

IN THE HIGH COURT OF SINDH, KARACHI

Before:-

Mr. Justice Ahmed Ali M. Shaikh, C.J.

Mr. Justice Mohammed Karim Khan Agha, J.

C.P. No.D-3897 of 2016

Rafiq Haji Usman V. The NAB & others.

Rafiq Haji Usman S/o Abdul Karim

Through Barrister Fayyaz Ahmed.

Counsel for the Respondents

Mr. Saeed Ahmed Memon,
Assistant Attorney General for Pakistan.

Mr. Muhammad Altaf, Special Prosecutor, NAB

Date of hearing: 10.10.2017

Date of order: 12.10.2017.

ORDER

Mohammed Karim Khan Agha, J:- By this order, we intend to dispose of the above petition filed by petitioner Rafiq Haji Usman S/o Abdul Karim, whereby he prayed that his name may be removed from the Exist Control List (ECL).

2. Brief facts of the case are that the National Accountability Bureau (NAB) filed Reference No.20 of 2014 (State V. Sikandar Abdul Karim & others) concerning a case of cheating the public at large under S.9 of the National Accountability Ordinance 1999 (NAO) in connection with a construction of a housing project i.e. Silver Sand on Commercial Plot No.DS-123, Khayaban-e-Shamsheer, Phase-V, DHA, Karachi whereby the petitioner was arrayed as accused No.4 in the above said Reference. It further appears

that he has cheated the public at large to the tune of Rs.9,485,900,000/- As such in order to prevent the petitioner from absconding the NAB requested the Ministry of Interior to place the petitioner on the ECL which was duly done

3. Learned counsel for the petitioner submitted that the Reference has been filed in the year 2014 and had been dragging on for a number of years and yet there was no end in sight and that he wished to avail his fundamental right to travel abroad to perform Umrah and Hajj and thus under these circumstances his name should be removed from the ECL.

4. Learned Assistant Attorney General placed on record a report from the Section Officer (ECL), Ministry of Interior, Government of Pakistan, Islamabad whereby the name of the petitioner has been placed on the ECL at the request of the NAB and according to him since the petitioner's name has been placed on the ECL at NAB's request, the Ministry of Interior, had no objection to remove the petitioner's name from ECL provided that the NAB had no objection and instructed them accordingly.

5. Learned Special Prosecutor appearing on behalf of the NAB strongly opposed removing the name of the petitioner from ECL as he was one of the main accused in a mega scam which was proceeding before the Accountability Court and he feared that he may abscond.

6. We have heard the parties, perused the record and considered the relevant case law.
7. It appears from the record that the petitioner was released on post arrest bail by order of the Hon'ble Supreme Court dated 26.06.2015 and it has not been disputed by the NAB that he has not caused any delay in the trial Court's proceedings or that he has attempted to abscond during this two year period. Learned counsel for NAB could not controvert the fact that the trial was not likely to conclude in the near future. In addition it appears from the record that the petitioner has already deposited his share of any potential liability with the concerned Accountability Court.
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 respect, reliance is placed on the cases of **Wajid Shamas-ul Hassan V Federation of Pakistan** (PLD 1997 Lahore P.617) **Federal Government V Ms Ayan Ali** (2017 SCMR 1179) and more recently the unreported Supreme Court case of **Dr. Asim Hussain V Federation of Pakistan** dated 29.08.2017.
9. Based on the above authorities and the particular facts and circumstances of this case we hereby direct the Ministry of Interior, Government of Pakistan, Islamabad to remove the

name of the petitioner from the ECL forthwith. However, it is made clear that the petitioner shall not leave Pakistan without the permission of the trial Court and that his absence from Pakistan shall not cause any delay in the trial proceedings. A copy of this order shall be facsimiled to the Secretary, Ministry of Interior, Government of Pakistan, Islamabad and the concerned Accountability Court bearing Reference No.20 of 2014 (State V. Sikandar Abdul Karim) for information and compliance.

10. The above are the reasons for our short order dated 10.10.2017.