

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-1231 of 2024
(*Nizar Ali Fazwani Vs Federation Pakistan and others*)

Date	Order with signature of Judge(s)
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Before:-

Mr. Justice Muhammad Karim Khan Agha

Mr. Justice Adnan-ul-Karim Memon

Date of hearing and order: **26.3.2025**

Mr. Kashif Khan Tanoli advocate for the petitioner

Ms. Wajiha Mehdi, Assistant Attorney General

Mr. Ghaus Bakhsh, Special Prosecutor NAB

ORDER

Adnan-ul-Karim Mmemon J. The petitioner Nizar Ali Fazwani requests the court to remove his name from the Exit Control List (ECL). This placement was initially ordered by the National Accountability Bureau (NAB) concerning Reference No. 29 of 2018. In response, NAB has confirmed that the case has been transferred to the Anti-Corruption Establishment, Sindh (ACE), as NAB no longer holds jurisdiction. Since NAB was the requesting authority for the ECL placement and is now detached from the case, the petitioner's counsel argues for removing the petitioner's name from the list.

2. An 85-year-old petitioner with severe health issues (stroke, diabetes, hypertension) seeks removal from the Exit Control List (ECL). His name was placed on the ECL by the National Accountability Bureau (NAB) in connection with NAB Reference No. 29 of 2018, alleging financial misappropriation in a housing society. He requires urgent medical treatment in the United Arab Emirates (UAE), for which the trial court granted permission, but the ECL authorities prevented his travel. He submits that his placement on the ECL is arbitrary, violates his fundamental rights of free movement inside and outside the country, and lacks legal basis under the Exit Control Rules, citing relevant court judgments. He also emphasizes that the NAB case has been transferred to the Anti-Corruption Establishment Sindh; as such, there is no impediment, however, he assures to return to the country as and when the trial court calls him.

3. NAB confirms that the petitioner is an accused in NAB Reference No. 29 of 2018, with specific roles and allegations outlined. NAB states the petitioner's name was placed on the ECL due to alleged embezzlement, a valid ground under the Exit Control Ordinance. NAB also confirms that the reference case has been transferred to the Anti-Corruption Establishment Sindh, due to jurisdictional issues. However, NAB did not take a stance on whether his name from the ECL

should be removed; now they say that they have no jurisdiction as the petitioner is no more required by the NAB authorities in criminal cases after such transfer.

4. Learned Assistant Attorney General, as well as learned Special Prosecutor NAB state that they have no objection to the removal of the name of the petitioner from the ECL, subject to any restriction imposed by the law or his presence in the court in any criminal case.

5. We have heard the learned counsel for the parties and perused the record with their assistance.

6. Article 4 of the Constitution guarantees legal protection for all. Articles 15, 9, and 4 establish the right to travel, including international travel, as a fundamental right, though it's subject to lawful, reasonable restrictions in the public interest. Arbitrary limitations, like those based on political beliefs, are unacceptable; restrictions must be for genuine national security concerns. Travel is vital for information access and personal liberty, linked to freedom of speech and association. Fundamental rights protect individuals from arbitrary state power and are essential for a free society. Even unenumerated rights integral to named rights are protected. While fundamental rights are crucial, they must be balanced against the state's need to maintain order. The Constitution allows for reasonable restrictions on certain rights in the public interest, but these restrictions must be lawful and not waived.

7. The right to travel, a basic human right, is integral to personal liberty. Legal precedent confirms that international travel is not merely a convenience but a fundamental right under Article 9 of our Constitution. Modern society necessitates global mobility for education, employment, and personal fulfillment, making travel a crucial aspect of both liberty and life.

8. The Exit from Pakistan (Control) Ordinance, 1981, empowers the Federal Government to restrict travel under Section 2, even with valid documents, if deemed in the public interest. The Exit from Pakistan (Control) Rules, 2010, specify grounds for these restrictions, including corruption, terrorism, and financial crimes, with certain exemptions. Although Section 2 allows restrictions without prior hearings, overriding natural justice, Supreme Court rulings mandate that the Federal Cabinet exercises this authority. Restrictions must align with the specified grounds in the Rules. While prior hearings are often omitted to prevent immediate departures, the Federal Cabinet can withhold reasons for the ban if deemed against the public interest.

9. The Supreme Court has shown varying stances on travel restrictions. While some cases prioritized preventing flight, others, along with High Court rulings, emphasized due process, reasoned justifications, and clear legal grounds.

Cases like *Wajid Shamsul Hassan* (PLD 1997 Lahore 617) and *Ayyan Ali* (2017 SCMR 1179) condemned arbitrary restrictions and emphasized the fundamental right to travel. The Court consistently ruled against belated ECL placements, especially when individuals had previously traveled freely. The Ayyan Ali case clarified that mere registration of a criminal case is insufficient for ECL placement and reaffirmed that restrictions must align with the Exit from Pakistan (Control) Rules, 2010. The Court emphasized that executive discretion is not absolute and upheld High Court decisions striking down unlawful restrictions.

10. Given the Supreme Court of Pakistan's ruling in *The Federal Government vs. Ms. Ayyan Ali*, supra, which strongly asserts that mere criminal case registration does not justify travel restrictions, the precedent set in *Naheed Khan vs. Government of Pakistan* appears to be superseded and should no longer be considered authoritative.

11. The Passport Act of 1974 and its related rules regulate Pakistani citizens' travel. Section 3 mandates a valid passport for foreign travel, while Section 8 grants the Federal Government broad authority to manage passports, including recall, cancellation, and impounding. Section 8 generally requires a show-cause notice before these actions, except in national security cases. A review process is available for such cases. The Passport Rules, 2021, establish a Passport Control List (PCL) categorizing individuals denied passport facilities. Category A includes those involved in anti-state activities, while Category B covers other reasons. The PCL is subject to periodic review, and individuals can appeal for removal. Rule 23 outlines the procedures for impounding passports, specifying authorized officials and grounds for action, including security threats, avoiding prosecution, and criminal activities. Impounded passports are to be kept in custody, and failure to surrender a passport upon requisition is punishable.

12. A passport is crucial for international travel, and its denial effectively restricts the right to travel. Pakistani courts have addressed this issue in several cases. In *Syed Abul Aala Maududi*, PLD 1969 Lahore 908, the Lahore High Court was divided on whether travel restrictions violated 'liberty.' Similarly, in *Syed Sharifuddin Pirzada*, PLD 1973 Karachi 132, the Karachi High Court, by majority decision, held that restricting departure did not violate the fundamental right to 'liberty.' Section 8 of the Passport Act, of 1974, empowers the Federal Government, through a Secretary or authorized officer, to recall passports for cancellation, impoundment, or confiscation. This requires a show cause notice to the passport holder, as per subsection (2). However, subsection (3) exempts the government from providing notice or a hearing if the passport holder is deemed to be involved in subversive activities or actions detrimental to Pakistan's interests or foreign relations. Subsection (4) then grants the affected person the right to challenge the decision. It's important to note that while the Act grants the

government authority to cancel, impound, or confiscate passports, it does *not* explicitly authorize the creation of a "Passport Control List" or the "blocking" of passports. These powers originate from the Passport Rules, 2021. This raises a potential legal issue: the Rules may exceed the powers granted by the Act, rendering them void. However, as the validity of these Rules is not being challenged in this specific case, we refrain from ruling on their legality. This issue can be properly addressed in separate, appropriate proceedings.

13. Coming to the case in hand, it appears that the *Ayyan Ali* case *supra* establishes that mere criminal involvement does not justify ECL placement, which confirms that citizens have a fundamental right to liberty under Article 9, which, combined with Articles 4 and 15, includes the right to travel, unless restricted by a law enacted in the public interest. Numerous judgments have affirmed that the mere registration of a crime does not constitute a "public interest" justification for restricting a person's liberty. Therefore, the Respondent's actions in placing the Petitioner's name on the ECL based on the criminal case are inconsistent with established legal principles. Consequently, this petition must be allowed.

14. The impugned order cannot be upheld, as the Supreme Court's ruling in *Mustafa Impex (PLD 2016 SC 808)* dictates that the power to restrict travel under the Exit Control Ordinance resides solely with the Federal Cabinet, not the Secretary of the Ministry of Interior, such order has not been placed on record. Regardless, the fundamental rights of the people of this country are beyond any form of curtailment.

15. Based on the facts, the Ministry of Interior's decision to place the petitioner's name on the Exit Control List (ECL) was deemed arbitrary and automatic. This action was solely driven by instructions from the National Accountability Bureau (NAB), without independent assessment or a reasoned order from the Ministry. Consequently, the Ministry failed to demonstrate a legitimate basis for exercising its authority under Section 2(3) of the Exit from Pakistan (Control) Ordinance, 1981. This lack of due process resulted in a violation of the petitioner's fundamental rights, specifically Articles 4, 9, and 15 of the Constitution. Furthermore, it unjustly prevented the petitioner from attending the medical treatment. Therefore, the respondents' actions, placing the petitioner on the ECL, barring his international travel, and removing him from the flight, thus contempt notice was served upon the delinquent official, as such their actions are declared arbitrary, invalid from the beginning (*void ab initio*), and beyond their legal authority (without jurisdiction).

16. Based on the reasons outlined above, we find the Respondents' actions in placing the Petitioner's name on the Exit Control List (ECL), or Passport Control

List (PCL), if any, to be unlawful. Therefore, we hereby overturn these actions. We direct the Respondents to immediately remove the Petitioner's name from the ECL.

17. The petition is allowed as per this order. No costs are awarded. Let a copy of this order be communicated to the Ministry of Interior, the Government of Pakistan, and respondents through a swift mode of service for compliance.

J U D G E

HEAD OF CONST. BENCHES

Zahid/*