

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No. D-4190 of 2026
(*Gulbadan versus Federation of Pakistan & others*)

Date	Order with signature of Judge
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Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Muhammad Jaffer Raza

Date of hearing and order: 18.8.2026

M/s Abid Hussain Chang and Naveed Raza Nizamani advocates for the petitioner
Mr. Abdul Jalil Zubedi, Additional AG
Ms. Samina Maqsood, Law Officer, NADRA
Mr. Arbab Ali Shah, Incharge Afghan holding camp
Inspector Ahmed Umer, SSP office, Keamari Karachi

ORDER

Adnan-ul-Karim Memon, J. Petitioner has filed this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, with the following prayer: -

- (a) *To direct the respondents to immediately produce the detainee before this Court without fail.*
- (b) *To restrain the respondents, subordinates or anyone acting under them from deporting, removing or handing over the detainee to any authority.*
- (c) *To direct the respondents to maintain status quo regarding the nationality till the finality of the instant petition*

2. The petitioner, being the real brother of alleged detainee Jamal Khan, has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution, alleging that his brother is being unlawfully detained at the Illegal Foreigners Holding Point/Afghan Refugee Camp, Karachi, with a threat of deportation. It is the petitioner's case that Jamal Khan and his family have been residing in Pakistan for a long time and possess Pakistani identity documents, including a CNIC issued by NADRA. The petitioner further asserts that Jamal Khan's CNIC was blocked without notice or opportunity of hearing. He had earlier approached the Federal Ombudsman, who, vide order dated 15.05.2023, observed that the CNIC had been blocked on the basis of suspicion and directed NADRA to decide the matter expeditiously, but the grievance remained unresolved. According to the petitioner, Jamal Khan was taken into custody on 11.06.2026 by the Police Post SITE Kotri and subsequently shifted to the Afghan Camp, Karachi, without registration of any FIR, production before a Magistrate, or obtaining of remand under the Code of Criminal Procedure. The petitioner maintains that Jamal Khan is not an Afghan national and has never been legally declared a foreigner. It is submitted that his proposed deportation, without first

determining his nationality through lawful proceedings, violates Articles 4, 9, 10-A and 25 of the Constitution. The petitioner also contends that mere verification or inquiry regarding nationality cannot justify indefinite detention. He pointed out that an application under Section 491 Cr.P.C. was earlier filed before the learned Additional District & Sessions Judge-I (MCTC), Karachi West, but was dismissed vide order dated 19.06.2026. He prayed to allow this petition.

3. Respondent No. 8, however, contests the maintainability of the petition and submits that the question of nationality is a disputed factual matter governed by the Pakistan Citizenship Act, 1951, for which appropriate remedies and forums are available. It is further contended that the petitioner has not exhausted the prescribed remedies and that NADRA had issued a legal notice under Section 18 of the NADRA Ordinance, 2000, to which no satisfactory response was furnished. According to NADRA, Jamal Khan appeared before the Zonal Board but failed to produce sufficient citizenship documents required under the applicable SOPs, including documents predating 1979. His case was consequently referred to the Special Branch and Intelligence Bureau for verification, where his national status was reported as “cannot be ascertained.” NADRA therefore maintains that the petitioner has failed to establish his Pakistani nationality and may approach the Ministry of Interior or the competent Civil Court for determination of the disputed question. He prayed to dismiss the petition on the aforesaid analogy.

4. The District Administration, District Keamari, on the subject issue has separately reported that an Illegal Foreigners Holding Point has been established at Government College of Technology, SITE Area, Karachi, for processing and repatriation of illegal foreign nationals in accordance with applicable law and governmental SOPs. It states that Jamal Khan was received at the holding point after his nationality came under verification and that the SVAS system showed his CNIC as “Under Verification.” The report further states that his CNIC had previously been digitally impounded by NADRA and that his case was referred to the District Level Committee headed by the Deputy Commissioner, District Jamshoro. According to the latest NADRA record, his application/record was subsequently marked “Permanently Rejected.” The District Administration further relies upon the order dated 19.06.2026 passed under Section 491(1-A), Cr.P.C., whereby the learned Additional District & Sessions Judge held that an inquiry regarding the detainee’s citizenship and alleged procurement of citizenship documents was pending before the competent authorities. The learned Court further observed that, under Section 9 of the Foreigners Act, 1946, the burden of establishing lawful presence lies upon the person claiming to be a citizen, and that determination of nationality falls within the jurisdiction of the Federal Government. Consequently, the detention at the Illegal Foreigners Holding Point

during the verification process was not found to be unlawful. They also prayed to dismiss this petition on the aforesaid grounds.

5. We have heard the parties present in court and have perused the record with their assistance.

6. We are of the view that the controversy involved in the instant petition essentially relates to two distinct questions, i.e. (i) determination of the nationality/citizenship status of Jamal Khan; and (ii) the legality of his continued detention at the Illegal Foreigners Holding Point due to uncertainty of his being foreign national status.

7. So far as the question of nationality is concerned, this Court, in exercise of constitutional jurisdiction, would not undertake a disputed factual determination in the absence of the complete record and the proceedings contemplated under the relevant statutory framework. The respondents have placed on record that the CNIC of Jamal Khan was digitally impounded; his case was subjected to verification before the concerned authorities; the Special Branch/Intelligence Bureau reported that his national status could not be ascertained; and the latest NADRA record shows his application/record as “Permanently Rejected.” On the other hand, the petitioner relies upon the earlier issuance of a CNIC, the identity documents of his family and the order of the Federal Ombudsman dated 15.05.2023. These circumstances demonstrate that the question of citizenship remains disputed and cannot, at this stage, be conclusively resolved merely on the basis of the assertions of either party under Article 199 of the Constitution.

8. The Pakistan Citizenship Act, 1951 provides a statutory mechanism for determination of cases where doubt exists regarding citizenship. In particular, section 19 enables a person in respect of whose citizenship a doubt exists to approach the Federal Government for a certificate of citizenship. Therefore, the appropriate competent Federal authority is required to examine the entire material relied upon by the alleged detainee as well as the material collected by NADRA, Special Branch, Intelligence Bureau and other verifying agencies and to determine his status strictly in accordance with law.

9. At the same time, the fact that the question of nationality is under verification does not, by itself, furnish an unlimited or indefinite authority to deprive a person of his liberty. Article 4 of the Constitution guarantees that every person shall be dealt with in accordance with law, while Article 9 protects life and liberty except in accordance with law. Article 10-A further guarantees fair trial and due process in the determination of civil rights and obligations and in criminal matters. Article 199 of the Constitution also specifically empowers this

Court, where a person is in custody within its territorial jurisdiction, to require that such person be brought before it so that the Court may satisfy itself that he is not being held without lawful authority or in an unlawful manner.

10. The respondents have relied upon the Foreigners Act, 1946. Section 9 thereof undoubtedly places the burden upon the person concerned to establish that he is not a foreigner where a question arises under the Act. However, section 9 relates to the burden of proof regarding status and cannot, by itself, be construed as an independent source of authority for indefinite detention.

11. Likewise, section 3 of the Foreigners Act empowers the Federal Government to make orders regulating or restricting the entry, departure, presence or continued presence of foreigners and, in the circumstances specified therein, provides for arrest and detention. Section 4 further contemplates detention of a foreigner where an order under section 3(2)(g) is in force. Thus, where the respondents seek to justify continued detention under the Foreigners Act, they must identify and place on record the specific lawful order and statutory provision under which the detainee is being detained or obtain proper legal order from the competent Court of law.

12. It is also material that section 14C of the Foreigners Act relates to custody pending deportation of a foreigner who has been convicted and sentenced to imprisonment under the Act. In the present case, the respondents have not pointed out any conviction or sentence of Jamal Khan under the Foreigners Act. Consequently, section 14C cannot, in the circumstances presently disclosed, be treated as an independent justification for his continued detention merely for the purpose of completing nationality verification.

13. The dismissal of the application under section 491 Cr.P.C. vide order dated 19.06.2026 also does not, by itself, confer an unlimited authority upon the executive to continue detention irrespective of the statutory basis thereof. The said order may be relevant to the factual and legal history of the matter. However, the respondents have to produce the person before the concerned Court of law for such purpose, if they justify the detention as per law.

14. We, therefore, find that the respondents have established the existence of a genuine and continuing dispute regarding the nationality of Jamal Khan and that the competent authorities are entitled to undertake verification in accordance with the Foreigners Act, 1946, the Pakistan Citizenship Act, 1951 and the applicable rules/SOPs. However, the respondents are equally bound to ensure that such verification is conducted expeditiously, transparently and in accordance with due process and that the pendency of such verification does not become a pretext for

indefinite detention without obtaining proper order from the Court of law, having jurisdiction.

15. Accordingly, without finally expressing any opinion on the citizenship of Jamal Khan, the petition is disposed of with the following directions:

- (i) The respondents shall forthwith produce Jamal Khan before the concerned competent authority/Court, as the case may be, and place on record the precise statutory authority and order, if any, under which he is presently detained.
- (ii) If there exists a valid order of detention under section 3 of the Foreigners Act, 1946, the respondents shall place the same on record and ensure strict compliance with all statutory safeguards attached thereto.
- (iii) If no independent and valid order of detention exists and there is no criminal case, conviction or other lawful authority justifying his continued custody, Jamal Khan shall not be kept in physical detention merely on the ground that his nationality is under verification, subject to any lawful order subsequently passed by the competent authority in accordance with law or Court of law having jurisdiction in the matter.
- (iv) The competent Federal authority shall undertake and conclude the determination of Jamal Khan's nationality/citizenship, after affording him a meaningful opportunity to produce all available documents and material in his support and after considering the record of NADRA, Special Branch, Intelligence Bureau, the District Level Committee and the earlier order of the Federal Ombudsman.
- (v) Until such determination is lawfully made, the respondents shall not deport, remove or hand over Jamal Khan to any foreign authority merely on the basis of an unresolved or inconclusive verification report. Any order for deportation shall be subject to the applicable statutory requirements and shall be passed by the competent authority having jurisdiction or Court of law on the subject issue.
- (vi) The respondents shall provide Jamal Khan a reasonable opportunity to clarify the discrepancies concerning his identity and nationality and shall communicate the final decision to him through a reasoned order, in accordance with law.
- (vii) The question whether Jamal Khan is ultimately a citizen of Pakistan or a foreign national is left open for determination by the competent statutory authority and shall not be treated as finally adjudicated by this order.

16. With the above safeguards, the petition is disposed of. The respondents shall ensure that the process of verification is completed without unnecessary delay and that no person is deprived of liberty except under clear and lawful authority. At the same time, nothing contained herein shall prevent the competent authorities from taking action in accordance with the Foreigners Act, 1946 or any other applicable law if, after due process, Jamal Khan is lawfully determined to be a foreign national.

JUDGE

JUDGE