

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

W.P No. 3508 of 2019

Ali Muhammad Turab
Versus
Federation of Pakistan and others.

Petitioner By: Mr. Imran Shafique, Advocate
Respondents No.1&2 by: Mr. Nazar Hussain Shah, Assistant
Attorney General.
Muhammad Azeem Akhtar, Section
Officer, ECL, M/o Interior.
Respondent No.3 by: Malik Shifa Ullah, A.D.(Litigations)
Date of Hearing: 13.07.2020

GHULAM AZAM QAMBRANI, J.:- Through this petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner, Ali Muhammad Turab, has made the following prayer:-

"It is, therefore, respectfully prayed that Writ may very kindly be issued by declaring that the impugned Memorandum issued by the respondent No.2 of placing name of the petitioner on ECL is illegal, unlawful, unwarranted, arbitrary, whimsical, contemptuous, without jurisdiction, without lawful authority, discriminatory, rarity, based on malafide, in abuse of process of law, against the due process clause, a threat to the fundamental rights of the petitioner as enshrined under the Constitution, in utter defiance of the judgment of this august Court itself, and the dictums of the superior Courts of the country, the applicable law, rules, regulations, hence liable to be set aside.

It is further prayed that till final decision of the instant petition the operation of the impugned memorandum issued by the respondent No.2 of placing name of the petitioner on ECL may be stayed.

Any other relief, which this honourable Court deems just and proper, may also be very graciously, is granted to the petitioner. This prayer is made in the interest of justice."

2. Brief fact of the case as narrated by the petitioner are that he is a distinguished Islamic scholar of great reputation and has the privilege of serving the country at different forums including the Council of Islamic Ideology as its Member; he is a provincial office bearer of Jamiat Ahle

Hadith, Pakistan; he is known and respected for his democratic ideas, his preaching for peace and harmony, for his efforts to eliminate sectarianism, for his struggle for the unity of Muslims and integrity, security of his beloved motherland. It is further stated that name of the petitioner was placed on black list maintained by respondent No.3; that the petitioner challenged the same by way of Writ Petition No.2953/2018 before this Court, which was allowed vide judgment dated 23.01.2019 and no direction was issued for placing the name of the petitioner to Exit Control List or to cancel his passport but while deleting the name of the petitioner from the Black List, respondent No.3 by using the name of this Court, has made recommendations for placing the name of the petitioner on Exit Control List.

3. Learned counsel for the petitioner has submitted that act of respondent No.3 is not only illegal, unlawful, unwarranted but also contemptuous; that it is quite clear from the judgment that the direction was only to extent of removal of the petitioner's name from Exit Control List and no further direction was issued, but the respondents with malafide intention and ulterior motives tried to misguide the authorities by making recommendations under the garb of judgment of this Court for placing his name on the Exit Control List. Next argued that under the law, the Directorate General Immigration and Passports has no role to recommend any person to be placed on Exit Control List, whereas, it is the domain of the Ministry of Interior to make any such recommendation to the competent authority; that respondent No.3 not only transgressed his authority, but has also adopted a unique procedure to infringe the fundamental rights of the petitioner; that the petitioner challenged the impugned recommendations made by respondent No.3 for placing his name in Exit Control List by way of Writ Petition No.1887/2019 which is still pending, wherein respondents put appearance and produced copy of memorandum No.12/42/2019-ECL dated 22.03.2019 issued by Ministry of Interior whereby it was informed that name of the petitioner had been placed on the Exit Control List under Section 2 of Exit from Pakistan (Control) Ordinance, 1981, on the recommendation of Securities Agencies on the character "*that the accused is a dubious anti-Pakistan character. He has link with Daesh as also with Al-Qaeda, LeJ and Jamaat-ul-Ahrar*". Further contended that the impugned memorandum has severely injured the dignity of the petitioner who has unblemished track record of service to the country. That the impugned memorandum has been issued just to frustrate the judgment passed by this Court, whereby, the petitioner's

name was directed to be removed from the black list; that the impugned memorandum is violative of the provision of the Constitution of the Islamic Republic of Pakistan and has been passed without jurisdiction, whereas, Ministry of interior has no jurisdiction, authority or power to place nay person on Exit Control List whereas this authority only vests with the Federal Government and in the case the federal cabinet has not passed any such order or memorandum. Next contended that placing the name of the petitioner on Exit Control List by respondent No.2 is without jurisdiction and *corum-non-judice*. It is further raged that no criminal case is registered against the petitioner and the action taken by the respondent is based on malafide intention and ulterior motive; that the right to travel is a guaranteed right of the petitioner under the provision of Articles 8, 9, 10, 10-A, 13, 14, 15, 19-A, 25 & 26. That the memorandum has been issued merely on the recommendation of the security agencies, without prior notice to the petitioner in violation of the provision of Section 24–A of the General Clauses Act, 1897 and is also violative of the pronouncement of the superior Courts. Lastly, prayed for declaring the impugned memorandum as illegal, unlawful, without jurisdiction and without lawful authority.

4. On the other hand, learned Assistant Attorney General contended that the name of the petitioner was placed on Exit Control List on 22.03.019 under Section 2 of Exit from Pakistan (Control) Ordinance, 1981 with the approval of Federal Cabinet vide decision No.288/Rule-19/2019 dated 22..03.2019 on the recommendation of Security Agency on the charges that the accused is a dubious Anti Pakistani Character. He has linked with Daesh as also with Al-Qaeda, Leg and Jamaat-ul-Ahrar. Lastly, prayed for the dismissal of the instant petition.

5. Perusal of the record reveals that earlier the name of the petitioner was placed on black list maintained by Director General Immigration & Passports which was challenged before this court through Writ Petition No.2953/2018 which was allowed vide judgment dated 23.01.2019 with the following observations:-

“In view of the forgoing the instant petition is allowed and the action of the respondents regarding the placement of name of the petitioner on black list is declared without lawful authority. Needless to observe that the respondents are at liberty to either place the name of the petitioner on the Exit Control List (ECL) or cancel his passport under the passport act, 1974, in Accordance with law.”

After that respondent No.3 through letter dated 01.03.2019 made following recommendations:-

“In compliance with the above orders of the Court of law, the name of the petitioner Mr. Ali Muhammad Turab s/o Haji Noor Muhammad is being deleted from the Black List. Ministry of Interior is requested to comply with the above orders of the Court and place the name of petitioner on ECL.”

The petitioner challenged the said documentation through writ petition 1887/2019 before this Court which is still pending but during this period vide Memorandum No. 12/42/2019-ECL dated 22.03.2019 issued by Ministry of Interior, it was informed that name of the petitioner had been placed on the Exit Control List under Section-2 of Exit from Pakistan (Control) Ordinance, 1981, on the recommendation of Securities Agencies on the character *“that the accused is a dubious anti-Pakistan character. He has link with Daesh as also with Al-qaeda, LeJ and Jamaat-ul-Ahra”*.

6. I have gone through the Exit from Pakistan (Control) Ordinance, 1981 read with Exit From Pakistan (Control) Rules, 2010 and Rule- 2 which provides complete mechanism for placing name of an individual on ECL, and the same is reproduced as under:-

“2. Grounds to prohibit persons from proceedings from Pakistan to a destination outside Pakistan:-

(1) The Federal Government may by an order in writing under subsection (1) of section 2 of the Exit from Pakistan (Control) Ordinance, 1981 (XLVI of 1981), prohibit any person from proceeding from Pakistan to a destination outside Pakistan notwithstanding the fact that any person is in possession of valid travel documents. If he is involved in:-

- (a) corruption and misuse of power or authority causing loss to the government’s funds or property;*
- (b) economic crimes where large government’s funds have been embezzled or institutional frauds committed;*
- (c) acts of terrorism or its conspiracy, heinous crimes and threatening national security;*
- (d) case of key directors of a firm, in default of tax or liabilities of not less than ten million rupees;*
- (e) case of two or more key or main directors of a firm in default of loan or liabilities exceeding one hundred million rupees;*

- (f) any case and his name forwarded by the registrar of a High Court, Supreme Court of Pakistan or Banking Court only; or
- (g) drug trafficking.

7. Restraining any person from leaving the country or from entering, it is to impose a physical restraint on his person. It is also to deprive him of a personal liberty, freedom to travel, both within and outside the boundaries of the territory of the State, raises important issues of personal freedom. The right of free movement whether within the country or across its frontiers, either in going out or in coming in, is a personal liberty within the meaning of Article 9 of the Constitution, which says that, "*No person shall be deprived of life or liberty save in accordance with law.*" Freedom of movement is stated to be the essence of personal liberty. A citizen cannot be deprived of his fundamental right to travel abroad except according to the procedure established by law. Reliance in this context may be made to the following judgments of the Hon'ble Superior Courts:-

- (i) *In the case of Federation of Pakistan v. General (Retd.) Parvez Musharraf (PLD 2016 SC 570), it has been held as follows:-*

"12. considering the question of inclusion or retaining the name of respondent No.1 in the ECL, thereby restricting his freedom of movement, we also cannot lose sight of the fact that under Article 15 of the Constitution freedom of movement is one of the fundamental rights guaranteed to every citizen of the Country, which cannot be abridged or denied arbitrarily on mere liking or disliking, without any lawful justification for this purpose. Moreso, when Article 4 of the Constitution further guarantees right to every individual to be dealt with in accordance with law."

- (ii) *In the case of Pakistan Muslim League (N) v. Federation of Pakistan through Secretary, Ministry of Interior (PLD 2007 SC 642), it has been held as follows:-*

"Every citizen has undeniable right vested in him as conferred under Article 15 of the Constitution to go abroad and return back to Pakistan without any hindrance and restraint but it must be kept in view that it is neither absolute nor unqualified as is indicative from the language employed in Article 15 of the Constitution as a specific mention has been made "subject to any reasonable restriction imposed by law in the public interest", meaning thereby that such right is subject to the relevant law which is in existence

at relevant time but "an action which is mala fide or colourable is not regarded as action in accordance with law. Similarly, action taken upon extraneous or irrelevant considerations is also not action in accordance with law. Therefore, action taken upon no ground at all or without proper application of the mind of an authority would also not qualify as an action in accordance with law and would, therefore, have to be struck down as being taken in an unlawful manner."

(iii) *In the case of Riaz Ahmed v. Government of Pakistan (PLD 2014 Islamabad 29), the petitioner had challenged the placement of his name on the E.C.L. The petitioner's name was said to have been placed on the E.C.L. on the recommendations of Inter Services Intelligence, as he was alleged to have been active in terrorist activities against the security forces in Swat during an operation. The petitioner's repeated representations seeking the removal of his name from the E.C.L. had remained unattended. It was held by this Court that the right to travel was a fundamental right of every citizen guaranteed under Articles 4, 9 and 15 of the Constitution. It was also held to be a universally recognized right enshrined in Article 12(4) of the Covenant on Civil and Political Rights, adopted by the United Nations General Assembly on 16.12.1966. Furthermore, it was held that no one could be kept in a lurch for an indefinite period, and that the authorities were under an obligation to decide the applications or representations of the general public in a fair and just manner, and within a reasonable time. This Court accepted the petitioner's writ petition and directed the respondents to remove the petitioner's name from the E.C.L., and to return his passport forthwith.*

(iv) *In the case of Wajid Shams-ul-Hassan v. Federation of Pakistan through Secretary, Ministry of Interior (PLD 1997 Lahore 617), it has been held as follows:-*

"14. In view of the above discussion, I have no doubt in my mind that the right of citizen to travel abroad is a fundamental right guaranteed by Articles 2A, 4, 9, 15 and 25 of the Constitution of Islamic Republic of Pakistan, 1973. Abridgment of this fundamental right by the State through the legislative or an executive measure has to be tested on the touchstone of the Constitutional provisions. The life, liberty or property of a citizen cannot be taken away or adversely affected except in accordance with law. However, the "law", I mean, a valid law which does not come in conflict with any of the provisions of the Constitution and should not be a law which is ex facie discriminatory. Section 2 of the Exit from Pakistan (Control) Ordinance, 1981, does not provide any guidelines or reasonable

classification for taking the action against a person prohibiting him from travelling abroad. Even the valuable rights of citizens of being heard and of knowing the reasons for such an action have been denied. The provisions of the law are therefore, ex facie discriminatory as also capable of being administered in a discriminatory manner. If no reasons are assigned to an aggrieved person the remedy of review under section 3 of the Ordinance by making a representation becomes redundant. A citizen would not be in a position to make any effective representation in the absence of any reason or a speaking order. Prima facie, it may be difficult to sustain the validity of the Ordinance on the touchstone of Articles 2A, 4, 9 and 25 of the Constitution of Islamic Republic of Pakistan, 1973. Under this law, there is a scope for the executive to adopt a policy of pick and choose in any case without there being any justifiable grounds. I, however, refrain from expressing any final opinion in this regard for the reason that the vires of the Ordinance have not been specifically challenged in the writ petition. The same would be examined in some other appropriate case where a specific challenge to the validity of the said Ordinance is made. However, in the present case, the impugned order dated 14-11-1996 does not contain any reasons in support thereof. It is an arbitrary and a mala fide order. The same is a nullity in the eyes of the Constitution and the law. In the absence of any valid reasons, the validity of the impugned order dated 14-11-1996 cannot be adjudged and the same has, therefore, to be struck down as without lawful authority. Similar is the position of impugned order dated 19-1-1997 whereby the representation of the petitioner was rejected without informing him of any grounds or reasons for its rejection."

8. Freedom to travel abroad is a fundamental protection or right available to a person under Articles 4, 9 and 15 of the Constitution. The grant of such right is certainly subject to restrictions placed by due process of law. Exit from Pakistan (Control) Ordinance, 1981, sets out the process of law by which a restriction could be placed on a person's right to travel abroad.

9. The Universal Declaration of Human Rights which was adopted by the United Nations General Assembly on 10.12.1948 and for which Pakistan voted, provides for freedom of movement within each State and also across its frontiers in either direction. Article 3 of the said Declaration is based on the general principle that, "everyone has the right to life,

liberty and security of person." Article 13 deals with freedom of movement, and reads thus:-

"Article 13 (1) Everyone has the right to freedom of movement and residence within the borders of each State.

(2) Everyone has the right to leave any country including his own and to return to his country."

10. Article 13 of the Universal Declaration of Human Rights is akin to Articles 9 and 15 of our Constitution. Since there is no inconsistency between Article 13 of the Universal Declaration of Human Rights and the provisions of our Constitution, the former can be cited and relied upon before Courts in Pakistan.

11. In the case of "Al-Jehad Trust v. Federation of Pakistan" (1999 SCMR 1379), the issue before the Supreme Court was whether the people of the Northern Areas of Pakistan (now Gilgit-Baltistan) could enjoy fundamental rights and be governed through their chosen representatives and to have access to justice through an independent judiciary, inter alia, for enforcement of their fundamental rights. Paragraphs 15 and 16 of the said report are reproduced herein below:-

"15. We may also observe that even under the Universal Declaration of Human Rights, to which Pakistan is a signatory, human beings have some basic fundamental rights irrespective of their origin or status. In this behalf reference may be made to Articles 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 15 and 21 of the Universal Declaration of Human Rights which read as follows:-

".....

Article 13

Everyone has the right to freedom of movement and residence within the borders of each State.

Everyone has the right to leave any country, including his own, and to return to his country.

....."

16. The Fundamental Rights enshrined in our Constitution in fact reflect what has been provided in some of the above-quoted Universal Declaration of Human Rights. It may be observed that this Court while construing the former may refer to the latter if there is no inconsistency between the two with the object to place liberal construction as to extend maximum benefits to the people and to have uniformity with the comity of nations. ..."

12. As a consequence of the enlargement of the concept of 'freedom' by judicial pronouncements, respondent No.3 is required to examine the

recommendations of Security Agencies before placing the name of the petitioner on the Exit Control List with a greater caution and care instead of mechanically following such recommendations and depriving the petitioner of his freedom to travel abroad which is likely to result in infringement of the fundamental protection and liberty guaranteed to the petitioner under the law and the Constitution. The principle of reasonableness has to be borne in mind by respondent No.3 while exercising discretion to restrict the fundamental protection of the right to travel abroad available to the petitioner by placing his name on E.C.L. in exercise of power conferred by section 2 of the Exit from Pakistan (Control) Ordinance, 1981, which is reproduced herein below:-

"2. Power to prohibit exit from Pakistan.---(1) *The Federal Government may, by order, prohibit any person or class of persons from proceeding from Pakistan to a destination outside Pakistan, notwithstanding the fact that such person is in possession of valid travel documents.*

(2) Before making an order under subsection (1), the Federal Government shall not be necessary to afford an opportunity of showing cause to the person against the order.

(3) If, while making an order under subsection (1) it appears to the Federal Government that it will not be in the public interest to specify the ground on which the order is proposed to be made, it shall not be necessary for the Federal Government to specify such grounds."

13. Admittedly, in the instant case, name of the petitioner was placed on the Exit Control List without issuing him a show cause notice and without seeking any clarification or explanation from him. Respondent No.3 could not abridge the petitioner's fundamental rights of travelling abroad without due process. Section 2(2) of the Exit from Pakistan (Control) Ordinance, 1981, in effect, provides that before making an order for the placement of a person's name on Exit Control List, it shall not be necessary for the Federal Government to afford an opportunity of showing cause to the person, whose name is to be placed on Exit Control List. This provision cannot be construed as an open license to respondent No.3 to place the name of the petitioner on Exit Control List without affording an opportunity of hearing to him. An opportunity of hearing is an essential postulate of due process recognized in Articles 2-A, 4 and 10-A of the Constitution. It has consistently been held that fair opportunity of hearing and due process were fundamental rights of all citizens. The learned Assistant Attorney-General has not placed before this Court any material

to show as to why respondent No.3 deemed it 'necessary' not to afford an opportunity of hearing to the petitioner before placing his name on Exit Control List. In the absence of such material, respondent No.3 could not be absolved from its constitutional obligation of affording an opportunity of hearing to the petitioner whose fundamental right to travel was curtailed. Nothing has been placed on record against the petitioner in the nature of any criminal case showing that petitioner has relation with any sectarian organization or with any organization which was kept under observation under section 11-D of the Anti Terrorism Act (ATA), 1997 or with any proscribed organization under Section 11-E of the Act.

14. The Hon'ble Division Bench of this Court in the case reported as **2017 P Cr. L J 1569 [Islamabad]** "Dr. Joseph Wilson vs. Federation of Pakistan and others", has held as under:-

"There appears to be consensus of judicial opinion on the point that the mere fact that an inquiry or an investigation was being conducted by NAB or any other agency against the petitioner was not by itself a sufficient reason to place his name on E.C.L. Even the pendency of criminal proceedings, including proceedings before an Accountability Court (without an order or a request from the Court for the curtailment of an accused's freedom to travel abroad) is not considered a sufficient ground to place a citizen's name on E.C.L. While this has been the general trend of judicial pronouncements, yet each case has to be examined on its own merits, and the peculiar facts of a case may cause a Court of Constitutional causes to decline relief to a petitioner seeking to have his name removed from the E.C.L. At this stage, reference to the following case law on the subject would be apposite:-

(i) In the case of Shaikh Muhammad Mansoor v. Government of Pakistan through Secretary, Ministry of Interior (2008 MLD 955), the petitioner had entered into a plea bargain with N.A.B., but his name was not removed by the E.C.L. The respondents plea was that there were two other enquiries pending against him before NAB. It was held by the Hon'ble Lahore High Court that this was not a cogent reason to bypass or ignore the Constitutional provisions enshrined in Articles 4, 9 and 15 of the Constitution. Order passed by the respondents, declining to remove the petitioner's name from E.C.L. was declared without lawful authority.

(ii) In the case of Sohail Latif v. Federation of Pakistan through the Secretary, Ministry of Interior (PLD 2008 Lahore 341), the petitioner's name had been placed on the E.C.L. by the Ministry of Interior at the behest of NAB on the ground that investigation/prosecution against the petitioner was in progress. It was held that no material had

been placed before the authorities before the petitioner's right of free movement was curtailed by placing his name on E.C.L. The Hon'ble Lahore High Court declared the respondent's action of placing the petitioner's name on E.C.L. to have been taken without lawful authority and of no legal effect. The right of a citizen to travel abroad was held to be a fundamental right guaranteed by Articles 2-A, 4, 9 and 15 of the Constitution.

(iii) In the case of Munir Ahmad Bhatti v. Government of Pakistan, Ministry of Interior (PLD 2010 Lahore 697), it was held that the involvement of a person in civil or criminal litigation was not ground to place his name on the E.C.L., unless the court where the matter was subjudice passed a specific order in that regard.

(iv) In the case of Masood Ahmed v. Federation Pakistan through Secretary, Ministry of Interior (2010 YLR 28), it has inter alia been held that mere investigation by NAB, which had been going on for a long time, would not be a ground for depriving the petitioner of his constitutional right of living as a free citizen of Pakistan and travelling abroad.

(v) In the cases of Mian Munawar. Ahmed v. Federation of Pakistan (2008 YLR 1508) and Zurash Industries (Pvt.) Ltd. v. Federation of Pakistan through Secretary, Ministry of Interior (PLD 2011 Karachi 385), the Hon'ble High Court of Sindh has held that mere pendency of civil or criminal cases against a citizen is no ground to deny him fundamental right of freedom to travel within or outside Pakistan.

(vi) In the case of Mst. Nasreen Begum v. Ministry of Interior (PLD 2012 Islamabad 17), although no criminal case was registered against the petitioner, his name was placed on the E.C.L. due to a pending inquiry. It was held that "there is a consistent view of the Courts that mere pendency of inquiry, does not justify the denial of fundamental right of travelling guaranteed by the Constitution of a citizen."

(vii) In the case of General (R) Pervez Musharraf v. Pakistan, through Secretary Interior (PLD 2014 Sindh 389), it was held as follows:-

"29. it is quite clear that registration of a criminal case or institution of criminal proceedings does not automatically imply that the accused should be disallowed to move outside Pakistan and or to put his name on E.C.L. Had it been the intention of legislature then it would have made the corresponding provisions in the Cr.P.C. or any other special enactments made for the trial of offences. Mere registration of FIR does not permit nor warrant the automatic inclusion of any such accused person on E.C.L. but once bail is granted,

it is the province of that court to regulate the custody of that particular accused."

(viii) In the case of Syed Masood Hussain Shah v. Federation of Pakistan (2015 MLD 124), the petitioner's name was placed on the E.C.L. on the recommendations of NAB, without any intimation to him. The petitioner had also been associated in an inquiry being conducted by NAB. There was an allegation of evasion of tax and custom duties to the tune of rupees thirty million against the petitioner. It was held that the Federal Government had to apply its mind while placing a person's name on the E.C.L., and that such an exercise must not be carried out in a mechanical manner on the mere request of an investigation agency including NAB. The insufficiency of the material on the record caused the Hon'ble High Court of Sindh to hold that the petitioner's name had been placed on the E.C.L. by the Ministry of Interior in an arbitrary and purely mechanical manner without applying its own mind and passing any speaking order. Therefore, the Hon'ble High Court accepted the petitioner's constitutional petition and directed the Ministry of Interior to remove his name from the E.C.L.

(ix) In the case of Mohammad Sadiq v. Federation of Pakistan (PLD 2016 Sindh 263), it was held that mere pendency of criminal or civil litigation against a citizen was no ground to deny the freedom to travel within or out of Pakistan. Furthermore, it was held that Articles 4, 9, 15 and 25 of the Constitution have made it clear that every citizen has the liberty to travel abroad and enter Pakistan unless he is precluded under the law made in the public interest.

(x) In the case of Tanvir Hussain Manji v. Federation of Pakistan (2016 CLC 1534), the petitioner's name has been placed on the E.C.L. on the recommendations of NAB. No prior notice or hearing was given to the petitioner before placing his name on the E.C.L. No details of allegations, particulars or reasons were given in the memorandum placing his name on the E.C.L. The petitioner had entered into a plea bargain and had paid a partial amount to NAB. The honourable Lahore High Court directed the Ministry of Interior to remove his name from the E.C.L.

(xi) In the case of Yousaf J. Ansari v. Government of Pakistan through Secretary, Ministry of Interior (PLD 2016 Karachi 388), the petitioner's name was directed to be removed from the E.C.L. despite the fact that a reference had been filed by the NAB against the petitioner wherein, the petitioner, was accused of committing gross mismanagement, cheating public stakeholders, corruption and causing loss of billions of rupees to the national exchequer.

15. In the case of Federation of Pakistan v. General (Retd.) Parvez

Musharraf (PLD 2016 SC 570), it has been inter alia held as follows:-

"In due course, all matters relating to the custody of an accused, restricting his liberty or freedom of movement are to be dealt with by the Courts ceased of the criminal cases against him or by the Federal Government in terms of the Exit from Pakistan (Control) Ordinance, 1981 and the rules framed thereunder. The superior Courts are, therefore, normally reluctant in passing orders of such nature, except in some exceptional circumstances, which is not the position here at this stage, as understandably the Respondent No.1 is facing trial before different criminal Courts/Special Court for the charged offences, which are competent to regulate all issues as regards his custody."

16. In another judgment reported as Muhammad Amjad vs. Federation of Pakistan (2017 P Cr. L J 1266) this court has taken the similar view and ordered to remove name of petitioner Muhammad Amjad from ECL in that case by declaring that placement of his name on ECL is in conflict with the fundamental rights. Even otherwise, phrase *"subject to reasonable restrictions imposed by law in public interest"* as referred in Article 15 of the Constitution of Islamic Republic of Pakistan, 1973 extends free movement of an individual throughout in Pakistan or otherwise and any restriction imposed upon his movement from going abroad must be lawful and validly justified for the said purpose as to be mentioned in the orders. Guidance is sought from the judgment reported as Federation of Pakistan through Secretary, M/o Interior vs. General (R) Pervez Musharraf and others (PLD 2016 SC 570), wherein it was held that:-

"Apart from the above discussion, considering the question of inclusion or retaining the name of respondent No.1 in the ECL, thereby restricting his freedom of movement, we also cannot lose sight of the fact that under Article 15 of the Constitution freedom of movement is one of the fundamental rights guaranteed to every citizen of the Country, which cannot be abridged or denied arbitrarily on mere liking or disliking, without any lawful justification for this purpose. Moreso, when Article 4 of the Constitution further guarantees right to every individual, to be dealt with in accordance with law. It will be pertinent to mention here that in the shape of Exit from Pakistan (Control) Ordinance, 1981, read with Exit from Pakistan (Control) Rules, 2010, a complete mechanism is provided for the situation, which needs to restrict the movement of any person from going abroad, where there is lawful and valid justification for this purpose."

17. In the instant case, respondents have not placed any cogent evidence or F.I.R before this Court with the regard to the allegation

against the petitioner that “*the accused is a dubious anti-Pakistan character. He has link with Daesh as also with Al-qaeda, LeJ and Jamaat-ul-Ahrar*”. Till date no trial is pending against the petitioner in any criminal case. It is settled principle of law that mere pendency of inquiry, investigation or proceedings cannot be considered sufficient grounds for placing the name of a citizen on the Exit Control List. In the case of “Wajid Shamsul Hassan v. Federation of Pakistan through Secretary Ministry of Interior, Islamabad” (PLD 1997 Lahore 617), it was held as under:-

“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.”

18. On perusal of the memorandum, this Court has reached to the conclusion that the memorandum No. 12/42/2019-ECL dated 22.03.2019 issued by the Ministry of Interior, has been passed in a mechanical manner and without giving any reason, as such, the same is also hit by Section 24-A of the General Clauses Act, 1897 and cannot be sustained.

19. In view of what has been discussed above, this petition is allowed. Memorandum No. 12/42/2019-ECL dated 22.03.2019 issued by the Ministry of Interior, is hereby set-aside and respondents are directed to remove the name of the petitioner from Exit Control List.

(Ghulam Azam Qambrani)
Judge

Announced in Open Court, on this 16th day of July, 2020.

Judge

Rana. M. If

“Approve for reporting.”