

IN THE HIGH COURT OF SINDH, KARACHI

C. P. NO. D-3625 / 2026

(Sarfraz Merchant Vs. Federation of Pakistan & Others)

Present:

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Muhammad Jaffer Raza

Date of hearing and order: 28.08.2026.

Mr. Amir Mansoob Qureshi, Advocate for Petitioner.
Mr. Muhammad Akbar Khan, Assistant Attorney General
Mr. Syed Manzoor Ali, Special Prosecutor NAB alongwith Ms. Sadaf,
Special Prosecutor NAB.
Inspector Jamal Saeed, FIA, Immigration, JIAP, Karachi.

Adnan-ul-Karim Memon, J. Petitioner has filed this Petition under Article 199 of the Constitution of Islamic Republic of Pakistan seeking the following reliefs: -

- “A. Declare that the continued retention of the Petitioner's name on the Exit Control List, after his acquittal in NAB Reference No. 28 of 2018 vide judgment/order dated 25.05.2026, is illegal, unlawful, arbitrary, unconstitutional, without lawful authority and of no legal effect.*
- B. Direct the Respondents, particularly the Ministry of Interior, to forthwith remove/delete the name of the Petitioner from the Exit Control List and all connected travel-restriction records, including PNIL, PCL, blacklist, stop list, watch list or any other similar database, in relation to NAB Reference No. 28 of 2018 and/or the bail order dated 06.05.2019.*
- C. Direct the FIA Immigration authorities and all concerned airport/immigration officials not to offload, restrain, obstruct or prevent the Petitioner from travelling abroad on the basis of NAB Reference No. 28 of 2018, the ECL condition contained in the order dated 06.05.2019, or any entry arising therefrom.*
- D. Pending disposal of the suspend petition, the operation/effect of the travel restriction against the Petitioner and direct the Respondents not to prevent the Petitioner from travelling abroad, subject to any condition deemed appropriate by this Hon'ble Court.*
- E. Grant any other, better, further or alternate relief which this Hon'ble Court may deem fit and proper in the circumstances of the case. Remove the name of the petitioner from ECL and grant three months' time to the petitioner to travel to Singapore/abroad for his medical treatment.*

2. The petitioner, has filed this Constitutional Petition under Article 199 of the Constitution seeking removal of his name from the Exit Control List (ECL) and connected travel-restriction databases, contending that his name was placed on the ECL pursuant to the order dated 06.05.2019 passed by this Court in C.P. No. D-7131/2018, whereby his pre-arrest bail in NAB Reference No. 28 of 2018 was confirmed with the specific condition that his name would remain on the ECL “till finalization of the trial before the NAB Court.”

3. The petitioner’s counsel states that the petitioner subsequently faced the proceedings and, after dismissal of his application under Section 265-K, Cr.P.C.

by the Accountability Court on 06.10.2025, approached this Court through Criminal Miscellaneous Application No. 911 of 2025, which was allowed vide order dated 25.05.2026, resulting in his acquittal from the said Reference, cancellation of his bail bond and discharge of the surety. According to the petitioner's counsel, the trial having concluded in his favour, the condition for retaining his name on the ECL stood exhausted, and its continued retention unlawfully restricts his freedom of movement and violates Articles 4, 9, 10-A, 15 and 25 of the Constitution. He further submits that despite his representation dated 03.06.2026 to the Ministry of Interior seeking removal of his name, no action has been taken. He, therefore, seeks deletion of his name from the ECL and all connected lists and, particularly, permission to travel abroad, including to Singapore for medical treatment.

4. The learned AAG, assisted by the counsel for the Respondent No.4/NAB, contests the petition, maintaining that the acquittal dated 25.05.2026 has not attained finality as NAB has processed a Criminal Petition for Leave to Appeal before the Supreme Court against the said judgment. It is contended that the petitioner suppressed this material fact and cannot seek constitutional relief based on an order which is under challenge. AAG further asserts that the investigation established that Rs.56 million, out of the sale consideration of Government land bearing Survey No.301, Deh Okewari, was paid to the petitioner through banking channels, supported by the purchaser's statement, banking record and other documentary evidence, thereby establishing his nexus with the proceeds of crime. AAG maintains that the ECL restriction was imposed pursuant to the order dated 06.05.2019, considering the gravity of the allegations and the incriminating material, and that its continuation is necessary to secure the petitioner's availability during the pending appellate proceedings. It is therefore argued that no enforceable constitutional right to removal from the ECL has accrued to the petitioner at this stage. Learned AAG further submitted that while referring to the Stop List record showing the petitioner's placement on the ECL on 03.07.2019 in connection with corruption and corrupt practices, they have accordingly sought dismissal of the petition.

5. We have considered the submissions of the learned counsel for the petitioner as well as the learned AAG assisted by learned counsel for NAB and have examined the record in the light of the statutory scheme governing the Exit Control List.

6. It is not disputed that the petitioner's name was directed to remain on the ECL by this Court vide order dated 06.05.2019 only "till finalization of the trial before the NAB Court." The said condition was therefore intrinsically linked with

the pendency of the trial and cannot reasonably be construed as an indefinite restraint extending beyond its express temporal limit.

7. The record further shows that the petitioner has subsequently been acquitted in NAB Reference No.28 of 2018 vide order dated 25.05.2026, whereafter his bail bond was cancelled and the surety discharged. Consequently, the very contingency for which the ECL condition was imposed has ceased to exist. The mere fact that NAB has proposed/processed an appeal against the acquittal does not, without more, revive or perpetuate a bail condition which expressly operated only until conclusion of the trial; nor does the pendency of an appellate remedy by itself amount to a conviction or furnish an automatic authority for continuation of a restriction upon the petitioner's liberty. An excerpt of order dated 25.05.2026 is reproduced as under: -

“.....10. Upon exhaustive examination of the matter, this Court is satisfied that the prosecution material taken at its highest and in its entirety discloses no legally sustainable foundation for inferring that the applicant knowingly or dishonestly received or retained proceeds of crime. The essential ingredient of mens rea being thus absent from the structural foundation of the prosecution case, no reasonable probability of conviction arises and continuation of the trial against the applicant would be without legal justification. The earlier dismissal of the section 265-K, Cr.P.C. application on 09.12.2020 rested on prematurity and the then-undeveloped state of the prosecution's evidence; the issue presently under determination, legal insufficiency arising from the admitted contours of the prosecution case as it has matured was neither posed nor resolved on that occasion and raises no bar to the present exercise of jurisdiction. Accordingly, this Criminal Miscellaneous Application is allowed. The order dated 06.10.2025 passed by the learned Accountability Court No. IV, Sindh at Karachi is set aside. The application under section 265-K, Cr.P.C. stands allowed and the applicant Sarfaraz Merchant is hereby acquitted in Reference No.28 of 2018. His bail bond stands cancelled and surety discharged. The office shall forthwith transmit a certified copy of this order to the learned trial Court for information and compliance.”

8. The statutory power to restrain departure from Pakistan is separately regulated by Section 2 of the Exit from Pakistan (Control) Ordinance, 1981, under which the Federal Government may, by an order, prohibit a person from proceeding abroad, while Section 3 provides a specific mechanism of review. Rule 2 of the Exit from Pakistan (Control) Rules, 2010 further identifies the circumstances in which such power may be exercised, including corruption, misuse of authority causing loss to Government funds or property and specified economic crimes. Thus, continued inclusion of the petitioner's name cannot lawfully rest merely upon the bail order when the trial has already culminated in acquittal.

9. The respondents fail to consider that, notwithstanding the acquittal, the pendency of the NAB appeal does not independently attracts any of the statutory grounds for restriction, they fail to demonstrate a subsisting and competent order under the governing statutory framework; the earlier judicial order cannot be treated as an inexhaustible source of executive authority.

10. The constitutional protection of liberty and freedom of movement and with the principle that a restriction upon travel must have lawful authority, a rational nexus with a permissible statutory purpose and must not continue merely by administrative inertia. Primarily, following acquittal, mere pendency of an appeal/CPLA does not, without supporting material or even interim order, restraining the movement of the petitioner to travel abroad, justify continued retention of a person's name on the ECL, where no independent lawful basis for the restriction has been established.

11. It is well-settled that after the foundational criminal proceedings have culminated in acquittal, continued inclusion in restrictive lists requires an independent lawful justification and cannot be sustained merely on the basis of concluded criminal proceedings, therefore, the respondent No.1 ought to have considered the request of the petitioner via letter dated 03.6.2026. However, they ignored such request without lawful justification.

12. Accordingly, the petitioner has made out a case that the continued operation of the ECL restriction solely on the basis of the order dated 06.05.2019 is without lawful justification. The petition is, therefore, disposed of to the extent that the respondents are directed to consider the request of the petitioner for removal of his name from the ECL and connected restrictive records maintained solely in relation to NAB Reference No.28 of 2018 and the bail order dated 06.05.2019 via reasoned order within three weeks by hearing the petitioner, and the FIA Immigration authorities shall not obstruct his travel movements on the basis of the said concluded proceedings. However, this order shall not preclude the competent Federal Government authority from taking any fresh action strictly in accordance with section 2 of the Exit from Pakistan (Control) Ordinance, 1981 and the applicable Rules, provided that such action is founded upon an independent statutory basis and a valid order of the competent authority based on cogent material.

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