

# **THE HIGH COURT OF SINDH, KARACHI**

Before:

***Justice Mohammad Karim Khan Agha***  
***Justice Adnan-ul-Karim Memon***

## **C.P. No.D-4439 of 2025**

[Najam-uz-Zaman v. Federation of Pakistan and others]

Petitioner : Through Mr. Raj Ali Wahid advocate

Respondent No.1 : Through Ms. Wajiha Mehdi Asstt. Attorney General for Pakistan

Respondents No.2 and 3 : Through Syed Khuram Special Prosecutor NAB

Date of hearing : 17.09.2025

Date of decision : 17.09.2025

## **JUDGMENT**

**Mohammad Karim Khan Agha, J.** –Through this petition, the petitioner has prayed for the following reliefs:

- (i) Set aside the impugned letter bearing No.1(2176)/2019/R/IM-1/NABHQ/DO(PCL) dated 25.07.2025 issued by the Respondent No.2 to the Respondent No.3.
- (ii) Suspend the operation of the impugned letter bearing No.1(2176)/2019/R/IM-1/NABHQ/DO(PCL) dated 25.07.2025 issued by the Respondent No.2 to the Respondent No.3.
- (iii) Direct the Respondent No.2/ NAB not to take any coercive measure in the backdrop of the impugned letter.
- (iv) Direct the Respondents to remove the name of the Petitioner from Passport Control List (PCL), Blacklist (BL), Exit Control List (ECL) or any other stop list putting an embargo on the travel of the Petitioner.
- (v) Direct Respondents not to place the name of the Petitioner in future on any travel ban list without the permission of this Hon'ble Court.
- (vi) Permit the Petitioner to travel abroad from time to time as the need arises.
- (vii) Any other reliefs) which this Honourable Court may deem fit and proper in the interest of justice.

2. The relevant facts for disposal of the instant petition are that a letter bearing No.1(2176)/2019/R/IM-1/NABHQ/DO(PCL) dated 25.07.2025 (hereinafter referred to as the “impugned letter”) was issued by Respondent No.2 to Respondent No.3, directing that the petitioner’s name, along with 15 others, be placed on the Passport Control List (PCL) in connection with NAB Reference No.14/2019 (State vs. Manzoor Qadir Kaka and others), which is pending before the Accountability Court at Islamabad. During the pendency of the said Reference, Parliament enacted the National Accountability

(Amendment) Act, 2022, followed by the National Accountability (Second Amendment) Act, 2022. According to the petitioner, by virtue of the amended Section 4 of the National Accountability Ordinance (NAO), 1999, certain exceptions were introduced which ousted NAB's jurisdiction in specific cases. Furthermore, under Section 9(a)(vi) read with Explanation-II of the NAO 1999, strict proof of monetary or pecuniary gain is now required to establish the offence of corruption and corrupt practices. Relying on these amendments, the petitioner challenged NAB's jurisdiction by filing an application before the Accountability Court, Islamabad. Vide order dated 09.06.2023, the Court returned/transferred the Reference to the Chairman/DG NAB with a direction to present it before the competent forum. Subsequently, the said amendments were challenged before the Supreme Court, which, vide judgment dated 15.09.2023, declared certain provisions ultra vires and struck them down, directing restoration of all inquiries, investigations, and references disposed of under the struck-down provisions. In compliance, NAB returned the References, including Reference No.14/2019, to the Accountability Courts. However, the Federal Government filed Intra-Court Appeals, and the Supreme Court, vide judgment dated 06.09.2024, set aside the earlier decision dated 15.09.2023 and restored the amendments introduced via Act No. XI of 2022 and Act No.XVI of 2022. In view of this, the petitioner again moved the Accountability Court, Islamabad, seeking return/transfer of the Reference, which is currently pending adjudication.

3. To the petitioner's utter surprise, he came to know about the issuance of the impugned letter placing his name on the PCL. Having no alternate remedy, the petitioner has filed the instant petition.

4. Learned counsel for the petitioner emphatically argued that the impugned letter has been issued by Respondent No.3 without lawful authority, as NAB Reference No.14/2019 is presently pending before the Accountability Court, Islamabad, for determination on the question of jurisdiction. Until such determination is made, no adverse action could lawfully be taken against the petitioner. It was further contended that the impugned letter violates Articles 4, 9, 15, 18, and 25 of the Constitution, as it restricts the petitioner's fundamental rights to liberty, movement, and equality before the law, without due process. It is further submitted that the action amounts to harassment and constitutes a colorable exercise of power. It is settled law that executive authorities cannot curtail constitutional rights in the absence of lawful justification or cogent reasons. The petitioner was neither served with prior notice nor afforded an opportunity of hearing before his name was placed on the Passport Control List (PCL). As held by the superior courts, mere pendency of a reference or investigation is not a valid ground to restrict a citizen's movement, unless there is credible material suggesting likelihood of absconsion which, in the present case, is absent. It was further argued that none of the grounds under Rule 2 of the Exit from Pakistan (Control) Rules, 2010 are attracted, as

the petitioner is not involved in any matter warranting such restriction. The impugned action is also contrary to the Passport Control Rules and binding precedents of the superior courts. Therefore, the impugned letter is liable to be set aside. Reliance has been placed upon the cases of **Miss Ayyan Ali vs. Federation of Pakistan** (2017 P.Cr.L.J 920), **Gen. (Rtd) Pervez Musharaf vs. Pakistan through Secretary Interior and others** (PLD 2014 Sindh 389), **Tanveer Shakoor vs. Federation of Pakistan** (PLD 2014 Lahore 482) and **Rafique vs. Federation of Pakistan** (2018 MLD 579).

5. On the other hand, learned Special Prosecutor NAB duly assisted by learned Asstt. Attorney General argued that the petitioner is an accused in NAB Reference No.14 of 2019, with specific allegations of corruption and corrupt practices; that impugned letter has been issued due to alleged embezzlement which is a serious offence. Lastly, it is submitted that said Reference is still pending adjudication before the Accountability Court at Islamabad, hence prayed for dismissal of instant petition.

6. We have heard learned counsel for the parties and have perused the relevant record minutely.

7. The first issue is whether this court has territorial jurisdiction to hear this petition. As the request which lead to the impugned letter came from NAB Islamabad and the impugned letter was issue by the DG Immigration and passport from Islamabad. It is well settled by now that since both these institutions operate throughout Pakistan a high court can hear the matter. In this respect reliance is placed on the case of **The Federal Government v Ms Ayyan Ali (2017 SCMR 1179)** which held as under in material part;

*“4. As regards the question of territorial jurisdiction, it hardly need any emphasis that the impugned Notification/Memorandum has been issued by the Federal Government, which functions all over the country, and since the respondent No.1 resides in Karachi, and has a right and choice to proceed abroad through Jinnah International Airport, Karachi, and in fact atleast twice earlier she had proceeded to go abroad through Jinnah International Airport, Karachi, though she was stopped owing to the earlier Notifications / Memorandums, and therefore the embargo placed on her leaving the country has in fact taken place at Karachi, which prevention in all likelihood, was to be repeated at Karachi in pursuance of the third Notification/Memorandum, and thus giving rise to a cause of action against the third Notification/Memorandum at Karachi because of its taking effect there. **It is now well settled that the Federal Government, though may have exclusive residence or location at Islamabad, would still be deemed to function all over the country.** In this regard the case of **LPG Association of Pakistan through its Chairman v. Federation of Pakistan through Secretary Ministry of Petroleum and Natural Resources Islamabad and 8 others (2009 CLD 1498)**, may be referred to, whereby the Lahore High Court, after meticulously analyzing the judgments rendered by this Court, as well as of the High Courts on the question of territorial jurisdiction, with regard to the acts, deeds and the legislative instruments of/by the Federal Government, has deduced the jurisprudential principles as follows:-*

*“(A) **The Federal Government or any body politic or a corporation or a statutory authority having exclusive residence or location at***

*Islamabad with no office at any other place in any of the Province, shall still be deemed to function all over the country.*

*(B) If such Government, body or authority passes any order or initiates an action at Islamabad, but it affects the "aggrieved party" at the place other than the Federal capital, such party shall have a cause of action to agitate about his grievance within the territorial jurisdiction of the High Court in which said order/action has affected him.*

*(C) This shall be moreso in the cases where a party is aggrieved by a legislative instrument (including any rules, etc.) on the ground of it being ultra vires, because the cause to sue against that law shall accrue to a person at the place where his rights have been affected. For example, if a law is challenged on the ground that it is confiscatory in nature, violative of the fundamental rights to property; profession; association etc. and any curb has been placed upon such a right by a law enforced at Islamabad, besides there, it can also be challenged within the jurisdiction of the High Court, where the right is likely to be affected.*

*In this context, illustrations can be given, that if some duty/tax has been imposed upon the withdrawal of the amounts by the account holders from their bank account and the aggrieved party is, maintaining the account at Lahore though the Act/law has been passed at Islamabad, yet his right being affected where he maintained the account (Lahore), he also can competently initiate a writ petition in Lahore besides Islamabad; this shall also be true for the violation of any right to profession, if being conducted by a person at Lahore, obviously in the situation, he shall have a right to seek the enforcement of his right in any of the two High Courts." (bold added)*

8. Thus, we find that this court does have territorial jurisdiction to hear this petition especially as the petitioner is a resident of Karachi and uses Jinnah International Airport to travel abroad.

9. An important point to note is that the petitioner is arrayed as an accused in National Accountability Bureau Reference **14/2019 State V Mazoor Qadir and others** which despite the lapse of 6 years still remains undecided and in fact is at its very initial stages and is likely to take many years to conclude. The question therefore arises for how long can the State deprive a person of his fundamental right of freedom of movement under Article 15 and his right to life under Article 9 of the Constitution? The answer is not indefinitely as these are fundamental rights guaranteed under the Constitution.

10. Significantly, the petitioner when the reference was filed was not placed on the Exit Control List (ECL) and has never been so placed in the last 6 years yet after almost 6 years the NAB has requested the petitioners name to be added to the PCL despite him being free to travel abroad for the last 6 years without hindrance and thereby abscond which the petitioner never did. The reason given in the PCL are that "*the accused persons are involved in the offences of corruption and corruption practices through cheating the public at large*". This is an accusation which was made against the accused 6 years ago yet NAB made no effort to place the accused on either the ECL, PCL or any other law, rule or regulation to prevent him from travelling abroad so the fact that the NAB has chosen to direct the placement of the petitioners name on the PCL now (only

about 2 months ago when the reference is not even proceeding) appears to be inexplicable and does not seem prima facie to have been done in good faith but rather to harass the petitioner for reasons best known to themselves.

11. Even otherwise it is well settled through a plethora of authorities from the Supreme Court that a citizen's right of freedom of movement under Article 15 and right to life under Article 9 of the Constitution cannot be curtailed simply because a criminal case is pending against him. In this respect reliance is placed on the case of **Ayyan Ali** (Supra) which held as under;

*"13. Reverting to the third Notification/Memorandum it is crucial to note that like the earlier two Notifications/Memorandums, the third Notification/Memorandum was issued purportedly for the reasons which do not conform to the criteria as laid down in the relevant rules and the exit control policy. It was not only in the case of Wajid Shamsul Hassan v. Federation of Pakistan through Secretary Ministry of Interior, Islamabad (PLD 1997 Lahore 617), where it was held that the liberty of a citizen cannot be curtailed by mere registering a criminal case, and that mere registration of FIR would not be a ground for depriving a citizen of the exercise of his constitutional right and further that registration of a criminal case has no nexus with and is extraneous to the object of the Exit from Pakistan (Control) Ordinance 1981, but even in the case of respondent No.1, in relation to the second Notification/Memorandum, this Court, while dismissing the petitioner's petition for leave, through judgment dated 13.4.2016, has held as follows:-*

*"5. Respondent No.1, no doubt, has been charged in a case mentioned above which is still pending adjudication in the competent Court of law. But mere pendency of a criminal case cannot furnish a justification for prohibiting her movement. It has never been the case of the petitioners that the respondent is involved in any of the cases listed in Rule 2 of the Exit from Pakistan (Control) Rules, 2010 in general or Rule 2(1)(b) in particular, inasmuch as she has not been charged to have embezzled a large government's fraud or committed institutional fraud." (bold added)*

12. Pursuant to certain amendments in the NAO the Accountability Court lost its jurisdiction to hear the instant reference which lead to the Accountability Court passing an Order dated 09.06.2023 which held that as the instant reference no longer, on account of the amendments, fell within the jurisdiction of the Accountability Court, ordered as under at para 6 which is reproduced below for ease of reference.

*"6) I have heard in detail about the concerned forum where the matter can be referred. It is clarified that this Court has the jurisdiction to determine the forum where the matter is to be sent. With the able assistance of Special Prosecutor Accountability the forum where matter can be referred to Anti-Corruption Court, Provincial Sindh Karachi (South). Hence the reference is hereby referred to Learned Anti-Corruption Court, Provincial Sindh Karachi (South) for further proceedings in accordance with section 4(4)(e) of the NAO, 1999 (as added by National Accountability (Amendment) Act, 2023). Investigating officer of the case be directed to collect all material of Reference No.14/2019, titled The State Vs. Manzoor Qadir, etc. to submit it before the above cited learned Court for further proceedings.*

***Notice be issued to I.O in this regard. All the applications filed by the accused stand disposed of accordingly.” (bold)***

13. This order however was superseded by a later Judgment of the Supreme Court dated 15.09.2023 which struck down a number of amendments made to the NAO which once again lead to the accountability court having jurisdiction to hear the instant reference.

14. Subsequently the Supreme Court vide later Judgment dated 06.09.2024 set aside the aforesaid Judgment dated 15.09.2023 which had the effect of again depriving the Accountability court of the jurisdiction to hear the instant reference under the NAO which potentially revived the Accountability Courts earlier order dated 09.06.2023.

15. It is quite apparent that as of 15.09.2024, which is over one year ago, the Accountability Court in Islamabad has no jurisdiction under the NAO to hear the instant reference and as such the accused are not undergoing an expeditious trial which is their right under Article 10 (A) of the Constitution. As such in order to meet the ends of justice we are sanguine that the concerned Accountability Court in Islamabad if there is any pending application before it concerning its jurisdiction may either chose to revive its order dated 09.06.2023 as reproduced earlier or pass a fresh order on any outstanding application in respect of its jurisdiction or if any such application is made expeditiously so the trial of the petitioner and his co-accused may proceed before the appropriate forum without further delay which continued delay might be a violation of Article 10(A) of the Constitution.

16. It is also apparent that since the Supreme Court judgment earlier referred to dated 06.09.2024 undid the earlier Supreme court Judgment dated 15.09.2023 since 06.09.2024 the NAB and the Accountability Court had no jurisdiction over this reference and from that date onwards the NAB lacked the lawful authority to request the DG Director General Immigration and passport to place the petitioners name on the PCL on 25.07.2025 as NAB no longer had jurisdiction in this reference. Even otherwise it is well settled that a pending criminal case which has a long way to go cannot trump indefinitely the fundamental rights guaranteed under Articles 15 and 9 of the Constitution which in this case seem to have been violated in bad faith for no good reason 6 months after the filing of the reference.

17. This being the case for the reasons discussed above we hereby;

(i) set aside the impugned letter bearing No.1(2176)/2019/R/IM-1/NABHQ/DO(PCL) dated 25.07.2025 issued by the Respondent No.2 to the Respondent No.3 as being passed without lawful authority.

(ii) Direct the Respondents to immediately remove the name of the petitioner from Passport Control List (PCL), Blacklist (BL), Exit Control List (ECL) or any other stop list putting an embargo on the travel of the petitioner outside of Pakistan.

(iii) Direct Respondents not to place the name of the Petitioner in future on any travel ban list without the permission of this Hon'ble Court.

18. A copy of this Order shall be sent by fax and electronic modes to the Chairman NAB, Secretary Ministry of Interior Government of Pakistan, DG Directorate General Immigration and Passport PCL section Islamabad and PO of Accountability Court Islamabad for information and compliance as the case may be.

**HEAD OF CONST. BENCHES**

**JUDGE**