

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.1452/2018

Gohar Ullah

Versus

The Federation of Pakistan through Secretary, Ministry of Interior and
others

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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15.01.2019	Barrister Umer Aslam Khan, for the petitioner. Barrister Rizwan Ahmed, Deputy Prosecutor-General, N.A.B. Mr. Ahmed Raza Tahir, Additional Director (Ops Div), N.A.B. (HQ) Islamabad along with M/s Ahmed Bin Zahid and Aslam Pervaiz Abro, Investigations Officers.
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Through the instant writ petition, the petitioner, Gohar Ullah, impugns the order dated 15.03.2018, passed by the Ministry of Interior (respondent No.1) furnishing the reasons for the placement of his name on the Exit Control List (“E.C.L.”) through memorandum dated 10.01.2018.

2. Learned counsel for the petitioner submitted that the petitioner has been arraigned as an accused in reference No.58/2016 filed by the National Accountability Bureau (respondent No.2) under Sections 18(g) and 24(b) of the National Accountability Ordinance, 1999 (“N.A.O.”) before the learned Accountability Court at Karachi; that the filing of the said reference was approved by the Chairman, National Accountability Bureau (“N.A.B.”) at Islamabad on 30.11.2016; that the petitioner was arrested on 19.08.2016 and remained in the custody of N.A.B. till 29.10.2016; that vide order dated 29.03.2017, the petitioner was granted bail by the Hon'ble Supreme Court; that the petitioner is regularly attending the proceedings before the learned

Accountability Court; that the Hon'ble High Court of Sindh has passed an interim order dated 29.05.2014 in favour of Fateh Textile Mills Limited.; that the petitioner's name was placed on the E.C.L. on the recommendations of N.A.B.; that vide order dated 06.02.2018, passed by this Court in writ petition No.439/2017, respondent No.1 was called upon to decide the petitioner's representation for the removal of his name from the E.C.L. within thirty days; that the reasons furnished by respondent No.1 for not removing the petitioner's name from the E.C.L. are not sustainable in law; that on account of a pendency of a reference against the petitioner, his fundamental right to travel abroad could not be curtailed; and that in the case of Dr. Joseph Wilson Vs. Federation of Pakistan (2017 PCr.LJ 1569), this Court had held that the mere pendency of a reference before an Accountability Court is not a valid ground for placing an accused name on E.C.L. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

3. On the other hand, learned Deputy Prosecutor-General, N.A.B. submitted that the petitioner was involved in the commission of corrupt practices causing a loss of Rs.2.503 billion to the national exchequer; that the petitioner has made efforts to protract the proceedings before the learned Accountability Court; that there is an imminent apprehension that in the event the petitioner's name is ordered to be removed from the E.C.L., he will abscond and frustrate the proceedings before the learned Accountability Court; that the petitioner is the

Chairman and Director of M/s Fateh Textile Mills Limited (“F.T.M.L.”); that in the year 2005, an area measuring 8626 acres was leased to F.T.M.L. for the purpose of installation of a 200 mega watt coal fired power plant for a period of thirty years; that instead of installing a power plant, the petitioner extracted coal from the said area and sold it in the market; that the petitioner in doing so caused a loss of Rs.2.503 billion to the national exchequer; that the petitioner is also under investigation for fraudulently obtaining an export rebate of Rs.4,745,346/- against fake bank credit advices and also obtaining a fraudulent sales tax refund of Rs.171,008,072/- on the basis of fake invoices; and that the petitioner has already been denied one time permission to go to China in December, 2018. Learned Deputy Prosecutor-General prayed for the writ petition to be dismissed.

4. We have heard the contentions of the learned counsel for the petitioner as well as the learned Deputy Prosecutor-General, N.A.B. and perused the record with their able assistance.

5. The petitioner, who has been arraigned as an accused in reference No.58/2016 filed by respondent No.2/N.A.B. under Sections 18(g) and 24(b) of the N.A.O. before the learned Accountability Court at Karachi, seeks a direction to respondent No.1 for the removal of his name from the E.C.L.

6. As per the contents of reference No.58/2015, a complaint had been filed against the petitioner, who had remained the President of the Hyderabad Chamber of Commerce and a Director of F.T.M.L., for unlawfully selling coal, which had been reserved for a power plant, in the

open market and thereby causing a loss to the tune of Rs.2.503 billion to the national exchequer. A coalfield spread over 8626 acres in a compact block in District Jamshoro had been reserved by the Government of Sindh for the generation of electric power. On 15.04.2005, an M.O.U. was signed by parties including the Sindh Coal Authority and the Fateh Group, whereby it was agreed that the latter would develop the coalfield leading to the establishment of an integrated coal fired power plant. The petitioner, who was a Director of F.T.M.L., is alleged to have played an active role in the matter. On 17.05.2005, another M.O.U. was signed between the Fateh Group and the Government of Sindh, whereby the latter was required to install a power plant and start the production of electricity within a period of five years. Pursuant to the provisions of the said M.O.U.s, the said land was leased to F.T.M.L. on 22.06.2006. F.T.M.L. was permitted to sell the surplus coal in the open market after meeting the requirements of the power generation plant. At no material stage, was a power generation plant installed by F.T.M.L. The petitioner had a controlling share in M/s F.G.B.C., which was not a financial institution. Manzoor Hussain Memon, former Director, Mines and Mineral Development Department, Government of Sindh, was alleged to have issued an N.O.C. without the approval of the competent authority allowing F.T.M.C. to mortgage the mines leased rights in favour of any bank or a financial institution. On the basis of the said N.O.C., F.T.M.L. mortgaged the said land with M/s F.G.B.C. for US Dollars 100 million. F.G.B.C. has instituted civil suit No.333/2012

against the Director General, Sindh Coal Authority, etc. Even though F.T.M.L. had not established a power plant, it was unlawfully permitted to sell surplus coal in the open market. Vide letter dated 13.02.2009 from the former Director General, Mines and Mineral Development Department, Government of Sindh, who has been arraigned as accused No.6 in the said reference. On 15.03.2010, the lease granted to F.T.M.L. was cancelled on account of its inability to establish a power plant within the stipulated time frame. Instead of utilizing the extracted coal from the said leased area for power generation, F.T.M.L. sold the extracted coal in the open market.

7. It is an admitted position that the trial before the learned Accountability Court in reference No.58/2016 is already underway. The petitioner is accused No.1 in the said reference. Section 16(a) of the N.A.O. provides that notwithstanding anything contained in any other law for the time being in force, an accused shall be prosecuted for an offence under the N.A.O. in the Accountability Court and the case shall be heard from day to day and shall be disposed of within thirty days. Even though the disposal of a reference within a period of thirty days by the Accountability Court may be a practical impossibility in certain cases, the Accountability Court shall nonetheless endeavour to decide the reference expeditiously. An accused in a reference is required to attend the proceedings before the Accountability Court on every date of hearing unless an express dispensation is granted by such a Court. An order from this Court to remove the petitioner's name from the E.C.L. has the potential of impeding and

protracting the trial before the Accountability Court in the event he goes abroad and is unable to attend the proceedings before the Accountability Court. Therefore, given the gravity of the allegations against the petitioner in the said reference, we are of the view that the Accountability Court before which the said reference is pending is in the best possible position to decide whether the petitioner's name should be removed from the E.C.L. so as to enable him to proceed abroad. In the case of Asif Kamal Vs. Government of Pakistan (2016 YLR 1777), the Hon'ble Lahore High Court declined the prayer for the removal of the petitioner's name from the E.C.L. primarily by taking into consideration the gravity of the offences he was alleged to have committed. In the case of S. Akbar Ali Shah Vs. Federation of Islamic Republic of Pakistan (2011 MLD 1536), the petitioner against whom a case had been pending before Special Judge (Control of Narcotic Substances), Karachi, had sought the removal of his name from the E.C.L. The Hon'ble High Court of Sindh dismissed the writ petition filed by the petitioner with the observation that if the case against him is decided by the Trial Court in his favour, he would be *"at liberty to avail the remedy available to him under the law by seeking deletion of his name from E.C.L."*. In the said case, the petitioner had earlier been granted permission to travel abroad upon furnishing sureties. One of the judges on the bench that authored the said judgment rose to the grace of Hon'ble Supreme Court. Hence the said judgment has to be revered and respected.

8. As regards the contention of the learned counsel for the petitioner that this Court in the case of Dr. Joseph Wilson Vs. Federation of Pakistan (supra) had held that even if a reference against the petitioner is pending before the Accountability Court, his name can be ordered to be removed from the E.C.L., we are of the view that this is not quite so. In the said case, a reference had not been filed against the petitioner and the case was only at the inquiry/investigation stage. In the case at hand, a reference against the petitioner had already been filed. In the case of Dr. Joseph Wilson Vs. Federation of Pakistan (supra), it was *inter-alia* held as follows:-

“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.” (Emphasis added)

9. As mentioned above, given the peculiar facts of this case, and given the fact that a reference against the petitioner is presently under adjudication before the learned Accountability Court, we are not inclined to exercise our discretion in directing respondent No.1 to remove the petitioner’s name from the E.C.L. However, we observe that there is no impediment before the petitioner in applying to the Accountability Court for dispensing with the petitioner’s presence in the proceedings in the reference so as to enable him to travel abroad for a fixed period. The said Court may, in exercise of

its discretion, allow or decline such an application. Only after an order is passed in the petitioner's favour by the learned Accountability Court, can he reapply to respondent No.1 for permission to travel abroad during such period. Since the learned Accountability Court before which the reference against the petitioner is pending adjudication is not within the territorial jurisdiction of this Court, we cannot direct the said Court to conclude the trial against him expeditiously. This petition stands disposed of with the said observations.

(CHIEF JUSTICE)

(MIANGUL HASSAN AURANGZEB)
JUDGE

*Qamar Khan**

APPROVED FOR REPORTING

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