

IN THE HIGH COURT OF SINDH, KARACHI.

Present:-
Mr. Justice Muhammad Iqbal Kalhoro.
Mr. Justice Shamsuddin Abbasi

C.P.No.D-5083 of 2019
Aijaz Hussain Jakhrani

Versus

Federation of Pakistan & others

Date of Hearings : 16.10.2020 & 23.10.2020
Date of order : 05.11.2020

Mr. Mohsin Shahwani, advocate for petitioner
Mr. Obaidullah Abro, Special Prosecutor, NAB
Mr. Mukesh Kumar Khatri, Assistant Attorney General

ORDER

Muhammad Iqbal Kalhoro, J:- Petitioner, who claims to have a political background, currently serving as Advisor to Chief Minister of Sindh with portfolio of Prisons and Inter Provincial Coordination, being aggrieved by a letter dated 14.06.2019 and memorandum dated 03.07.2019 placing his name on Exit Control List (**ECL**) has filed this petition seeking quashing thereof mainly on the grounds, among others, that the same are against his fundamental rights guaranteed under Articles 4, 9, 14 and 15 of the Constitution of Islamic Republic of Pakistan; and in disregard to various pronouncements of the superior courts on the issue.

2. A perusal of record shows that impugned action has been taken against the petitioner on the recommendation of respondent No.2/NAB in view of apprehension of his abscondence in an enquiry into the allegations of accumulating assets beyond source of income initiated against him in the year 2018. In the course of hearing, we were informed that after completion of enquiry / investigation, a reference has been filed against the petitioner before the learned Accountability Court at Sukkur and apart from it two other enquiries in respect of different allegations have been undertaken by NAB against him.

3. Learned defence counsel has mainly stated that by now it has been settled that mere pendency of a criminal case or investigation will not form a valid ground for placing name of a person on ECL curtailing his

fundamental right of movement and liberty guaranteed under the Constitution. The impugned memorandum has been issued in disregard of settled principle of law and obiter dicta of the superior courts laying down as a rule that mere pendency of the criminal case would not disentitle a person from traveling abroad. The petitioner has strong social, political and family ties with this country and he is not likely to abscond leaving behind his entire family in the lurch. The petitioner is sick and regularly goes abroad for medical treatment but because of impugned action, he has not been able to get medical treatment since. In support of his arguments, he has relied upon the case laws reported in **2011 CLD 511, PLD 2014 Sindh 389, 2015 YLR 1460, PLD 2016 SC 570, PLD 2016 Sindh 388, PLD 2016 Supreme Court 57, 2016 P Cr. LJ 1226, 2016 YLR 177, 2017 SCMR 1179, 2018 MLD 579, PLD 2019 Islamabad 316 and 2019 SCMR 332.**

4. On the other hand, learned Special Prosecutor, NAB and learned Assistant Attorney General both have opposed this petition and have submitted that petitioner has a remedy of review against impugned memorandum u/s 3 of the Exit From Pakistan (Control) Ordinance, 1981. They further have relied upon the case law reported in **2016 P Cr. LJ 1226** and an unreported judgment dated 13.04.2016, passed by the Honourable Supreme Court of Pakistan in the case of **The Federation of Pakistan through Collector of Customs, Model Custom Collectorate, Islamabad Vs. Sindh Education for Institution Development Society through its General Secretary, Karachi.**

5. We have considered case of both the contesting parties and perused the material available on record. In various pronouncements of superior courts, some of which have been relied upon by learned defence counsel, it has been settled that mere pendency of a criminal case would not *ipso facto* disentitle a person from traveling abroad and his right to movement and liberty guaranteed under the constitution would not be curtailed. On the same touch stone, the impugned restriction does not seem to be maintainable. Besides, the impugned action was taken against the petitioner, when the enquiry was pending against him, which since has culminated into a reference filed before the relevant Accountability Court at Sukkur, his movement within or outside of the country be better left to be regulated by the said court, where his presence is required.

6. As to jurisdiction of this court, we refer the case of **Wajid Shamas-ul-Hasan Vs. Federation of Pakistan through Secretary Ministry of Interior, Islamabad (PLD 1997 Lahore 617)** and an unreported judgment WP No.12312/2019 in the case of **Mian Muhammad Shahbaz Sharif Vs. Federation of Pakistan & 4 others** passed by learned Lahore High Court unambiguously holding that constitutional jurisdiction would not be regulated by a subservient law particularly when life, liberty and other fundamental rights of a person guaranteed under the Constitution are involved. Ergo, the objection in regard to maintainability of this petition in view of alternate remedy is not sustainable and is hereby turned down and the petition is allowed as prayed. Nonetheless, the petitioner when intends to travel abroad shall have to seek permission from the trial court on the terms and conditions to be decided by it if at all, it accedes to such a request for ensuring unhindered proceedings in the trial in his absence and securing his presence back in the trial in due course of time.

Petition stands disposed of in above terms.

JUDGE

JUDGE

Rafiq/P.A.