

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.4640/2018
Sheikh Ansar Ahmad and another
Versus

Ministry of Interior, Government of Pakistan through Secretary and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	25.06.2019	Mr. Ahmad Nawaz Bhatti, Advocate for the petitioners in the instant petition as well as in connected writ petition No.686/2019. Mr. Abdul Rashid Sheikh, Advocate for the petitioner in writ petition No.630/2019. Mr. Muhammad Nadeem Khan Khakwani, learned Assistant Attorney-General. Ch. Ehtasham ul Haq, Advocate for respondent No.3/A.N.F.

Through this order, I propose to decide writ petitions No.4640/2018, 630/2019 and 686/2019, since they entail commons questions of law and fact.

2. The petitioners in the said writ petitions seek a direction to respondent No.1 (Ministry of Interior) to remove their names from the Exit Control List ("E.C.L.").

3. Learned counsel for the petitioners submitted that the names of three other persons, which find mention in the impugned memorandum dated 15.05.2013 have been removed from the E.C.L. pursuant to the directions passed by the Hon'ble Lahore High Court and this Court; that it is the petitioners' fundamental right to travel abroad; and that the petitioners have been regularly attending the proceedings before the learned Trial Court in case F.I.R. No.40/2011, dated 10.10.2011. Learned counsel for the petitioners prayed for the writ petitions to be allowed in terms of the relief sought therein. In making their submissions, learned counsel for the petitioners placed reliance

on the judgment passed by the Division Bench of this Court in the case of Dr. Joseph Wilson Vs. Federation of Pakistan (2017 PCr.LJ 1569).

4. On the other hand, the learned Assistant Attorney-General submitted that the petitioners had been charged with a very serious offence; that in the event their names are removed from the E.C.L., it would result in the conclusion of the trial being delayed; and that the mere fact that the names of the co-accused had been removed from the E.C.L. does not *ipso facto* entitle the petitioners with the same relief. Learned Assistant Attorney-General prayed for the writ petitions to be dismissed.

5. I have heard the contentions of the learned counsel for the petitioners as well as the learned Assistant Attorney-General and have perused the record with their able assistance.

6. Through memorandum dated 15.05.2013, the names of nine persons, including the petitioners were placed on the E.C.L. in exercise of the powers conferred by Section 2 of the Exit from Pakistan (Control) Ordinance, 1981. All the persons whose names were placed on the E.C.L. are accused in F.I.R No.40/2011, dated 10.10.2011, registered under Sections 9-C, 14, 15 and 16 of the Control of Narcotics Substance Act, 1997 ("C.N.S.A."), at Police Station A.N.F., Rawalpindi. The trial is pending before the Special Court (C.N.S.), Islamabad. This Court, vide order dated 21.09.2017, passed in criminal revision No.82/2017 directed the learned Trial Court to conclude the trial within a period of six months.

7. The petitioners' names were placed on the E.C.L. on the recommendations of respondent No.3 (Anti Narcotics Force).

8. For the present purposes, it is not necessary to go into the details of the allegations levelled against the petitioners or the present status of the trial.

9. Vide the above-mentioned memorandum dated 15.05.2013, the names of Syed Ali Musa Gillani, Makhdoom Shahab Ud Din and Dr. Asad Hafeez had also been placed on the E.C.L.

10. Syed Ali Musa Gillani had filed writ petition No.13492/2016 before the Hon'ble Lahore High Court, seeking the removal of his name from the E.C.L. Vide judgment dated 10.11.2016, the said writ petition was allowed and the said memorandum dated 15.05.2013 was held to be violative of the fundamental rights guaranteed under Articles 4, 9 and 15 of the Constitution. Furthermore, the said memorandum dated 15.05.2013 was declared to be *"illegal, without lawful authority and of no legal effect"*. Civil Petition No.155/2017 preferred by the Anti Narcotics Force against the said judgment dated 10.11.2016, passed by the Hon'ble Lahore High Court, was dismissed by the Hon'ble Supreme Court, vide order dated 28.02.2017.

11. Makhdoom Shahab Ud Din, whose name had also been placed on the E.C.L., vide the impugned memorandum dated 15.05.2013, had also filed writ petition No.3304/2017 before this Court, seeking the removal of his name from the E.C.L. The said writ petition was allowed by this Court, vide judgment dated 29.12.2017 and the Ministry of Interior was directed to remove Makhdoom Shahab Ud Din's name from the E.C.L.

12. Dr. Asad Hafeez, whose name had also been placed on the E.C.L., vide the impugned memorandum dated 15.05.2013, had also filed writ

petition No.1278/2015 before this Court, seeking the removal of his name from the E.C.L. The said writ petition was allowed by this Court, vide judgment dated 19.07.2018 and the Ministry of Interior was directed to remove Dr. Asad Hafeez's name from the E.C.L.

13. I have gone through the said judgment dated 10.11.2016, passed by the Hon'ble Lahore High Court and the judgments dated 19.07.2018 and 29.12.2017, passed by this Court and cannot bring myself to take a view different from the one taken by the Hon'ble Lahore High and this Court in the said judgments. The case of the present petitioners is at par with those of the petitioners who have already been granted the relief of the removal of their names from the E.C.L.

14. Since the role ascribed to the petitioners in the writ petitions under disposal is not substantially different to those of Syed Ali Musa Gillani, Dr. Asad Hafeez and Makhdoom Shahab Ud Din, whose names were placed on the E.C.L., vide the same very memorandum dated 15.05.2013, issued by respondent No.1; and since the names of the above named three persons have already been removed from the E.C.L. pursuant to the directions passed by the Hon'ble Lahore High Court and this Court, therefore, for the purposes of consistency, the instant writ petitions are allowed and respondent No.1 is directed to remove the names of (i) Sheikh Ansar Ahmad, (ii) Abdul Sattar Sorani, (iii) Ansar Farooq, and (iv) Tahir-ul-Wadood Lahoti from the E.C.L.

15. It may be mentioned that the direction to remove the petitioners' names from the E.C.L. shall not be construed as permission to the petitioners to absent themselves from the

proceedings before the learned Trial Court. In the event any of the petitioners absent themselves from the proceedings before the learned Trial Court without having been exempted from attendance by the learned Trial Court, the Anti Narcotics Force shall be at liberty to apply to the Ministry of Interior to yet again place the defaulting/absenting petitioners' names on the E.C.L.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Ahtesham*