

IN THE HIGH COURT OF SINDH, KARACHI

Before:-

Mr. Justice Muhammad Iqbal Kalhoro, J.

Mr. Justice Mohammed Karim Khan Agha, J.

Petition No. and name of petitioner along with counsel.

C.P No.D-883 of 2018 Javed Iqbal (the petitioner) v. Federation of Pakistan and others through Salman Hamid and Abbas Rizvi, Advocates.

Counsel for the Respondents.

Mr. Yasir Siddiqui, Special Prosecutor, NAB.

Mr. Muhammad Aslam Butt, DAG for the Federation.

Dates of Hearing: 08.05.2018 and 17.05.2018

Date of Order: 29.05.2018

ORDER

Mohammed Karim Khan Agha, J. This is a petition filed by Javed Iqbal to quash the memorandum dated 29.12.2017 whereby his name was placed on the Exit Control List (ECL) by the Ministry of Interior on the request of the National Accountability Bureau (NAB) for allegedly committing forgery in the revenue records in connivance with revenue staff and usurped Government land which was sold on to private purchasers causing a loss of RS.50 Billion to the Government Exchequer (the impugned memo).

2. The brief facts of the case are that petitioner is the MD/CEO of M/s Ghani Builders and Developers which is in the property business and is involved in numerous construction projects. That on 09.12.2015 the NAB issued the petitioner with a call up notice in connection with the fraudulent allotment of 30 acres of land and cheating the public at large through construction of high rise plaza on bogus land in Deh Mehran Sector 40, Scheme 33 Karachi on the basis of which this court granted the petitioner pre arrest bail vide order dated 15.12.2015. In another inquiry in which he was again linked with the officials of the land revenue department the petitioner was again admitted to pre arrest bail by this court vide order dated 19.12.2016 with the condition that he deposit his original passport with the Nazir of this court which condition was struck down by the Hon'ble Supreme Court. Other inquiries were also initiated against the petitioner by the NAB and again he was

granted pre arrest bail by this court in respect of the same. As per the petitioner since 09.12.2015 he has been malafide harassed and hounded by the NAB who are hell bent in fixing him in some false case the most recent manifestation of which was the placing of his name on the ECL through the impugned memo. The petitioner approached the Ministry of Interior to remove his name from the ECL but did not receive any positive response from them and as such the petitioner, as he wants to travel abroad for business purposes, has approached this court to strike down the impugned memo as being unlawful and of no legal effect.

3. In support of his contentions he has placed reliance on **Federation of Pakistan through Secretary, M/o Interior v/s. General (R) Pervez Musharraf and others** (PLD 2016 SC 570), **Syed Arsalan Iqbal v/s. Government of Pakistan through Secretary, Ministry of Interior, Islamabad and another** (2015 YLR 1460), **Muhammad Sadiq v/s. Federation of Pakistan through Secretary Interior and 2 others** (PLD 2016 Sindh 263), **Yusuf J. Ansari v/s. Government of Pakistan through Secretary Ministry of Interior, Islamabad and another** (PLD 2016 Sindh 388), **Ms. Ayyan Ali v/s. Federation of Pakistan & another** (SBLR 2018 Sindh 36), **Rafique v/s. Federation of Pakistan & 02 others** (2018 MLD 579), **The Federal Government through Secretary Interior, Government of Pakistan v/s. Ms. Ayyan Ali and others** (2017 SCMR 1179), **Messrs Mustafa Impex, Karachi and others v/s. The Government of Pakistan, through Secretary Finance, Islamabad and others** (PLD 2016 SC 808), **Higher Education Commission through Project Manager v/s. Sajid Anwar and others** (2012 SCMR 186) and **United Bank Limited V Federation of Pakistan** (2014 SCMR 856)

4. Learned counsel for the Federation submitted that it had no objection if the name of the petitioner was removed from the ECL as the Ministry of Interior had placed the name of the petitioner on the ECL on the request of the NAB. Special Prosecutor NAB submitted that the petitioner was involved in a multi billion corruption case and an investigation was still going on against him in respect of the same which may culminate in a reference against him and as such his name should remain on the ECL as there were chances of his absconsion.

5. We have heard learned counsel for the parties and considered the record as well as the relevant case law.

6. In our view NAB has every right to inquire into offenses which may have been committed under the NAO however such inquiries and investigations cannot go on for an indefinite period and prevent a person's constitutionally guaranteed right to travel abroad. In the case in hand it appears that the petitioner has been subject to various NAB inquiries/investigations for over 2 and a half years and yet no reference has been filed against him. Even as per NAB's own SOP's an inquiry and investigation should have been completed well before this time and a reference filed if the evidence before the NAB justified such filing of a reference under S.18(g) NAO. The sword of Damocles as to whether or not a person is going to have a reference filed against him pursuant to NAB initiating an inquiry against him cannot be allowed to hang over his head for years on end especially when during such period he has fully co-operated with the NAB as in this case.

7. It is true that in this case the name of the petitioner has only been put on the ECL for the last few months as per the impugned memo but the NAB has not been able to satisfactorily explain as to why the petitioners name at this point in time has now been placed on the ECL especially as they have conceded that the investigation is on going and that a reference still is not yet ready for filing despite their alleged substantial material against the petitioner. Their main reasoning for keeping the petitioners name on the ECL is that the case is one of high value and that there are chances of absconsion. It is noted that most NAB cases are of high value as NAB's primary mandate is to deal with mega corruption cases. With regard to the petitioners absconsion MAB has not produced any material in support of this contention and since the petitioners business interests are in Pakistan this would tend to support his returning to face any charges which may be leveled against him. It is also noteworthy that prior to the petitioners name being placed on the ECL and during the pendency of other inquiries and investigations he had traveled abroad on a number of occasions and had always returned back to Pakistan. We are acutely aware that in deciding whether or not to take the name of a person off the ECL we must carefully balance the chances of an accused absconding in a high value case with his constitutionally

guaranteed rights under Article 15 of the Constitution but in this case for the reasons mentioned above we are of the view that the balance tilts in favour of taking the petitioners name off the ECL especially when we consider the authorities and other aspects mentioned below.

8. In **Syed Arsalan Iqbal's case** (Supra) this court allowed an accused to travel abroad despite being on the ECL **when the reference against him had already been filed** and was proceeding albeit very slowly whereas in this case no reference has yet been filed and as such the petitioners case appears to be on a better footing. Likewise in the case of **Rafique V Federation of Pakistan** (2018 MLD Sindh 597) which held in material part at Para 8 as under;

"8. It is now settled law by the Hon'ble Supreme Court that an accused right to travel abroad as guaranteed under Article 15 of the Constitution cannot be lightly trifled with even if he is an accused in a criminal case. In this regard, reliance is placed on the cases of Wajid Shams-ul Hassan v. Federation of Pakistan (PLD 1997 Lahore P.617) Federal Government v. Ms Ayan Ali (2017 SCMR 1179) and more recently unreported Supreme Court case of Dr. Asim Hussain v. Federation of Pakistan dated 29.8.2017."

9. It also cannot be ignored that the Ministry of Interior and NAB also sometimes seem to proceed in an arbitrary pick and choose manner when deciding whether to place a person's name on the ECL which prima facie appears to be governed more by the status or standing of the individual in society than the legal merits of the case against him and the chances of his absconsion. For example, s former President's name was taken off the ECL by the Ministry of Interior despite there being a high treason case against him which was at the fag end which enabled him to abscond abroad where he now remains; the Ministry of Interior (Federal Government) declined NAB's request to place the name of a former Prime Minister on the ECL despite a reference proceeding in the accountability courts against him involving large sums of money being at the fag end whereas on the other hand the Ministry of Interior left no stone unturned in its attempt to keep an actress on the ECL who was involved in a lesser offense than the personalities mentioned above; that NAB did not request the Ministry of Interior

to place the then Finance Minister on the ECL despite his alleged involvement in a very serious corruption case involving large sums of money which enabled him to abscond abroad (where he now remains) during the course of his trial before the accountability court despite being declared an absconder and being directed by the Hon'ble Supreme Court to return to Pakistan. All the above examples smacks of a pick and choose policy used by both the NAB and the Federal Government in deciding whether to place a person's name on the ECL which is *prima facie* discriminatory and contrary to both Articles 4 and 25 of the Constitution.

10. To enhance the public's confidence in the rule of law and adherence to the Constitution both the Federal Government and the NAB when dealing with cases which may entail placing a person's name on the ECL are hereby **directed** to develop rules/SOP's within 3 months of the date of this order to ensure that all person's are treated equally before the law in this respect notwithstanding their status or position in society keeping in view the need sometimes to place a person's name on the ECL expeditiously due to genuine fears of his absconsion or other cogent reasons. A compliance report shall be put up before this court by MIT II within 4 months of the date of this order which shall be placed in court by the office on 18-10-2018.

11. Thus, based on the above discussion, authorities and the particular facts and circumstances of this case we hereby set aside the impugned memo and direct the Ministry of Interior, Government of Pakistan, Islamabad to remove the name of the petitioner from the ECL forthwith. A copy of this order shall be facsimiled to the Secretary, Ministry of Interior, Government of Pakistan and the Chairman NAB for information and compliance.

12. The petition stands disposed of in the above terms.