

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P. No. 715/2020

Hamid Ilyas

versus

National Accountability Bureau, etc.

Petitioner by: Mr. Muhammad Masood Khan and Mr. Muhammad Zeeshan Khan, Advocates.

Respondents by: Rana Zain Tahir, Special Prosecutor NAB.
Muhammad Ghufraan, AD/I.O.

Date of Decision: 01.10.2020.

MOHSIN AKHTAR KAYANI, J: Through this Writ Petition, the petitioner has prayed for issuance of direction to respondents to remove his name from ECL and any bar imposed by the respondents on his traveling may kindly be declared illegal.

2. Learned counsel for the petitioner contends that petitioner was remained posted as Coordinator, Bahria Town Karachi project from 2009 to 2014 and thereafter he has performed his duties as Deputy Chief Executive (Operating) since March 2014 and all of his duties were assigned by Bahria Town (Pvt.) Ltd.; that petitioner was traveling to Saudi-Arabia in connection with performance of Umrah when he was offloaded on the ground that his name has been referred in no fly list on the recommendations of NAB, who are investigating the matter relating to fake bank accounts; that petitioner received three call up notices from NAB regarding fake bank account scam whereby an amount of Rs.1.22 billion was received as kick backs in JV Opal by Zardari Group, whereby petitioner has submitted the entire information required by NAB through his reply to the call up notices but despite that his name has not been removed from ECL; that respondents have not complied with any justifiable reasons to retain the name of petitioner on ECL and as such fundamental rights of the petitioner has been

violated, whereby right to free movement in terms of Article 15 of the Constitution of Islamic Republic of Pakistan, 1973 could not be curtailed in any manner.

3. Conversely, learned Special Prosecutor NAB contends that inquiry of fake bank account is still under process and as such petitioner is required in the investigation in connection with huge sum of money which was transacted through his signatures, whereby petitioner has failed to satisfy the NAB regarding such a huge transaction from his personal bank account, whereby Rs.200/- Million was encashed and Rs.50/- Million was transferred to Asad Abbas Zaidi; that other co-accused under this inquiry have already entered into plea-bargain namely Zain Malik and petitioner's name could not be removed from ECL unless investigation and probe stand concluded.

4. Arguments heard, record perused.

5. Perusal of record reveals that petitioner in order to perform Umrah alongwith his family members went to Islamabad Airport on 09.03.2019, whereby boarding card was issued but immigration staff refused to give clearance for departure and petitioner was off loaded as his name was placed in no fly list, subsequently petitioner's name was placed on ECL on 31.05.2019 on the recommendations of NAB.

6. The history of this case reveals that petitioner was working as Deputy Chief Executive of Bahria Town, Karachi and there-after at Islamabad w.e.f 2009 to 2014, however, he finally resigned on 05.03.2020. During his service with Bahria Town, he was signatory of certain accounts of Bahria Town (Pvt.) Ltd. and during the inquiry and probe of fake bank accounts scam it was revealed that Rs.1.22 billion kick back was received in GV Opal-225 by Zardari Group and as such petitioner was booked in the inquiry being signatory to those bank accounts on behalf of Bahria Town (Pvt.) Ltd., wherefrom Rs.800/- million was transferred in the alleged fake bank account namely Dream Trading and Ocean Enterprises in result whereof NAB issued call up notices dated 10.04.2019, 07.05.2019 &

13.05.2019 to the petitioner to explain his position. All three notices were replied by the petitioner, however, Investigation officer present before this Court states that explanation so rendered by the petitioner has not yet been verified and consider with the requisite information even petitioner has failed to explain the status of Rs.200/- million which was encashed by the petitioner.

7. In this backdrop learned Special Prosecutor, NAB has heavily emphasized that petitioner may not be allowed to proceed abroad although I.O as well as Special Prosecutor NAB having been confronted regarding status of petitioner who is Pakistani citizen has no other nationality and his family is also residing in Pakistan.

8. We have also gone through the reported judgment PLD 2007 SC 642 (PML (N) through Khawaja Muhammad Asif Vs. Federation of Pakistan), whereby Article 15 of the Constitution of Islamic Republic of Pakistan, 1973 regarding freedom of movement has been given wider meaning. The petitioner has also relied upon PLD 2019 Islamabad 316 (Syed Zulfikar Abbas Bukhari Vs. Federation of Pakistan), whereby it was held that Federal Government while placing the name of petitioner on ECI, did not apply its mind and acted mechanically on the recommendations of NAB and it was also held that any recommendation by investigation agency to place the name of an individual on ECI, was not to be followed by the Federal Government in a mechanical fashion, especially when the only charge is mere pendency of inquiry but in the instant matter investigation is still pending and under way whereby I.O has *prima-facie* expressed his grave concern regarding transaction of huge sum of money from the bank account of petitioner which has not yet been justified by the petitioner, who is signatory to that account, wherefrom the amount has been encashed.

9. We have also attended the proposition with reference to the impugned order and as such detailed reasons have been rendered by the NAB in their para-wise comments for placing the name of petitioner on ECI especially when Rs.250/- million has transferred in petitioner's personal bank account No.1-2-15-

20371-714-161053, maintained at Summit Bank Dolmen City Branch, Karachi, whereby an amount of Rs.200/- million was drawn as cash by the petitioner himself and as such the details of that amount have not yet been provided, although claim raised by the petitioner is regarding a joint venture project for construction of multipurpose high-rise building at plot No.225, Raja Ghazanfar Ali Khan Road, Saddar, Karachi.

10. We have confronted the learned counsel for the petitioner regarding maintainability of instant writ petition, whereby he contends that alternate remedy though referred in the Exit from Pakistan (Control) Ordinance, 1981 is available but the same will not serve the purpose and constitutional petition is maintainable. Reliance is placed upon PLD 2016 Lahore 553 (Inam Akbar Vs. Federation of Pakistan). But this Court is of the view that it is not appropriate to adjudicate the matter when the alternate remedy is in field, as things are required to be done strictly according to law, or it should not be done at all. Reliance is placed upon PLD 2010 SC 759 (Human Rights Cases Nos.4668 of 2006, 1111 of 2007 and 15283-G of 2010), PLD 2013 SC 255 (Muhammad Anwar and others Vs. Mst. Ilyas Begum and others).

11. In view of above backdrop, instant petition is not maintainable, especially when alternate remedy of review is still in field; hence, the same is hereby dismissed. The petitioner may approach the competent authority for review of the impugned order, who shall decide the review while considering the background of the case after hearing the petitioner in accordance with law. The competent authority shall also record reasons while taking into consideration the investigation conducted by the NAB in fake bank account scam.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

(MOHSIN AKHTAR KAYANI)
JUDGE