Ilahi versus Federation of Pakistan through Secretary Interior, Ministry of Interior, Islamabad and 6 others” (PLD 2023 Lahore 359) held that the travel abroad though not expressly guaranteed by Article 15 of the Constitution of the Islamic Republic of Pakistan, 1973 (the ‘**Constitution**’) or the provision in Chapter 1, Part II but the Courts can invoke

Articles 4 and 9 of the *Constitution* while dealing with such rights. The following extract will be beneficial to be reproduced:-

“The right to travel abroad is not expressly guaranteed by Article 15 or any other provision in Chapter 1 of Part II of the Constitution but our courts have invoked Article 4 (right to be treated in accordance with law) and Article 9 (right to life and liberty) to support it. In Government of Pakistan and another v. Dada Amir Haider Khan (PLD 1987 SC 504) the Hon’ble Supreme Court held:

“Article 15 guarantees to every citizen the right to remain in, enter and move freely throughout Pakistan. But his right to enter the country if he is leaving it or has gone abroad and his right to step out and step in the country are subject to reasonable restrictions imposed by law in the public interest. By reading the provisions of Articles 4, 9 and 15, it is manifest that every citizen has the liberty to go abroad and to re-enter Pakistan unless he is precluded from doing so under some law made in the public interest ... Moreover, a citizen’s right to travel abroad is an important aspect of the citizen’s liberty and it closely related to the rights of free speech and association. As nations in the world become politically and commercially more dependent upon each other and foreign policy decisions have come to have greater impact upon the lives of citizens, the right to travel has become correspondingly more important.”

7. In “Mian Muhammad Shahbaz Sharif versus Federation of Pakistan and 4 others” (2019 P Cr. L J 1123), a learned Division Bench of this Court, while setting-aside an order placing name of an accused on ECL merely on the basis of pendency of an inquiry or investigation with

National Accountability Bureau Authorities, has observed as follows:-

*“....Mere pendency of an inquiry with the “NAB” does not provide sufficient material or justification for keeping the name of the petitioner in the “ECL”. Apparently, no plausible reasons have been assigned by the respondents while placing the name of petitioner on “ECL”. It appears that the impugned order is passed in haste and in mechanical manner on the instructions of “NAB”. **In recent past, there is a consistent view of this Court as well as learned High Courts of other provinces that mere pendency of an inquiry or investigation would be no ground for justifying the placement of name of an accused on “ECL”. It is well entrenched principle of law that merely pendency of an inquiry or investigation with the “NAB” Authorities, which seemed to be going on for a considerable long time, would not be a ground for depriving a citizen of his constitutional right of living as a free citizen of Pakistan.** We see no reasonable ground on the basis of which petitioner could be deprived of travelling abroad. The view formed hereinabove is further fortified by a judgment of this Court in case “Sohail Latif and 2 others v. Federation of Pakistan through Secretary, Ministry of Interior Government of Pakistan, Islamabad and 2 others” (PLD 2008 Lahore 341). In “Muhammad Khyzer Yousuf Dada v. Federation of Pakistan through Secretary, Ministry of Interior and 5 others” (PLD 2011 Karachi 546) learned Sindh High Court, while dealing with the similar proposition, observed as under:-*

“Keeping in view the rationale laid down in the above reported cases, there is no material on record to show that there is any pending case against the petitioner in any Court and merely investigation by the NAB Authorities, which seems to be going on for a considerable time, will not be a ground for depriving the petitioner of his constitutional right of living as a free citizen of Pakistan and there appears to be no reasonable ground on the basis of which he

could be deprived from travelling abroad.”

(Emphasis supplied)

8. Similar view has been expressed by the learned Islamabad High Court in “Dr. Joseph Wilson versus Federation of Pakistan through Secretary Ministry of Interior and others” (2017 P Cr. L J 1569) and the learned Court refused to construe the provisions of law as an open license to place any citizen’s name on ECL. Reference in this regard can also be made to the cases titled “Messrs United Bank Ltd. Versus Federation of Pakistan and others” (2014 CLD 544), “Farah Mazhar and 3 others versus Federation of Pakistan through Secretary, Ministry of Interior, Islamabad and 2 others” (PLD 2022 Lahore 119), “Mrs. Ifrah Murtaza and another versus Government of Pakistan and others” (PLD 2019 Lahore 565), “Hamid Khan through Authorized Attorney versus Federation of Pakistan through Secretary, Ministry of Interior, Islamabad and others” (2024 YLR 59), “Faisal Maqbool Shaikh versus Federation of Pakistan through Secretary Interior, Ministry of Interior, Islamabad and 02 others” (W.P. No. 2141 of 2023), “Dr. Shireen M. Mazari versus Federation of Pakistan through Secretary Interior, Ministry of Interior Islamabad and another” (W.P. No. 2212 of 2023), “Tabish Badar through Special Power of Attorney versus Pakistan, through Secretary, Ministry of Interior and 2 others” (2023 CLC 1457) and “Jaffar Khan vs. Federation of Pakistan, through Secretary, Ministry of Interior, Islamabad and 3 others” (PLD 2023 Balochistan 65).

9. Respondent No. 2 refused to accept the representation of the appellants on account of ongoing investigation with the *Establishment* in the *FIR*, disclosing

possibility that Farhat Shahzadi has purchased properties in the name of her children from unlawful amounts. Order dated 17.10.2023 reveals that to inquire into the same letters were written to different authorities for details of assets in the names of the appellants. Reading of the said order further reflects that representation of the appellants was rejected for the reason that Farhat Shahzadi and her husband have already left the Country to avoid consequence of the *FIR* and in the absence of appellants no source would be left with investigation team for further probe during the ongoing investigation. The same reason prevailed with the learned Judge-in-Chamber, who then observed as under:-

“.....The temporary stoppage in plans to leave Pakistan which will make the petitioners inaccessible to the investigating agencies does not appear, for now, to outweigh the concerns/interest/duty of the state to uncover the facts qua alleged wrongs to public institutions. The instant constitutional petition under the circumstances does not appear to be based on good faith and seems to be rather indicative of a move to preclude facilitating fact-finding exercise of the investigating agencies.....”

11. In the above state of affairs that respondents’ request met with the approval by the learned Judge-in-Chamber. At the same time, expectation was shown by the learned Judge-in-Chamber to expeditiously reach some point enabling the appellants to invoke the necessary machinery in changed circumstances for deletion of their names. Almost a year has passed since lodging of the *FIR*. The above observation was made by the learned Judge-in-Chamber on 23.10.2023. However, no progress is shown by the respondents.

12. Today, fresh reports have been filed but once again same is the invocation. The reports filed before us repeatedly

refer to the fact that Farhat Shahzadi has failed to join investigation and the learned Court of competent jurisdiction has declared her a proclaimed absconder. Admittedly, the *FIR* involves allegations of huge loss to Government Exchequer and Farhat Shahzadi has not joined the investigation but this alone cannot be a valid reason for placing names of present appellants on PCL for such a long time period and curtailing their rights, recognized in above discussed law. We have also noticed that the year of occurrence given in the *FIR* is 2019, when Eman Iqbal Jamil and Faraz Iqbal Jamil were less than sixteen years old. The learned Law Officers despite their earnest efforts have failed to convince to accede their request to retain the names of the appellants on PCL.

14. For what has been discussed above, present appeal is **allowed**. Order dated 17.10.2023 passed by the learned Judge-in-Chamber is *set-aside*. No order as to costs.

(ANWAARUL HAQ PANNUN)
JUDGE

(SULTAN TANVIR AHMAD)
JUDGE