

ORDER SHEET
HIGH COURT OF SINDH AT KARACHI
 CONST. PETITION NO.D-6833 OF 2021

Date	Order with signature of Judges
PRIORITY.	

1. For hearing of CMA No.29548.
2. For hearing of main case.

26.11.2021.

M/s. Abid S. Zuberi, Munir Khan, Ms. Sana Q. Valika and Barrister Agha Ali Durrani, Advocates for the Petitioner.

Mr. Zahid Hussain Baladi, Special Prosecutor NAB.

Mr. Irshad Ali, Assistant Attorney General.

Mohammad Karim Khan Agha, J. The petitioner Mrs. Faryal Talpur whose name is on the Exit Control List (ECL) has filed an application for one off exemption to enable her to travel to the United Kingdom (UK) in order to see her daughter who is residing there and is apparently unwell.

2. Learned counsel for the petitioner has stated that there is no bar on the petitioner's travelling abroad from the Supreme Court of Pakistan and that the petitioner's name was placed on the ECL at the request of the FIA who were initially carrying out the inquiry/investigation into the petitioner and others in the case commonly known as the 'Fake Accounts Case'. Learned counsel for the petitioner has also stated that many other persons who have been placed on the ECL by the FIA during their inquiry/investigation have already either been allowed one time permission to travel abroad or have got their names completely deleted from ECL and as such the petitioner should be given the same treatment and be allowed to travel abroad on a one off basis for the reasons mentioned earlier in this order.

3. Learned Special Prosecutor, NAB has stated that he has no objection to the petitioner's travelling abroad for one off exemption period which she has requested to visit the UK in order to see her ailing daughter provided that adequate surety is deposited with the Nazir of this Court to ensure that she will return to Pakistan within the prescribed period of exemption from the ECL for which she has requested. On the other hand learned DAG has opposed the application as he has serious apprehension

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that if allowed to travel abroad the petitioner would abscond and avoid facing trial.

4. We have heard the parties and considered the record.

5. At the very outset we have noted that the fake accounts case initially was taken up by the Supreme Court of Pakistan and it was investigated by the FIA and as such we wanted to satisfy ourselves that there was no bar on this Court allowing the petitioner one off exemption from the ECL on the basis of any order of the Supreme Court.

6. The Supreme Court of Pakistan vide its order dated 08.07.2018 divided the persons prima facie involved in the fake accounts cases into four categories. The first were those companies whose names fake/suspicious account had been opened, the second were the persons / companies who deposited amounts in those accounts, the third were the beneficiaries (it is noted that the petitioner's name appears as a beneficiary at Sr. No.7) and forth is persons who have been named as accused persons in criminal cases registered whose names were specifically set out in the order and are listed below for ease of reference;

1. Anwer Majeed
2. Abdul Ghani Majeed.
3. Aslam Masood.
4. Arif Khan.
5. Mrs. Noreen Sultan.
6. Mrs. Kiran Aman.
7. Naseer Abdullah Lootah.
8. Muhammad Iqbal Khan Noori.
9. Muhammad Ashraf s/o Abdul Sattar
10. Muhammad Iqbal Araen.
11. Muhammad Umair s/o. Muhammad Yaseen
12. Adnan Jawed s/o Jawed Ahmed.
13. Qasim Ali s/o Ahmed.
14. Azam Wazir Khan.

It is noted that these names do not include the petitioner.

7. The Supreme Court's order at paragraph No.5 went on to direct all those named in the four categories to be summoned to appear before the Court on the next date of hearing. The Ministry of Interior was also directed to immediately put the names of persons mentioned above on the ECL so they may not leave the country until investigation in the matter is concluded or further orders passed by the Supreme Court.

8. On the next date of hearing before the Supreme Court on 12.07.2018 it appears that some controversy/confusion arose as to which names the Supreme Court in its order dated 08.07.2018 had directed were to be placed on the ECL as apparently the FIA understood the order to mean that all those named in the order dated 08.07.2018 be placed on the ECL.

9. On that date the Supreme Court vide order dated 12.07.2018 made it clear that only those persons named in paragraph 4 (which names have been reproduced above in this order and which names did not include the petitioner) of the order dated 08.07.2018 were to be placed on the ECL as per directions contained in that order which did not include the name of the petitioner. Paragraph No.2 of order dated 12.07.2018 is reproduced for ease of reference as under:-

"It has been pointed out that an impression has been created that names of all persons mentioned in paragraphs 1 to 4 of our order dated 08.07.2018 have been directed to be placed on the Exit Control List (ECL). We find that the said impression is unjustified. Paragraphs 6 of the order is clear and unambiguous. The only possible interpretation of the said paragraph is that the persons whose names have been mentioned above (in paragraph 4 of our order dated 08.07.2018) and are accused in criminal cases have been directed to be placed on the ECL. The Ministry of Interior, Government of Pakistan, Islamabad, shall act accordingly."
(bold added)

10. It is apparent from the Supreme Courts later order dated 12.07.2018 referred to above that the accused persons only falling within the paragraph-4 of the order dated 08.07.2018 which did **not** include the name of the petitioner were directed to be placed on the ECL by the Supreme Court. It is, therefore, apparent from reading and interpretation of the Supreme Court's order that the Supreme Court did **not** direct the FIA to place the name of the petitioner on the ECL. We are fortified in our finding by a letter dated 26.12.2018 sent to the Secretary, Ministry of Interior, by the Joint Investigation Team whereby it has specifically stated that the court had not ordered the placement of the name on the ECL of all the people in its order but it was for the Ministry of Interior to do so on the request of the FIA. In the aforesaid letter which is at page -79 of the File, a request was made to the FIA to place the name of 172 accused / suspects on the ECL and pursuant to this letter vide memorandum dated 27.12.2018 which is at page-81 of the File, the names of the 172 persons/suspects referred to in the aforesaid letter from the Joint Investigation Team dated 27.12.2018 were placed on the ECL by the

Ministry of Interior on the recommendation of the FIA. The petitioner's name appears at Sr. No.36. This reveals that the name of the petitioner was placed on the ECL by the Ministry of Interior from a request made by the FIA/Joint Investigation Team in pursuant to its investigation into the fake accounts case and not on the directions of the Supreme Court.

11. Later on, we have been informed (which has not been refuted) the Chairman, NAB filed an application under Section 16-A of the National Accountability Ordinance 1999 (NAO) for transfer of the fake accounts case to the National Accountability Bureau (NAB) for further investigation which was allowed and the investigation of the case was then taken over by the NAB. As such ultimately the NAB exclusively took over the charge of investigation and prosecution of the fake accounts cases in place of the FIA. After further investigation by the NAB a supplementary Reference No.02 of 2019 was filed against the petitioner and is currently pending before the Accountability Court No.II, Islamabad in respect of the fake accounts case. It is quite clear that the case and trial of the petitioner is now being dealt with by the NAB instead of the FIA.

12. We can thus round up the above discussion by concluding that the name of the petitioner was not put on the ECL on account of any direction/order of the Supreme Court, that the petitioner's name was placed on the ECL by the Ministry of Interior at the request of the FIA which is no longer a part of her case which is being prosecuted by the NAB before an accountability court for offences under the NAO.

13. We have noted that out of the 172 people who were placed on the ECL by FIA in the fake accounts case (including the petitioner) that at least 02 of them have already been given one time permission to travel abroad and that a number of them have had their names completely deleted from the ECL by the Ministry of Interior. We also note that the name of the petitioner was placed on the ECL on 27.12.2018 which is nearly three years ago and that she has not been able to leave Pakistan during this 3 year period and that only 16 PWs have been examined out of 96 PWs in the reference which has been filed against her by the NAB. There are 25 accused in this case each of whom has a right to their own counsel and right to cross examine each of the 96 PWs. The petitioner has already been prevented from leaving Pakistan for the last 03 years. The status of the trial against the petitioner is that around 80 PW's are yet to be

examined (examination in chief, cross examination and re examination) and that each of these remaining 80 PW's might be subject to 25 separate cross examinations which leads us to the inescapable conclusion that the trial is no where in sight of completion and if the petitioner was not given permission to travel abroad she would be denied such right for a period which might extend for **at least** a further period of 03 years based on the current progress of the trial and its likely completion date **in addition** to her denial to travel outside of Pakistan for the last 3 years making a minimum total of 6 years. Article 15 of the Constitution of Pakistan allows citizens a right to freedom of movement which is a fundamental right which cannot be curtailed forever especially in cases where an under trial person is concerned and there trial through no fault of their own is no where in sight of completion.

14. There are a plethora of Supreme Court's judgments on this point and even this court in the recent case of **Rafi v. Federation of Pakistan** (2018 MLD 579) has recognized this position.

15. We have also noted that other persons involved in serious NAB references which are proceeding at trial have also been granted one off permissions to travel abroad for example Mr. Shahid Khaqaan Abbasi, former Prime Minister of Pakistan and other such so called big fish involved in scams where allegedly loss of billions of rupees has been caused to the State yet in the case of the petitioner the potential loss as per NAB reference against the petitioner is Rs.3-crores. The petitioner is also an elected parliamentarian with deep roots in Pakistan and is not a dual national and has no reason to abscond.

16. Keeping in view the above discussion and the NAB's no objection (who are now prosecuting the petitioner in the fake accounts case rather than the FIA) to the petitioner travelling abroad on a one off basis subject to sufficient surety being provided by the petitioner we hereby allow the petitioner a one off exemption from the ECL to travel abroad to the UK in order to see her ailing daughter for the period from 29th November, 2021 to 28th December, 2021 subject to furnishing solvent surety in the sum of Rs.25,00,000/- (Twenty Five Lacs) and P.R. bond in the like amount to the satisfaction of the Nazir of this Court **and direct the Secretary Ministry of Interior Government of Pakistan to immediately remove the name of the petitioner from the ECL for the aforesaid period.** It is made clear that

Sheraz Ahmed Rajpar, advocate, present in court, shall represent the petitioner on each and every date of hearing before the trial court so that no delay is caused in the completion her trial and that the petitioner shall immediately return to Pakistan if so directed by the trial court.

17. A copy of this order shall be sent through facsimile to Secretary, Ministry of Interior, Government of Pakistan and Director General, FIA for information and immediate compliance. It is also made clear that this order shall also allow exemption from PNIL or any so-called no fly list and no impediment shall be placed in the way of the petitioner in travelling abroad for the limited period as per this order as the learned counsel for the petitioner has serious apprehension that efforts might be made to stop the petitioner from travelling abroad in violation of this order.

18. This matter shall come up again on **19.01.2022** on which date each party shall advance arguments whether or not the petitioner's name may be permanently removed from the ECL as per the main prayer in the petition. Special Prosecutor, NAB and learned Assistant Attorney General shall come fully prepared to argue this case on that date and shall ensure that prior the next date of hearing their comments are filed with an advance copy to the learned counsel for the petitioner.

19. The above application is disposed of in the above terms