

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**

**Present:**  
**Mr. Justice Muhammad Iqbal Kalhoro J.**  
**Mr. Justice Agha Faisal, J.**

C.P. No.D-3294 of 2021

Amanullah Memon -----Petitioner

Versus

Federation of Pakistan & others ----- Respondents

Barrister Mohsin Shahwani, advocate for petitioner.  
Mr. Irfan Ahmed Memon, DAG.  
Mr. Shahbaz Sahotra, Special Prosecutor NAB. a/w Ahmed  
bin Zahid, Deputy Director NAB/I.O.

**07.04.2022.**

**ORDER**

**MUHAMMAD IQBAL KALHORO J:** Petitioner, a builder, working as Chairman, Al-Asar Group, has filed this petition seeking directions to respondents to remove his name from Exit Control List stating that in the year 2014 he had purchased a land admeasuring 58-00 acres in S.No.572 to 580 in Na-Class No.344 Deh Dureji Bin Qasim Town Malir Karachi form its owner after fulfilling all necessary formalities against a sum of Rs.34,80,00,000/- and developed the same for a housing society. In the year 2018 NAB started investigation into a case commonly known as Fake Accounts Case and issued petitioner a call up notice alleging that part of consideration of the land he had paid to its owner had ended up in an account connected with fake bank account case and that the land was actually the government land.

2. Petitioner, apprehending his arrest, approached learned Islamabad High Court and obtained ad-interim pre arrest bail. For seeking confirmation thereof, as per his undertaking, he paid entire amount to the persons to whom he had sold the land in shape of plots meanwhile. Finally, he entered into plea-bargain with NAB and surrendered entire land to the Sindh government. In this back drop, it is stated that after his full cooperation in investigation-

pending for the last two and half years- his surrender of the land and payment to all the affectees directly and through the Chairman NAB, there is no justification for NAB to make a recommendation to the federal government for placing his name in ECL and for the latter to implement it. This arrangement is seriously prejudicing his right to travel abroad to look after his business interests spread over in so many countries including Dubai, where a part of his family also resides, and where he regularly goes to visit them, and to look after his business.

3. It is also stated that petitioner is no more accused in the case and has been made a witness on account of pardon tendered to him by the Chairman NAB. End of the investigation is not in sight and therefore holding him back from availing his right to travel abroad for aforesaid purposes is illegal and in violation of his fundamental rights guaranteed under the Constitution. He has strong social, financial, business and family ties within Pakistan which he is not likely to sacrifice by leaving Pakistan permanently. His conduct to cooperate with NAB has been matchless in that he has satisfied claim of all the affectees and surrendered the entire land to the Sindh government. And that there is currently no investigation or inquiry in any case pending against him.

4. Learned counsel for petitioner has reiterated aforesaid facts and grounds in his arguments and has relied upon 2011 CLD 511, PLD 2014 Sindh 398, PLD 2016 SC 570 and 2017 SCMR 1179 in which it is held mainly that right of a citizen to travel abroad cannot be limited on the basis of pendency of a criminal case against him.

5. Learned Special Prosecutor NAB and IO, *per contra*, have argued that petitioner has been tendered pardon against certain terms and conditions whereby he is required to give evidence in the court; the prosecution case is dependent, among others, upon his evidence, and thus his leaving Pakistan would seriously jeopardize merits of the case as there is strong likelihood that he would not return to Pakistan and dodge appearance in the court for evidence, for the case involves big tycoons of a political party ruling province of Sindh. Further, NAB has agreed to grant

him one time permission to travel abroad for attending to his business affairs and family and which is more than enough to satisfy his object of filing this petition. Learned DAG has stated that name of the petitioner was put on ECL on a recommendation of the NAB and therefore any order in the facts and circumstances be passed.

6. We have heard learned counsel for the parties and perused the material available on record including the case law relied upon at bar. NAB does not seem to have a dispute over factual aspects of the case: petitioner is a businessman/builder; he has a part of his family and business concerns abroad; he has satisfied all the affectees to whom he had sold out plots from the land; and which he has unconditionally surrendered in favour of the Sindh government. The reason for NAB to yet object seems to us is only a lurking apprehension nurtured by it that petitioner after leaving, as a result of removal of his name from ECL, may not return to Pakistan and that will compromise merits of its case before the court. During the arguments, we noticed, except that flickering fear regarding abscondence of petitioner, NAB had nothing substantial to offer warranting denial of right to him to travel abroad for the purposes as above.

7. A survey of relevant provisions of law has led us to sections 337 to 339 CrPC which encapsulate a complete procedure regulating tendering of pardon to an accused. It is averred that at any stage of investigation/enquiry into or trial of an offence which is triable by High Court or Court of Session and is punishable with imprisonment which may extend to 10 years, officer in charge of prosecution in the district (District Public Prosecutor) may tender pardon to a person directly or indirectly concerned or privy to the offence on the conditions of his making a full and true disclosure of whole of the circumstances within his knowledge relating to the offence and every such person who accepts a tender of pardon as such is required to be examined as a witness in subsequent trial, if any. And such person unless he is already on bail has to be taken into custody until termination of trial. In terms of section 338 CrPC before judgment is passed, the High Court or Court of Session trying the case, with a view to obtain evidence of any person having connection with an offence may tender or order District Public

Prosecutor to tender a pardon on the same conditions to such person. However, when District Public Prosecutor certifies that in his opinion the person after having accepted tender has either willfully concealed anything essential or has given false evidence and has not complied with any of conditions of tender of pardon, such person will be tried for the same offence in respect of which pardon was tendered to him or any other offence of which he appears to be guilty in connection with the same matter.

8. The dispensation underlying aforesaid provisions has been incorporated in section 26 of National Accountability Ordinance, 1999 with a few modifications befitting the said law. The Chairman NAB has substituted the District Public prosecutor for the purpose as stated above. But what is important to note is that this provision, in no way, seems to put up a bar on travel of a person who has accepted a tender of pardon. All that a person, having accepted pardon, is required to do is to present himself for examination by the Magistrate for recording his plea first and then as a witness in the subsequent trial. As far as first requirement is concerned, we were informed, has been complied with and 164 CrPC statement of the petitioner before the Magistrate has been recorded. The necessity to take action against the person who has accepted pardon- envisaged by subsection "d" of the said provision- arises only when the Chairman NAB certifies that he has willfully concealed anything essential or given false evidence through willful or reckless misstatement or not complied with the conditions on which tender was made. And, it is only in that eventuality, such person would be tried for the offence in respect of which pardon was so tendered to him or any other offence of which he appears to have been guilty in connection with the said matter including an offence of giving false evidence which he knows or has a reason to know as false and for this purpose his statement made before the Magistrate in the course of accepting tender of pardon would be given in evidence against him at trial. This scheme of provision, save what is stated above, is specific and does not conspicuously tend to restrict travel right of such person either within or outside the country.

9. Be that as it may, it is noteworthy, the stage of trial has not yet come as investigation is still pending. When we asked the IO as to within what time he was going to finalize it, he

sounded non-committal and utterly clueless. Therefore, prospect of petitioner breaking any of the conditions of pardon ensued by the Chairman NAB certifying him as such is at best merely illusive not based on either deductive reasoning or inductive reasoning. But, presumably, if worse comes to worst and petitioner does not return after leaving the country, NAB, under various provisions of law including sections 90 and 91 CrPC, has a recourse to follow and procure attendance of the petitioner for evidence. The contrary prospect- the petitioner does not intend to contravene arrangement of his pardon and merely intend to attend to his business interests and family abroad- could result into irreparable and irrepressible loss to him both financially and psychologically which while dealing with humans cannot be ruled out in such circumstances. Then, interestingly, NAB has no issue to one time permission granted to the petitioner for the said purpose which we have failed to find a reason behind. For if the petitioner has a plan to never return to Pakistan and defeat pardon-process, his onetime-travel abroad will be sufficient for this purpose.

10. Next, as NAB has not denied that petitioner has a business concern besides presence of a large family in Pakistan, its stance that petitioner means leaving the country permanently seems to be farfetched. Furthermore, petitioner in order to allay such fears of NAB has even shown willingness to furnish a surety for his return to Pakistan which in our view is the best bargain in the given circumstances to be demanded from him. For these reasons, this petition is allowed and the respondents are directed to remove name of the petitioner from ECL subject to his furnishing a solvent surety in the sum of Rs.2 million and P.R bond in the same amount with Nazir of this court. The petition and pending application(s), if any, are accordingly disposed of.

JUDGE

JUDGE

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