

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

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

W.P.No.20/2012.  
Hafiz Muhammad Aslam  
**VS.**  
Secretary, M/o Interior etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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12.01.2012	<b>Barrister Nasim Sabir Chaudhry, Advocate for the petitioner. Raja Inam Amin Minhas, Advocate for the respondents. Mr. Shabbir Abbasi, Standing Counsel. Mr. Qaiser Masud, D.D/Law FIA, HQ.</b>
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Hafiz Muhammad Aslam son of Noor Hussain, is seeking indulgence of this Court through issuance of writ so as to declare orders dated 18.11.11 and 4.1.12 passed by Secretary, Minister of Interior Government of Pakistan and Director, NCB FIA Headquarters Islamabad, hereinafter respectively referred to as respondents No.1 and 2, as without lawful authority, against the fundamental rights of the petitioner and contrary to the provisions of the Constitution and norms of fair administration of justice and equity.

2. Facts of the case of the petitioner in brief are that the respondent No.1 issued a notification u/s 7 of the Extradition Act, 1972, for conducting magisterial inquiry. That two criminal cases were also registered against the petitioner vide F.I.R. No.247/11 u/ss 420/468/471 r/w Section 30 of NADRA Ordinance, 2000, at Police Station FIA Gujrat, and F.I.R. No.6/11 under Section 14 of Foreigner Act, 1946, at Police Station SIU FIA

Islamabad. That the petitioner was discharged from case F.I.R. No.247/11 on 22.11.11, while case registered vide F.I.R. No.6/11, u/s 14 of Foreigner Act, 1946, was still pending adjudication. That the petitioner had earlier challenged his arrest and detention, in pursuance of red notice issued by the Interpol, in writ petition No.23692/2011 before the Hon'ble Lahore High Court, which was accepted on 03.11.11. That notification u/s 7 of the Extradition Act, 1972, is also under challenge before this Court in writ petition No.3218/11, which is pending and C.M. No.3088/11 in the same was disposed of by this Court with the direction that the petitioner shall not be deported save by adopting the procedure prescribed by law. That the petitioner had also filed another writ No.3219/11 for quashment of F.I.R. No.6/11, which is pending adjudication before this Court. That in spite of pendency of the said petitions, respondent No.1 managed a deportation order of the petitioner without fulfilling the conditions prescribed in the order dated 18.11.11. That to avoid deportation of the petitioner in clandestine manners, petitioner was constraint to file writ petition No.3148/11 before this Court, which was disposed of with the directions that the petitioner would not be deported unless procedure prescribed for the same is adopted. That the petitioner has also filed a Habeas Corpus Petition challenging his illegal arrest and detention, which is still pending before

this Court. That in spite of the afore-stated circumstances, respondent No.2 issued letter dated 4.1.2012 with an object to secure deportation of petitioner. That the impugned order dated 18.11.11 and letter dated 4.1.12 are passed on the ground that the petitioner was a foreign national whereas the petitioner has renounced his Norwegian Nationality and has assumed his Pakistani Nationality by express declaration duly communicated to the Norwegian Embassy through courier. That apart from renewal of his CNIC and certificate of domicile, petitioner has also instituted a suit for seeking such declaration before the civil Court at Gujrat. That the status regarding the nationality of the petitioner has become a disputed question of fact and, therefore, without adjudication and determination of the same, an adverse action against the interest of the petitioner would amount to abuse of law and violative of petitioner's fundamental rights. That the impugned orders are contrary to the real facts and express provisions of law, contemptuous and aimed at deportation of the petitioner on extraneous consideration. That the petitioner, in the afore stated circumstances, is left with no option but to invoke the jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

3. Learned counsel for the petitioner, during the course of arguments, highlighted and deliberated upon the facts referred to above. He further argued that F.I.R. No.247/11 was conditionally withdrawn, while F.I.R.

No.6/11 under Section 14 of Foreigner Act, 1946, was subsisting. That only a person accused of any anti State activities is to be deported under the provisions of Section 3 of the said Act. He placed reliance on reported case 2011 YLR 418. He further argued that the petitioner has come to Pakistan through Norwegian Passport and having a valid origin card of NADRA, whereafter he renounced his Norwegian nationality and adopted his previous nationality of Pakistan. That since the petitioner is by now a Pakistani National and accused of criminal charges as such cannot be deported and that too, in the mode and manners adopted by the respondents No.1 and 2.

4. Learned Standing Counsel for the respondents assisted by learned counsel namely Raja Inam Amin Minhas Advocate, argued that the petitioner is a Norwegian National and process adopted for his deportation was quite in consonance with the procedure provided and prescribed for the same. It was further argued that the proceedings under Section 7 of Extradition Act, 1972, are different from the proceedings adopted for deportation of the petitioner, which are governed by the statute of Foreigner Act, 1946. That the procedure adopted by the petitioner for renouncing the Norwegian Nationality and adoption of Pakistani Nationality was contrary to the prescribed mode and manners. Reliance was placed on Sections 3, 14, 14(b) of Foreigner

Act, 1946 and case law reported in PLD 1980 Peshawar 275.

5. Arguments of the learned counsel for parties heard and record perused.

6. Points emanating from the writ and arguments of the learned counsel for the parties and requiring adjudication can be conveniently formulated as under:-

- i) Status of the petitioner nationality with reference to his deportation.
- ii) Pendency of criminal cases and deportation of the petitioner without adjudication of the same.
- iii) Deportation of petitioner in spite of his non-involvement in Anti-State Activities

7. In order to answer and determine the status of Nationality finally and conclusively this Court cannot and will not enter into indepth inquiry while exercising writ jurisdiction and, more particularly, when civil suit in respect of the same has been instituted and pending adjudication.

8. Plea that the status of the petitioner with respect to his nationality is in dispute and until then postponement of the process of deportation would be appropriate is a question which could be effectively decided by the Civil Court through final or interim order. Suffice to say that the petitioner was a Norwegian Passport Holder at the time of entry to the territory of Pakistan. Had he not been a citizen of Norway and holder of a Norwegian Passport he would have not been in a position to enter to the territory of the Pakistan as a

Pakistani citizen. In such eventuality the petitioner, for the purpose of proceedings under Foreigner Act, 1946, is to be considered a Norwegian National .

9. So far as registration of any criminal case and pendency thereof till decision thereon is concerned the same is a liability of the accused and privilege of the State. Same cannot be used as a tool or converted into a vested right debarring the State from deportation of the petitioner. In other words, a citizen of foreign origin cannot, as of right, claim to retain him for facing criminal charges which the State intends to ignore by deporting such a citizen. Pendency of criminal case cannot be therefore considered a privilege vested in the petitioner to claim detention and retention in the foreign country in which he is charged for a criminal offence. Point No.(ii) stand determined in the above manners.

10. Learned counsel for the petitioner has placed reliance on case law reported in 2011 YLR 418, wherein it was ruled that Government was empowered to detain a foreigner involved in activities against the State if sufficient material was available on record against such person. Facts of the case of the petitioner are different from the facts of the case referred to and relied upon by the counsel for the petitioner as the Federal Government of Pakistan is not seeking detention of the petitioner to prosecute him for the criminal charges rather they are enduring to deport the petitioner to the country of his origin in spite of

criminal cases and that too, on the request and demand of the country of origin.

11. For the afore-mentioned reasons, order of this Court dated 05.1.2012 passed in C.M. No.01 of 2012 is withdrawn and the writ petition in hand stands dismissed.

**(~~MUHAMMAD AZIM KHAN AFREDI~~)**  
**JUDGE**

\*Qamar Khan\*

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