

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No. D-3891 of 2025
(Sharafat Hussain versus Federation of Pakistan & others)

Date	Order with signature of Judge
------	-------------------------------

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Zulfiqar Ali Sangi

Date of hearing and order:-04.2.2026

Petitioner is present in person
Mr. Shah Hussain, Assistant Attorney General

ORDER

Adnan-ul-Karim Memon, J. – Petitioner Sharafat Hussain has filed this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, seeking the following relief: -

- a) To pass an Order and direct the Respondents and their hierarchies to release/return the original passport of Petitioner Bearing No.QE6894382 vide CNIC No.21303-5559438-9, as no any sort of Criminal and other litigations are pending against the Petitioner before any forum.*
- b) To direct the Respondents No.01 to 04 to remove/expunge/delete the name of Petitioner from the Exit Control List (ECL) if it exists or exists, because no criminal or other litigations are pending against the Petitioner before any forum.*
- c) To grant an injunction whereby the Respondents may be restrained from blocking the CNIC / Passport of the petitioner and or creating any third-party interest in respect of the original passport bearing No.QE6894382 vide CNIC No.21303-5559438-9 whatsoever in nature without due course of law.*

2. The petitioner who is present in person has narrated his ordeal and submits that he is an overseas Pakistani, lawfully residing and carrying on business in the State of Qatar. Upon his return from Doha on 17.07.2025 via Flight No. QR-604, he was unlawfully detained and interrogated for several hours at Jinnah International Airport, Karachi, by officials of the Federal Investigation Agency (FIA) and other persons in plain clothes. He was eventually released, however, his original passport bearing No. QV6894382 was unlawfully retained. It is further submitted that the petitioner's name had earlier been placed on the Passport Name Insertion List (PNIL) pursuant to an order passed by the learned VI-Civil/Family Judge, Malir, Karachi in Family Execution Application No. 08/2024 arising out of Family Suit No. 121/2023. Upon compromise and withdrawal of the said proceedings, the learned Family Court vide order dated 12.04.2025 directed removal of the petitioner's name from the said list. He submits that such reports submitted by the Directorate General of Immigration & Passports confirm that the

petitioner's name was accordingly removed from the Passport Control List (PCL). However, despite compliance with the Family Court's order, the petitioner's name was subsequently placed on the PNIL by the FIA. He added that the report submitted by the FIA claims that such placement was made on the recommendation of security agencies on the allegation of the petitioner's suspected affiliation with a proscribed organization, namely the Zainbiyoun Brigade. However he categorically denies any nexus or affiliation with the purported organization and submits that he has never been involved in any criminal activity nor has any criminal record. Despite repeated opportunities granted by this Court, the respondents have failed to place on record any material or evidence establishing even a prima facie link between the petitioner and the alleged proscribed organization. He emphasized that the so-called recommendations merely describe the petitioner as a "suspected" person, without disclosing any inquiry, travel history, or conduct supporting such allegation. It is submitted that the continued restraint on the petitioner's right to travel is arbitrary, unlawful, and violative of his fundamental rights, particularly in the absence of any substantiating material. He submitted that the impugned action is based on vague suspicion alone and cannot be sustained in law. an excerpt of the relevant paragraph of the report reads as under:

"6. That it is further submitted that the name of the present petitioner was placed by Respondent/FIA on Provisional National Identification List (PNIL) on the recommendation of Security Agencies reason for placement Ex-Zainbiyoun Affiliates, being organization. List of proscribed Organization issued by National Counter Terrorism Authority (NACTA), Islamabad wherein Zainbiyoun is placed at Sr. No.79 and the said list is attached herewith as Annex-B."

3. In such circumstances this Court passed the following order 09.10.2025, which reads as under: -

"A report has been submitted on behalf of FIA alongwith a fresh report on behalf of Respondent Nos.1 and 4. Representative of the FIA is in attendance today and submits that the name of the Petitioner is on the PNIL and PCL as being affiliated with a proscribed organization, namely Zainbiyoun Brigade, however, further time is being sought to place the relevant material/reports on record as to the inquiries conducted in the matter of such organization as well as all the material to show that the Petitioner has any linkage with such organization. Adjourned. To come up on 27.10.2025. The officials present today are required to be present on the next date."

4. Thereafter, on 27.10.2025, further time was sought. However, the report submitted by the Assistant Director, Immigration and Passports, fails to disclose any material justifying the restriction on the petitioner and merely states that his passport was placed on the PCL on the recommendation of a security agency. A perusal of the said recommendation shows that the petitioner has only been

described as a “suspected” affiliate of the Zainbiyoun Brigade, a proscribed organization since 29.03.2024, and that his name was included in a list of suspected persons for placement on the PCL and Integrated Border Management System based on apprehensions, without any supporting evidence. However, to date, no material has been placed on record to justify the allegations against the petitioner. Despite repeated adjournments sought by the Assistant Attorney General for submission of reports, no evidence has been produced to substantiate the assertions made in the speaking order. In these circumstances, and while dealing with the petitioner’s fundamental right to travel abroad, this Court finds no prima facie material establishing any linkage of the petitioner with the proscribed organization or any conduct prejudicial to the interests of Pakistan.

5. On the previous hearing, the petitioner filed a representation to the competent authority of the respondents, seeking removal of his name from the PCL, which was handed over to the Assistant Director, D.G. Immigration & Passports, Karachi, with directions to place the same before the Review Committee under the Passport Rules for decision through a speaking order within 30 days. The petitioner submits that pursuant thereto, he appeared before the concerned officer and was served with a speaking order dated 30.12.2025. An excerpt of the order dated 30.12.2025 is reproduced as under: -

“SPEAKING ORDER

In compliance with the Hon'ble High Court of Sindh, Karachi's directions/order dated 10.12.2025 passed in writ petition No.D-3891/2025 titled as "Sharafat Hussain V/s FOP, etc. A personal hearing has been afforded to the petitioner on 15.12.2025. The petitioner has requested for removal of his name from Passport Control List (PCL), so that he can proceed abroad.

2. After going through the relevant records/facts, it has been transpired that, on the classified report of the Security Agency, name of the petitioner being suspected for affiliation with a proscribed organization was placed on "Passport Control List (PCL)" as per provisions contained in Rules 21, 22 (2) (b), 22 (4) and 23 (2) of the Passport Rules 2021. Hence, petitioner's travel abroad will be prejudicial to the Pakistan's security and national interest.

3. Moreover, a reference dated 23.10.2025 has been sent to the concerned Security Agency for provision of their views/recommendations regarding removal of petitioner's name from PCL or otherwise, which is still awaited.

4. Foregoing in view, application of the petitioner is disposed off as regretted. Hence, name of the petitioner will be removed from "PCL" on the specific recommendation of the Security Agency.

5. This issues with the approval of the competent authority.”

6. Learned Assistant Attorney General submits that the petitioner’s name was placed on the PCL on the basis of a classified security report alleging suspected affiliation with a proscribed organization, in exercise of powers under

Rules 21, 22(2)(b), 22(4) and 23(2) of the Passport Rules, 2021, on the ground that his travel abroad would be prejudicial to national security. It is further stated that a reference dated 23.10.2025 was sent to the concerned security agency for its recommendations regarding the removal of the petitioner's name from the PCL, which is still awaited; consequently, the petitioner's representation was disposed of with the observation that his name could only be removed upon clearance by the security agency. He prayed to dismiss the petition in the aforesaid lines.

7. We have heard the petitioner, who is present in person, as well as the learned Assistant Attorney General, and have carefully examined the record, the reports submitted by the respondents, and the applicable law.

8. The core issue before this Court is whether the petitioner's fundamental right to travel abroad can lawfully be curtailed merely on the basis of an unsubstantiated intelligence or security agency report, without disclosure of any concrete material or prima facie evidence.

9. Under Article 15 of the Constitution of the Islamic Republic of Pakistan, 1973, every citizen has the fundamental right to remain in and enter Pakistan, subject only to reasonable restrictions imposed by law in the public interest. Likewise, Article 4 guarantees that every action affecting the rights of a citizen must be taken strictly in accordance with law. Any restriction on the right to travel must, therefore, meet the test of legality, reasonableness, and proportionality.

10. The respondents have relied upon Rules 21, 22(2)(b), 22(4) and 23(2) of the Passport Rules, 2021, to justify the placement of the petitioner's name on the Passport Control List. A plain reading of these provisions shows that although the competent authority may act on security considerations, such power is neither unfettered nor absolute. The exercise of discretion under these Rules must be supported by relevant material, objective satisfaction, and must not be based on vague suspicion or undisclosed allegations. However, during the hearing of the petition we have been informed that the learned Lahore High Court vide judgment dated 23.12.2025 declared the Rule 23 of the Rules 2021 have been declared ultra vires. An excerpt of the judgment reproduced as under:-

“ Evidently, power to inactivate the passport is not provided for in Section 8 *ibid*. There is no explanation that when conditions exist why action is not taken in terms of Section 8 of the Act 1974, which *inter alia* extends power to cancel, impound and confiscate the passport. And preference was extended to inactivate the passport-informal action wrapped in obscurity. There is no apparent reason for effecting inactivation of passport and recording *factum* thereof in integrated Border Management System (IBMS), except avoidance of procedural requirements and due-process necessity, otherwise envisaged under Section 8 of Act 1974 since inactivation of passport is not covered under Section 8 of the Act 1974 therefore requirement of notice/procedure of intimation was not followed, often. Failure to follow the mandate of section 8 of the Act 1974 has, in recent time, resulted in placing travelers in unexpected, unprepared and

awkward position, especially those, who gained first-hand knowledge of surreptitiously effected inactivation of passport, at the airport causing humiliation bringing social disgrace and extreme indignity when unfortunate travellers were disallowed to travel despite having passport and valid visa. Resort to informal action under rule 23 of the Rules, 2021, upon surreptitious inactivation of the passport encourages arbitrariness and is a prima source of embarrassment for the citizens, in wake of element of sheer surprise. Informal actions, alike inactivation, are often preferred to obscure cause of action with an intent to discourage triggering of judicial review action. Informal actions enable the executive to evade procedural safeguards and achieve results without legal compliances. This informality of action by inactivation of passport is intended to curtail rights of the citizens forcing them from running pillar to post. Act of inactivation of passport manifest denial of right to travel, in covert manner, not envisaged by Section 8 of Act of 1974. Conversely, procedure provided under section 8 of the Act 1974 encourages following of due-process, openness, brings transparency of action and extends facilitation to the citizens to be aware of adverse action against them, prior in time. Rule 23 of the Rules 2021 apparently conflicts the scheme of parent act. It is evident that Executive, upon adopting practice of inactivation under rule 23 of Rules, 2021, travels beyond the scope of parent act. Delegated action fails in law where it disregards statutory method expressly provided, introduces substantive measures in shape of restrictions not authorized/permitted under parent act, and especially where it replaces legislative judgment with executive preference. When asked, there is no explanation for not adopting the options provided in section 8 of the parent act. Hence, mere inactivation of passport without conclusive actions contemplated under section 8 of the parent act, acknowledged by law, manifest disregard of law and tramping of rights of the citizens. Evidently, what legislature choose to do directly by providing section 8 of the parent act, executive/delegate had altered, expanded or substituted for mere aggrandizement of authority, alas, at the expense of curtailing rights of citizen. Inactivation of passport can be stop-gap arrangement but no permeance could be extended to such action, outside the scope of Section 8 of act, 1974.

6. In view of the above, I hold that power to inactivate passport under rule 23 of the Rules 2021 is beyond the scope of Section 8 of the Act 1974 and same is declared ultra vires only the power to inactivate is declared invalid and powers to cancel, impound or confiscate are intact and exercisable subject to the existence of conditions and fulfillment of requirements prescribed for enforcing the powers prescribed.”

11. In the present case, despite repeated opportunities granted by this Court, no material has been placed on record to establish even a prima facie nexus between the petitioner and the alleged proscribed organization. The reports relied upon merely describe the petitioner as a “suspected” person, without disclosing any inquiry, act, conduct, travel history, or association linking him with activities prejudicial to the security or national interest of Pakistan. The so-called classified report has neither been substantiated nor corroborated by any independent material.

12. It is a settled principle of law that a citizen cannot be deprived of his fundamental rights solely based on secret intelligence reports, unless such reports are backed by tangible material capable of judicial scrutiny. The Supreme Court of Pakistan has held in its pronouncements that discretionary powers affecting fundamental rights must be exercised transparently, reasonably, and based on relevant material. Similarly, that restrictions on the right to travel cannot be sustained in the absence of lawful justification and due process. Even mere recommendations of intelligence agencies, without disclosure of concrete reasons or supporting material, cannot form a valid basis for placing a citizen’s name on the PCL or restricting his movement under the law.

13. On the subjected issue we are guided by the decision of the superior Court in the cases of Farooq Saleh Chohan and others v Government of Pakistan Ministry of interior Islamabad & others **PLD 2010 Karachi 394**, Saleem Akhtar v Federation of Pakistan & others **PLD 1999 Karachi 177**, Dr. Joseph Wilson v Federation of Pakistan & others **2017 P Cr. L.J 1569**, Collector Sahiwal and others v Muhammad Akhtar **1971 SCMR 681**, Syed Ali Abbas and others v Vishan Singh & others **PLD 1967 SC 294**, Messrs Mustafa Impex Karachi & others v The Government of Pakistan & others **PLD 2016 SC 808**, Pakistan Electronic Media Regulatory authority (PEMRA), Islamabad v Pakistan Broadcaster Association and another **2023 SCMR 1043** and Gen. (Retd). Pervez Musharraf v Government of Pakistan & others **PLD 2014 Sindh 389**.

14. It is now well settled that the right to travel abroad is a fundamental right, forming part of the liberties guaranteed under Articles 4, 9, 14, and 15 of the Constitution, though such right is not absolute and may be regulated strictly in accordance with law and through a transparent, proportionate, and fair procedure. The Supreme Court in **PLD 2016 SC 570** and **PLD 2007 SC 642** has categorically held that restrictions on movement must have lawful authority and cannot be imposed arbitrarily or secretly.

15. In the case at hand, the respondents themselves concede that the petitioner's case for removal from the PCL is pending solely due to the awaited response from a security agency. Such an indefinite and open-ended restriction, without any demonstrated material, effectively amounts to holding the petitioner hostage to an undisclosed process, which is neither sanctioned by law nor compatible with constitutional guarantees.

16. In these circumstances, this Court is of the considered view that the continued placement of the petitioner's name on the PCL/PNIL and the retention of his passport, based merely on suspicion and unsubstantiated intelligence input, is arbitrary, unlawful, and violative of Articles 4 and 15 of the Constitution. In the absence of concrete material establishing any involvement of the petitioner in activities prejudicial to the security or interest of Pakistan, the impugned restriction cannot be sustained under the Passport Rules, 2021.

17. In view of the foregoing discussion, this petition is disposed of with the direction to the respondents/competent authority to forthwith remove the name of the petitioner from the Passport Control List (PCL), the Provisional National Identification List (PNIL) and the Exit Control List (ECL, if any). The respondents are further directed to act strictly in accordance with law and shall not create any impediment in the petitioner's travel abroad, subject to lawful exceptions, if any as discussed supra. The petitioner's passport, if presently in the custody of the Immigration authorities, shall be released immediately.

18. The petition, along with all pending applications, stands disposed of in the above terms. Let a copy of this order be communicated to all concerned for compliance in time; failure whereof consequences in terms of Article 204 of the Constitution will follow.

JUDGE

JUDGE

Shafi