

JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

Writ Petition No.4062/2019

Tahir Akbar & another

versus

Federation of Pakistan through Secretary, Ministry of Interior & 2 others

Writ Petition No.4339/2019

Majeed Akhtar Hussain

versus

Anti-Narcotics Force through its D.G. & 2 others

and

Writ Petition No.4379/2019

Tahir Akbar Kiyani & another

versus

Anti-Narcotics Force through its D.G. & 2 others

Petitioners by: Mr. Qaiser Imam Ch., Advocate.

Respondents by: Mr. Muhammad Shahid Zafar, SSP, ANF.
Mirza Abdul Rehman, Inquiry Officer, A.D./Law.

Date of Decision: 03.03.2020.

MOHSIN AKHTAR KAYANI, J: By way of this common judgment, I intend to decide the captioned writ petitions as having involved common questions of law and facts.

2. Brief and consolidated facts referred in captioned writ petitions are that petitioners namely Tahir Akbar Kiyani and Sadia Tahir, Petitioners No.1 & 2, respectively, received a letter from Anti-Narcotics Force (Respondent No.2) regarding their assets being frozen as inquiry regarding the assets of the petitioners was initiated, whereafter the petitioners joined the proceedings of inquiry, but the inquiry was not completed for one or the other reasons. Accordingly, the petitioners approached this Hon'ble Court by filing their respective writ petitions, whereby direction was issued to the ANF authorities for finalization of inquiry within 60 days, whereafter report was submitted on 10.05.2019. However, in continuation of said inquiry, the ANF authorities lodged

FIR No.124/2019 against Petitioner No.1, even otherwise, the names of petitioners were placed in the Exit Control List restricting them to travel abroad. On the other hand, ANF authorities also served Petitioner No.1 with 13 impugned notices, dated 04.11.2019, under Section 6(4)(5) of ANF Act, 1997 read with Section 37 of CNSA, 1997, whereby assets/properties of petitioners as well as of his father-in-law i.e. Majeed Akhtar Hussain (petitioner in captioned W.P. No.4339/2019) have been attached. Hence, the captioned writ petitions.

3. Learned counsel for petitioners contended that it is settled proposition of law that the rights of citizens granted by the Constitution of the Islamic Republic of Pakistan, 1973 cannot be easily lifted by the administrative authorities, even conviction cannot take away the fundamental rights as guaranteed by the Constitution including but not limited to life, trade and movement; that it has been settled by the superior Courts in recent judgments that if the investigation or inquiry is pending before the investigating authority or the case is not decided by the competent authority/court, the names of accused persons could not be placed in the Exit Control List; that the ANF was established to inquire/investigate the offences relating to narcotics, however the petitioners have no nexus with any of such offence but even then their assets have been frozen by the ANF authorities in violation of law, therefore, order of ANF authorities freezing/attaching the assets of petitioners as well as placing the names of petitioners in the ECL may kindly be set-aside for being illegal, unlawful and *void ab initio*.

4. Conversely, learned Special Prosecutor ANF while opposing the instant writ petitions contended that petitioners' names were placed on ECL under Section 2 of the Exit from Pakistan (Control) Ordinance, 1981 with the approval of Cabinet made on the recommendation of Ministry of Narcotics Control as the petitioner No.1 is involved in case FIR No.124/2019; that application submitted by the petitioners for removal of their names from ECL has been forwarded to

Ministry of Narcotics Control for their views/comments, which is still awaited; that the ANF authorities are fully authorized to conduct inquiry/investigation under Section 6(4)&(5) of the Anti-Narcotics Force Act, 1997, regarding which impugned letters freezing/attaching the properties of petitioners have rightly been issued, which cannot be assailed through the instant writ petitions as the actions taken by the ANF authorities are subject to judicial scrutiny of the learned trial Court where the matter is subjudice and the question of confirmation of freezing or otherwise will be decided by the learned trial Court; that Petitioner No.2 (Sadiah Tahir) is not entitled for any relief as she has already been declared proclaimed offender by the competent Court of law, against whom perpetual warrant of arrest has been issued; that the ANF authorities time and again called Majeed Akhtar Hussain (Petitioner) to join the investigation and justify the sources to purchase the property in his name, but the said petitioner failed to do so, rather approached this Court by filing the captioned writ petition; that Majeed Akhtar Hussain (Petitioner) has no means to purchase properties and he is benami owner of his son-in-law i.e. Tahir Akbar Kiyani/Petitioner No.1 along with his wife/Petitioner No.2, and as such, the petitioners came to this Hon'ble Court with unclean hands, therefore, the their writ petitions are liable to be dismissed.

5. Arguments heard, record perused.

6. Perusal of record reveals that Tahri Akbar Kayani and Mst. Sadiah Tahri, petitioners in the captioned W.P. No.4062/2019, came to know about their names being placed on Exit Control List when they were traveling abroad on 18.09.2019 at Islamabad Airport being nominated as accused in cases FIR No.82/2018, dated 07.06.2018, under Section 9-C/15 CNSA, 1997, P.S. ANF RD (North), Rawalpindi and FIR No.124/2019, under Sections 12, 13, 15 and 17 of CNSA, 1997 read with Sections 3 & 4 of Anti-Money Laundering Act, 2010, which are pending

adjudication before the CNS Court, Islamabad. As per record, petitioners' names have been placed on ECL due to pendency of those criminal cases as both are British citizen and the ANF authorities apprehend that if the said petitioners proceed abroad, they will not return to Pakistan, therefore, their names be kept on ECL till conclusion of the trial

7. It has further been observed from the record that Tahri Akbar Kayani/Petitioner No.1 was granted permission in the previous round for traveling abroad and he came back to Pakistan and as such, there is no denial that cases are not pending, therefore, in this backdrop the question of liberty of citizen could not be curtailed by mere registration of a criminal case and that mere registration of FIR would not be a ground for depriving a citizen from exercising his constitutional right as held in PLD 1997 Lahore 617 (Wajid Shamsul Hassan vs. Federation of Pakistan). This aspect has also been considered by the apex Court in reported judgment of 2017 SCMR 1179 (Federal Government vs. Ms. Ayyan Ali). However, all these aspects are qualified with another important aspect that whether the petitioners have obtained a prior permission from the learned Trial Court to visit abroad, such aspect has been considered in the case reported as PLD 2020 Islamabad 24 (Raja Pervaiz Ashraf vs Federation of Pakistan), wherein it has been held that:

"Permission to travel abroad has to be considered in the light of provision under Section 540-A Cr.P.C. where every accused has to make complete disclosure of all relevant facts, including plans to travel abroad, for the purpose of seeking exemption from personal approved, because only then the learned Trial Court would be able to exercise discretion in deciding whether or not the request may be acceded to. Moreover, if the name of accused is on the ECL 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 matter relating to trial, including presence of an accused or granting exemption, are exclusively dealt with and regulated by the learned Trial Court. This discretion obviously cannot be interfered with while exercising jurisdiction under Article 199 of the Constitution of the

Islamic Republic of Pakistan, 1973 nor can statutory provisions be made make redundant."

8. The above referred parameters are missing in this case, therefore, the question of removal of petitioners' names from the ECL has to be regulated through the learned Trial Court at the first instance by seeking a permission after submission of complete traveling itinerary, if such permission for exemption from appearance was allowed by the learned Trial Court, then the petitioners/accused can apply to the Federal Government for removal of their names from the Exit Control List with certain conditionalities and assurance that they will come back to Pakistan to face the trial. There is no cavil to the proposition that the ECL has to be regulated through the Exit from Pakistan (Control) Ordinance, 1981, read with Exit from Pakistan (Control) Rules, 2010, which has a specific procedure and has to be applied strictly.

9. Similarly, the petitioners in captioned W.P. No.4379/2019 have assailed the order of freezing of their properties by the Ministry of Narcotics Control, Government of Pakistan, dated 04.11.2019, passed in terms of Section 6(4)(5) of the ANF Act, 1997 read with Section 37(2) of the CNSA, 1997 due to pendency of criminal case FIR No.124/2019, dated 14.06.2019, P.S. ANF RD (North), Rawalpindi, whereby the vehicles i.e. Honda Civic (QZ-001-ICT) and Land Cruiser (ASF-001), two plots in Tehsil Gujar Khan, District Rawalpindi, Plaza situated at GT Road, Gujar Khan, Rawalpindi, and all the bank accounts maintained in different banks of Pakistan have been freezed. The ANF authorities have taken the stance that all the assets under the freezing order have been managed through the assets crime and the real brother of Tahir Akbar Kayani/Petitioner namely Zaheer Akbar Kayani, who is in judicial lockup in case FIR No.82/2018, is directly involved in the drug trafficking, and this fact further strengthens the case of ANF authorities as per their point of view.

10. In order to reach at just conclusion, I have gone through the provision of Section 37 of the CNSA Act, 1997, where powers to freeze assets of an accused person can be achieved by two ways, *firstly*, by the Special Courts, if, "*reasonable grounds for believing that accused has committed such an offence, it may order freezing of assets of accused, his relatives and associates in terms of Section 37(1)*", and *secondly*, if the Director General, ANF comes to an opinion that, "*an offence is being or has been committed, he may freeze the assets of such accused and within 7 days of the freezing shall place before the court the material on the basis of which freezing was made and further continuation of the freezing or otherwise shall be decided by the Court.*"

11. The abovementioned two concepts of freezing of assets stand regulated by the CNS Court only and as such, the Special Court has the jurisdiction by making an order in writing, confirm or *resent* very such freezing orders under the law while considering the background of the case on the basis of available record and evidence. The ANF authorities are under legal obligation to place at least the sources or material and *prima facie* evidence before the Court with promptitude to justify their point of view for confirmation of freezing of the properties notified by the Government of Pakistan and that material requires the appreciation under the law. However, in this case the entire file is silent to that effect and the petitioners have approached this Court, even in the previous round i.e. W.P. No.2494/2018, W.P. No.2811/2018, and W.P. No.1810/2018, have been disposed of by this Court vide order dated 17.12.2018, wherein the ANF authorities had taken the stance that they are in process of inquiry and they had placed caution upon the properties of the petitioners, however the inquiry stand concluded by the ANF authorities, which resulted into registration of FIR against the petitioners and as such, the challan has been submitted in the Court, therefore, the primary question as to whether the properties/assets have been managed through proceeds of crime is yet to be adjudicated upon.

12. The ANF authorities are also empowered in terms of Section 6(4)(5) of the ANF Act, 1997 to inquire and investigate the assets, which were acquired through illicit trafficking of narcotics and as such, there is no bar for inquiry/investigation of these assets, but the minimum requirement has to be justified before the Special Court and the onus is upon the ANF authorities to justify those grounds, reasons, material and evidence on the basis of which they have formulated their opinion that the petitioners built their assets on the basis of crime proceeds through drug trafficking, therefore, at this stage, the filing of instant writ petitions is premature as after submission of challan under Section 173 Cr.P.C., the assets have to be regulated by the order of the Court and the Special Court (CNS) is empowered to consider the limitation as well as the law along with material placed by the ANF authorities for confirmation, cancellation or further continuation of the freezing order, hence this Court in terms of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 could not enter into such arena as the power exercised by the petitioners in this case is of judicial review, which could only be allowed to proceed when the alternative remedy has already been invoked, which is missing in this case.

13. Likewise, Majeed Akhtar Hussain i.e. father-in-law of principal accused namely Tahir Akbar Kayani/petitioner through his captioned W.P. No.4439/2019 has challenged the orders of freezing of assets and as such, he is not an accused in any of the case, but the ANF authorities have leveled allegations that the assets of the said petitioner are managed by Tahir Akbar Kayani i.e. his son-in-law through narcotics business and as such, Majeed Akhtar Hussain/Petitioner is just a *Benami*, however the principles discussed above are required to be applied in this case on equal footings.

14. While considering the above background and discussion referred above, the captioned writ petitions stand DISPOSED OF with direction to the

petitioners to approach the Special Court to agitate all these matters/questions notwithstanding any observations passed by this Court. The learned Trial Court shall also adjudicate upon the question of exemption from appearance of the petitioners as well as decide the continuation of freezing order or otherwise, under the law, through speaking order within the period of 02 months, under intimation to this Court. However, the learned Trial Court may also consider it appropriate to conclude the trial of the pending criminal cases within next six (06) months by all means.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on 17th March 2020.

JUDGE

Khalid Z.