

IN THE HIGH COURT OF SINDH, KARACHI
C.P. No.D-5000 of 2023

PRESENT:

**Justice Zafar Ahmed Rajput
Justice Amjad Ali Bohio**

Petitioners : Farhan Qaisar and 5 others, through
Mr. Ahmed Masood, Advocate

Respondent : Federation of Pakistan, through Secretary
No.1 Ministry Of Interior Division, through
Mr. Muhammad Qasim Khan, D.A.G.

Respondents : Special Judge Anti-Corruption (Provincial)
No. 2 & 3 Karachi and Enquiries & Anti-Corruption
Establishment Sindh, through Muhammad
Javed, A.A.G.

Date of hearing : 23.10.2023
Date of order : 23.10.2023

ORDER

ZAFAR AHMED RAJPUT, J:- This Constitution Petition is directed against the letter dated 28.09.2023 ("**the impugned letter**"), issued by the respondent No.2 in pursuance of its order dated 26.09.2023 ("**the impugned order**"), passed in Special Case No.2 of 2022, arisen out of F.I.R. No.1/2022 registered by ACE, Karachi, under sections 409, 420, 468, 471, 34, P.P.C. R/W section 5(2), Act-II, 1947, whereby the respondent No.1 was directed for placing the names of the petitioners/accused in the Exit Control List ("**ECL**").

2. Learned counsel for the petitioners contends that the petitioners on being admitted to bail, vide order dated 21.05.2022 passed by the respondent No.2 in Crl. Bail Application No.8 of 2022, are regularly attending the trial Court to face the trial; however, after passing of seventeen months of their bail order, the impugned order was passed by the trial Court in violation of section 2 of the Exit From Pakistan (Control) Ordinance, 1981 ("**the Ordinance**") and Rule 2(f) of the Exit From Pakistan (Control) Rules, 2010 ("**the Rules**") without any formal

request from the prosecution and giving hearing to petitioners. Hence, the impugned order being arbitrary and violative of law is liable to be set aside.

3. Conversely, learned D.A.G. and A.A.G. while conceding to the arguments of the learned counsel for the petitioner state that whatever order is passed by this Court that will be complied with in letter and spirit.

4. Heard the learned counsel for the petitioners as well as learned D.A.G. and A.A.G. and perused the material available on record.

5. For the sake of convenience, Section 2 of the Ordinance and Rule 2 of the Rules 2010 are reproduced as under:-

Section 2 of the Ordinance:

2. *Power to prohibit exit from Pakistan---*(1) *The Federal Government may, by order, prohibit any person or class of persons from proceeding from Pakistan to a destination outside Pakistan, notwithstanding the fact that such person is in possession of valid travel documents.*

(2) *Before making an order under subsection (1), it shall not be necessary to afford an opportunity of showing cause against the order.*

(3) *If, while making an order under subsection (1), it appears to the Federal Government that it will not be in the public interest to specify the grounds on which the order is proposed to be made, it shall not be necessary for the Federal Government to specify such grounds.*

Rule 2 of the Rules:

2. *Grounds to prohibit persons from proceeding from Pakistan to a destination outside Pakistan.* (1) *The Federation Government may, an order in writing under sub-Section (1) of Section 2 of the Exit from Pakistan (Control) Ordinance, 1981 (XLVI of 1981), prohibit any person from proceeding from Pakistan to a destination outside Pakistan notwithstanding the fact that any person is in possession of valid travel documents if he is involved in:*

- (a) *corruption and misuse of power or authority causing loss to the government's funds or property;*
- (b) *economic crimes where large governments funds have been embezzled or institutional frauds committed;*
- (c) *act of terrorism or its conspiracy, heinous crimes and threatening national security;*

- (d) *case of key directors of a firm, in default of tax or liabilities of not less than ten million rupees;*
- (e) *case of two or more key or main directors of a firm, in default of loan or liabilities exceeding one hundred million rupees;*
- (f) *any case and his name forwarded by the Registrar of a High Court, Supreme Court of Pakistan or Banking Court only; or*
- (g) drug trafficking.

(Emphasis supplied)

6. It appears from the perusal of the above provisions of law that under Section 2 of the Ordinance, the Federal Government is empowered to prohibit any person or class of persons from proceeding from Pakistan to a destination outside Pakistan and Rule 2 (a) to (e) & (g) of the Rules provide specifications of the cases wherein the Federal Government is empowered to prohibit any person from proceeding from Pakistan to a destination outside Pakistan if he is found involved in any of the specified cases. It further appears that under Rule 2 (f) of the Rules, the Federal Government is empowered to place name of any person(s) on ECL whose name is forwarded by the Registrar of a High Court, Supreme Court of Pakistan or Banking Court only. The said Rule does not include the name of the Anti-Corruption Court. Hence, what follows is that though the legislature has duly empowered the High Courts, Supreme Court of Pakistan and Banking Courts to recommend placing of such restrictions on persons considered to be flight risk, the said authority to recommend has nevertheless been limited to only the said forums. Whereas by virtue of the impugned order, the respondent No.2 has exercised such authority otherwise not vested in it by law.

7. It has been held in the case of *The Federal Government through Secretary Interior, Government of Pakistan v. Ms. Ayyan Ali and others* (2017 SCMR 1179) that the liberty of a citizen cannot be curtailed by mere registering a criminal

case, and that mere registration of F.I.R. 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. It has also been held in the case of *Federation of Pakistan through Secretary, M/O Interior v. General (R) Pervez Musharraf and others* (PLD 2016 SC 570) that under Article 15 of the Constitution freedom of movement is one of the fundamental rights guaranteed to every citizen of the country, which cannot be abridged or denied arbitrarily on mere liking or disliking, without any lawful justification for this purpose. More so, when Article 4 of the Constitution further guarantees right to every individual, to be dealt with in accordance with law. It will be pertinent to mention here that in the shape of Exit from Pakistan (Control) Ordinance, 1981, read with Exit from Pakistan (Control), Rules, 2010, a complete mechanism is provided for the situation, which needs to restrict the movement of any person from going abroad, where there is lawful and valid justification for this purpose.

8. In the instant case, it is an admitted position that (i) the petitioners were duly granted pre-arrest bail by the respondent No.2, without any restriction on travel within or outside of Pakistan; (ii) the petitioners have never misused the concession of bail and thus no proceedings whatsoever have ever been undertaken against them for cancelation of their bail; (iii) the trial of the case has yet not begun as no witness has been examined till date, despite the fact that the petitioners have been in attendance on each date of hearing, except on one date when the petitioner No.2 was absent; however, his absence was condoned by the trial Court and (iv) the trial Court has not assigned any reason and justification in the impugned order for the issuing direction to the respondent No.1 for placing the names of the petitioners on ECL and thereby putting a substantive restriction on their fundamental right guaranteed under Article 15 of the Constitution, causing a breach of their rights under Article 4, 10A, & 25 thereof vide impugned letter.

9. For the foregoing facts and reasons, this Petition is allowed by setting aside the impugned order and letter holding the same as arbitrary, without jurisdiction, unconstitutional and unlawful.

JUDGE

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