

*Form No: HCJD/C-121.*  
**JUDGMENT SHEET**

IN THE ISLAMABAD HIGH COURT, ISLAMABAD  
JUDICIAL DEPARTMENT

**W.P. No. 2930 of 2019**

Raja Pervez Ashraf  
***Vs***  
Federation of Pakistan, etc

**PETITIONER BY:** M/s Farooq H.Naek & Aqeel Akhter Raja,  
Advocates.  
**RESPONDENTS BY:** Barrister Rizwan Ahmed, Special Prosecutor,  
NAB.  
Ch. Abdul Jabbar, Assistant Attorney General.  
**DATE OF HEARING:** **05-09-2019.**

**ATHAR MINALLAH, CJ.-** The petitioner, namely

Raja Pervez Ashraf, is the former Prime Minister of Pakistan and a sitting Member of the Parliament/Majlis-e-Shoora. He has invoked the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 seeking a direction to the respondents to remove his name from the Exit Control List so as to enable him to travel to the Republic of China.

2. The facts, in brief, are that the name of the petitioner was placed on the Exit Control List pursuant to a request made by the National Accountability Bureau (hereinafter referred to as the "**Bureau**"). Despite his name being on the Exit Control List, the petitioner, from time to time, was granted permission on a one time basis by the Federal Government to travel

outside Pakistan. However, the last request was not acceded to by the Ministry of Interior and he was instead advised to seek permission from the learned courts before which proceedings were pending against him. The petitioner is admittedly one of the accused in several trials which are pending before different Accountability Courts. The petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 on the ground that the learned Accountability Court in Islamabad is not functional and, therefore, he has no other remedy. It has been brought to our attention that a trial is also pending before a learned Accountability Court in Lahore, wherein the date fixed for hearing was 05.09.2019. We have been informed that in the said trial evidence has been recorded and only arguments on behalf of the parties are to be heard.

3. The learned counsel for the petitioner has been heard at length. He has argued that freedom of movement is one of the most valuable and important fundamental rights guaranteed under the Constitution. He has stressed that permission to travel abroad is not required to be obtained from the trial courts where proceedings are pending. He has placed reliance on a judgment rendered by the learned Sindh High Court in Constitution Petition No.4325/2014, titled "Yusuf J. Ansari vs. Government of Pakistan through its Secretary, Ministry of Interior, Islamabad, etc",.

4. The learned Special Prosecutor of the National Accountability Bureau, on the other hand, has argued that the trial pending before the learned Accountability Court, Lahore has reached the final stage because evidence has been recorded and only arguments on behalf of the parties are to be heard. He has placed reliance on a judgment rendered by a learned Division Bench of this Court in the case reported as "Gohar Ullah vs. Federation of Pakistan through Secretary, Ministry of Interior and others", **2019 YLR 781** in support of his contention that when a trial is pending then it is the trial court alone which is in the best position to decide as to whether exemption can be granted from appearance when the accused intends to travel outside Pakistan. He has also placed reliance on judgments titled "Dr. Asim Hussain vs. Federation of Pakistan through Secretary Interior and 3 others", **PLD 2017 Sindh 665**, "Mrs. Humaira Khurram Khan vs. Secretary, Ministry of Interior and 3 others", **2016 Cr. L J 1226**, "S.Akbar Ali Shah vs. Federation of Islamic Republic of Pakistan through Secretary, Ministry of Interior", **2011 MLD 1536**, and "Asif Kamal vs. Government of Pakistan and others", **2016 YLR 177**.

5. The learned counsels have been heard and the record perused with their able assistance.

6. We are mindful of the fact that the petitioner is a former Prime Minister of Pakistan and a sitting Member of the

Parliament/Majlis-e-Shoora and at this stage he is to be treated innocent because a competent court has not handed down a conviction. However, several references have been filed by the Bureau under the National Accountability Ordinance, 1999 wherein the petitioner is one of the accused. In all these references respective trials are pending before different Accountability Courts. Admittedly, in one case trial is also pending before the learned Accountability Court in Lahore, wherein evidence has been recorded and the matter is ripe for decision because only arguments are to be heard on behalf of the parties. The petitioner has received an invitation from a private hospital in the Republic of China for attending an event. While exercising jurisdiction under Article 199 of the Constitution we are not in a position to determine whether or not the presence of the petitioner is required before the respective learned Courts where the proceedings are pending against him. A learned Division Bench of this Court in the judgment reported as "Gohar Ullah vs. Federation of Pakistan through Secretary, Ministry of Interior and others", **"2019 YLR 781"** has held that in case of pending proceedings under the Ordinance of 1999, the trial court where the proceedings are pending is the most appropriate forum to decide whether or not an accused should be allowed exemption from personal appearance when the latter intends to travel outside Pakistan. This view is fortified by the scheme of the Code of Criminal Procedure, 1898 (hereinafter referred to as the "**Cr.P.C**") and

the legislative intent of empowering a trial court to grant exemption to an accused from personal appearance under section 540 A ibid. The scheme of the said statute explicitly contemplates that proceedings in a criminal trial are regulated exclusively by the trial court before which the matter is pending. Even in the case of a trial court which is not functional temporarily because of the absence of the presiding Judge, the Duty Judge would be competent to decide an application seeking exemption from personal appearance when an accused intends to travel abroad. It appears from the record that the trial pending before the learned Accountability Court in Lahore was fixed for today. There is no information regarding the next date fixed and whether the petitioner has been granted exemption from appearance under section 540 A of the CrPc after having been informed that the latter intends to travel outside Pakistan. It is settled law that a High Court, while exercising jurisdiction under Article 199 of the Constitution, cannot interfere with the proceedings relating to a pending trial which are regulated exclusively by the trial court and every matter relating thereto, particularly exemption from personal appearance, has to be dealt with in the manner prescribed by the legislature under the Cr.P.C. A High Court, therefore, cannot bypass a trial court as that would have the effect of rendering the legislative wisdom of enacting the Cr.P.C as redundant. The Federal Government has taken the stance in the case in hand that it shall not obstruct or in any manner

object to the petitioner leaving Pakistan if the respective learned courts before which trials are pending grant permission in this regard. We have been unable to persuade ourselves regarding the argument advanced before us by the learned counsel for the petitioner that permission to travel abroad is not required to be sought from the court before which the trial is pending. This argument is not in conformity with the legislative intent of seeking exemption under section 540-A of the Cr.P.C. It is implicit in the language of the said provision that an accused has to make complete disclosure of all the relevant facts, including plans to travel abroad, for the purposes of seeking exemption from personal appearance because only then would the trial court be able to exercise its discretion in deciding whether or not the request may be acceded to. Moreover, if the name of an accused is on the Exit Control List then an accused has to bring to the notice of the learned trial court plans to travel abroad and to seek explicit exemption for this purpose. This is necessary because all matters relating to a trial, including the presence of an accused or granting exemption, are exclusively dealt with and regulated by a trial court. This discretion obviously cannot be interfered with while exercising jurisdiction under Article 199 of the Constitution nor can statutory provisions be made redundant.

7. For what has been discussed above, the petitioner, if so advised, would be at liberty to file applications before the different trial Courts before which proceedings are pending

against him. The petitioner would be expected to explicitly mention in his applications the details and purpose of his intended plans to travel outside Pakistan. In case each trial court is satisfied and exemption from personal appearance is granted with the permission to travel outside Pakistan, then the Federal Government has taken a stance that in such an eventuality the petitioner's name being on the Exit Control List would not be an impediment.

8. The petition is, therefore, disposed of in the above terms.

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

**(CHIEF JUSTICE)**

*Asif Mughal\**

Approved for reporting

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