JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

WRIT PETITION NO.1314 OF 2023

MUHAMMAD SHAHZAD
VS.
GOVERNMENT OF PAKISTAN *and another*

Petitioner by	**:**	**Ch. Muhammad Zafar Iqbal Zafar, Advocate.**
Respondents by	**:**	**Rana Imran Farooq, AAG.** **Rai Alam Sher, Inspector, FIA.**
Date of Decision	**:**	**26-10-2023.**

SAMAN RAFAT IMTIAZ, J.

1. Through the instant petition, the Petitioner [Muhammad Shahzad] has prayed that the blacklisting of the Petitioner's name by the Respondents may be declared illegal, ultra vires, unconstitutional, void, and without legal effect. He also seeks direction to the Respondents to delete his name from the blacklist and to renew his passport.

2. The brief facts as per the Memo of Petition are that the Petitioner is an overseas Pakistani. The Petitioner applied for renewal of his passport through Consulate General of Pakistan Dubai, U.A.E. in the first week of February, 2023 then on 02-03-2023 and 07-10-2023 but they refused to renew the passport of the Petitioner and verbally informed the Petitioner that his name has been blacklisted and advised him to approach the Court.

3. The learned AAG submits that the impugned act has been taken on the recommendations of the FIA [Respondent No. 3]. He referred to Rule 22(1)(b) of the Passport Rules, 2021 ("**Passport Rules**") where under names of persons who have been refused passport under the said rules for other than anti-state activities specified in clause (a) may be placed in the Passport Control List on the recommendation of government agencies or departments.

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He also relied upon Rule 21 (m) of the Passport Rulesvwhere under issuance of passport may be refused to such a citizen of Pakistan who is suspected of being, *inter alia*, involved in human smuggling. He submitted that there are 11 FIRs registered against the Petitioner under Section 17 of the Emigration Ordinance, 1979 ("**Emigration Ordinance**") which according to him pertains to human trafficking. He also submitted that the Petitioner is a proclaimed offender in the case of FIR No.172 dated 04-10-2021.

4. According to the report submitted on behalf of Respondents No.1 [Government of Pakistan through Secretary Ministry of Interior] and 2 [Immigration and Passports through its Director General] the Petitioner's name was placed on the 'Passport Control List" on the recommendations of FIA Immigration Wing, Islamabad [Respondent No. 3] conveyed vide their letter dated 21.10.2022 wherein it was stated that the Director Zone requested to place the name of the Petitioner on "Passport Control List" being nominated in 11 FIRs i.e. (i) 344/2020, (ii) 365/2020, (iii) 368/20202, (iv) 373/2020, (v) 469/2020, (vi) 481/2021, (vii) 172/2021, (viii) 81/2021, (ix) 178/2021, (x) 80/2022, (xi) 82/2022 of PS FIA, AHTC, Lahore.

5. The learned counsel for the Petitioner confirms that the Petitioner is nominated in the said 11 FIRs which have been registered under, *inter alia*, Section 17 of the Emigration Ordinance, 1979. However, he argued that the offence under Section 17 of the Emigration Ordinance does not constitute human trafficking, therefore, the Respondents' reliance upon Rule 2(m) of the Passport Rules is misconceived and refusal to renew the passport of the Petitioner on such basis on the recommendation of FIA is unjustified. He pleaded that the Respondents cannot refuse to renew the Petitioner's passport merely on the basis of criminal cases registered against him. He submitted that such refusal is an infringement of the fundamental rights of the Petitioner who is a citizen of Pakistan and is facing extreme difficulty due to the Respondents' unjustified refusal to renew the Petitioner's passport as the Petitioner's U.A.E., Resident Identity Card as well as his company's license has expired which cannot be renewed without the renewal of his Pakistani passport.

6. Arguments advanced by the learned counsel for the parties have been heard and the record has been examined with their assistance.

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Refusal to renew passport under Rule 18(m) of the Passport Rules

7. I will start by reproducing Rule 21 (m) of the Passport Rules as that is the provision of law being relied upon by the Respondents to justify their refusal to renew the Petitioner's passport:

> *"21. Refusal of passport.—**A citizen of Pakistan may be refused issuance of passport** for the time being on any of the following grounds, namely:—*
>
> *(m) **upon receipt of report from** the concerned authority(ies), i.e. **FIA,** ANF, Customs, IB, Coast Guards or Border Agencies, **a person suspected of** being habitual smuggler or purveyors of contraband goods **or involved in human trafficking.**"* [Emphasis added]

8. The foregoing reproduction shows that Rule 21 of the Passport Rules deals with refusal to issue a passport. The Respondents are justifying their refusal to renew the Petitioner's passport under the same provision. Be that as it may, they have relied upon Rule 21 (m) *ibid* to justify such refusal by alleging that FIA has reported that the Petitioner is involved in human trafficking. In this regard they relied upon the FIA letter dated 21-10-2022.

9. Perusal of the FIA letter dated 21-10-2022 reveals that the letter suggests that the name of the Petitioner may be removed from the Passport Control List ("**PCL**") in the case of FIR Nos.663/2018, 664/2018, 665/2018 of PS FIA, AHTC, Lahore in light of court order as per request of Director FIA Punjab Zone-I Lahore. The same letter, however, also states that the Director Zone has requested that the name of the Petitioner may be placed on the Blacklist Category/Passport Control List due to nomination in eleven other FIRs i.e. 344/2020, 365/2020, 368/20202, 373/2020, 469/2020, 481/2021, 172/2021, 81/2021, 178/2021, 80/2022, 82/2022 of PS FIA, AHTC, Lahore. There is no allegation that the Petitioner is involved in human trafficking. Examination of the said eleven FIRs shows that they are registered under Sections 17 and 22 of the Emigration Ordinance and Section 4 of the Anti-money laundering. The Respondents argued that Section 17 of the Emigration Ordinance constitutes the offence of 'human trafficking' which is denied by the Petitioner.

10. Contrary to such submission, Section 17 of the Emigration Ordinance provides as follows:

> *"17. **Unlawful emigration,** etc. (1) Whoever, **except in conformity with the provisions of this Ordinance** and the rules, emigrates or departs or attempts to emigrate or depart shall be punishable with imprisonment for a term which may be extended to five years, or with fine, or with both.*

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(2) Whoever, except in conformity with the provisions of this ordinance or of the rules,

(a) makes, *or attempts to make* ***any agreement with any person purporting to bind that person, or any other person, to emigrate or depart; or***

(b) causes or assist or attempts to cause or assist, any person to emigrate or depart *or to attempt to emigrate or depart or to leave any place for the purpose of emigrating or departing; or*

(c) causes any person engaged, assisted or recruited by him, after grant of the license referred to in section 12, to depart without appearing before the Protector of Emigrants as required by section 15 shall be punishable;

(i) for a first offence, with imprisonment for a term which may extend to five years, or with fine, or with both; and

(ii) for a second or subsequent offence, with imprisonment for a term which may extend to seven years, or with fine, or with both.

(3) When, in the course of any proceeding in connection with emigration in which an Overseas Employment Promoter is concerned, a breach of the provisions of this Ordinance or of the rules is committed, such person shall be liable to the punishment provided by subsection (2) unless he proved that he was not responsible for and could not have prevented the commission of the breach.

(4) Whoever, in contravention of the provisions of section 9, recruits a citizen of Pakistan or holds an interview or examination or issues an advertisement for such recruitment, and the editor, printer and publisher of a newspaper in which such advertisement is published, shall be liable to punishment provided by subsection (2)." [Emphasis added]

The term 'Emigrate' is defined under Section 2(h) of the Emigration Ordinance as under:

"(h) "Emigrate" and "emigration" means the ***departure*** *by sea, air or land* ***out of Pakistan of any person for the purpose****, or with the intention,* ***of working for hire or engaging in any trade, profession or calling in any country beyond the limits of Pakistan.****"* [Emphasis added]

11. Whereas, the definition of 'Human Trafficking' under Section 2 (h) of the Prevention and Control of Human Trafficking Ordinance, 2002 is reproduced herein below:

"human trafficking" means ***obtaining, securing, selling, purchasing, recruiting, detaining, harbouring or receiving a person****, notwithstanding his implicit or explicit consent, by the use of coercion, kidnapping, abduction, or by giving or receiving any payment or benefit, or sharing or receiving a share for such person's subsequent transportation out of or into Pakistan by any means whatsoever for any of the purposes mentioned in section 3."* [Emphasis added]

Section 3 of the Human Trafficking Ordinance, 2002 provides as follows:

"3. Punishment for human trafficking. ---The human trafficking shall be punishable as under: -

(i) Whoever knowingly plans or executes any such plan for human trafficking into or out of Pakistan ***for the purpose of attaining any benefit, or for the purpose of exploitative entertainment, slavery or forced labour or adoption in or out of Pakistan*** *shall be punishable with imprisonment which may extend to seven years and shall also be liable to fine:*

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Provided that in case of an accused who, in addition to committing an offence as aforesaid has also been guilty of kidnapping or abducting or any attempt thereto in connection with such offence, the imprisonment may extend to ten years with fine:

Provided further that whoever plans to commit an offence under this clause but has not as yet executed the same shall be punishable with a term of imprisonment, which may extend to five years and shall also be liable to fine.

(ii) Whoever knowingly provides, obtains or employs the labour or services of a person by coercion, scheme, plan or method intended to make such person believe that in the event of non-performance of such labour or service, he or any other person may suffer from serious harm or physical restraint or legal proceedings, shall be punishable with imprisonment which may extend to seven years and shall also be liable to fine:

Provided that if the commission of the offences under this clause involves kidnapping or abduction or any attempt thereto, the term of imprisonment may extend to ten years with fine: Provided further that payment of any remuneration in lieu of services or labour of the victim shall not be treated as mitigating circumstance while awarding the punishment.

(iii) Whoever knowingly purchases, sells, harbours, transports, provides, detains or obtains a child or a woman through coercion, kidnapping or abduction, or by giving or receiving any benefit for trafficking him or her into or out of Pakistan or with intention thereof, for the purpose of exploitative entertainment by any person and has received or expects to receive some benefit in lieu thereof shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine: Provided that if the commission of the offence sunder this clause involves kidnapping or abduction or any attempt thereto of the victim, the term of imprisonment may extend to fourteen years with fine:

Provided further that plea, if any, taken by the biological parents of the child shall not prejudice the commission of offence under this clause.

(iv) Whoever knowingly takes, confiscates, possesses, conceals, removes or destroys any document related to human trafficking in furtherance of any offence committed under this Ordinance or to prevent or restrict or attempt to prevent or restrict, without lawful authority, a person's liberty to move or travel shall be punishable with imprisonment which may extend to seven years and shall also be liable to fine." [Emphasis added]

12. As may be seen from the above-reproduced provisions, the offence under Section 17 of the Emigration Ordinance involves *inter alia* any departure out of Pakistan for the purpose, or with the intention, of working for hire or engaging in any trade profession or calling in any country beyond the limits of Pakistan or making an agreement with another person purporting to bind that person, or any other person, to so depart or causing or assisting or attempting to cause or assist, any person to so depart except in conformity with the Emigration Ordinance and its rules. In short, this offence involves departure from Pakistan or assistance of another in departure from Pakistan for purposes of employment abroad in violation of the law. Neither departure from Pakistan nor assistance of another in departure from Pakistan for purposes of employment abroad is itself illegal

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provided it is carried out in accordance with the Emigration Ordinance and its rules.

13. On the other hand, the offence of 'human trafficking' involves, *inter alia*, obtaining, securing, sale and purchase, recruitment, detention, harbouring or receiving a person into or out of Pakistan for the purpose of attaining any benefit or for exploitation entertainment, slavery or forced labour or adoption.

14. The two offences, i.e., 'unlawful emigration' and 'human trafficking' therefore, cannot be equated. The former entails unlawful departure or rendering assistance to another for unlawful departure from Pakistan for the purpose of engaging in employment or any trade or profession whereas the latter involves conducting trade of human beings or entering into other such transactions for exploitative purposes. Therefore, nomination of the Petitioner in FIRs registered under Section 17 of the Emigration Ordinance does not fall under Rule 21(m) of the Passport Rules, which as such does not serve as valid grounds for refusal to renew the Petitioner's passport.

Refusal to renew passport on account of registration of FIRs

15. On the other hand, no provision of Rule 22 of the Passport Rules or any other law has been identified pursuant to which renewal of Petitioner's passport may be refused on account of mere registration of FIRs. In similar circumstances, in the unreported case of *Faisal Maqbool Shaikh Vs. Federation of Pakistan through Secretary Interior, Ministry of Interior Islamabad and 02 others*, Writ Petition No.2141 of 2023, this Court held that the placing of the name of an accused person in the PCL on the ground of registration of FIR is in violation of his fundamental rights of due process, liberty, life, and freedom of movement as guaranteed by the Constitution of the Islamic Republic of Pakistan, 1973. Several cases have been cited in such Order whereby placement of an accused person's name in the Exit Control List on account of pendency of criminal cases against him was held unlawful.

Passport Control List

16. In a recent judgment titled *Sheikh Shah Ilahi Vs. Federation of Pakistan through Secretary Interior, Ministry of Interior, Islamabad and 6*

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others, PLD 2023 Lahore 359, the Lahore High Court observed that under Section 8 of the Passport Act, 1974 the Federal Government is empowered to cancel, impound or confiscate a passport subject to issuance of a show cause notice. However, no such action was taken against the petitioner in the case before the Lahore High Court nor against the Petitioner in the instant case. In *Sheikh Shah Ilahi (Supra)* the petitioner was proceeded against under Paragraph 51 of the Passport and Visa Manual, 2006 **("Manual")** which provides for the procedure for Blacklisting and as such the petitioners in such case assailed the vires thereof. The Lahore High Court noted that the Manual has been prepared to carry out the aims and objects of the Passport Act, which is the governing law and which does not contain any provision for Blacklisting nor do the Rules framed thereunder provide for the same. The Lahore High Court held Paragraph 51 of the Manual to be ultra vires the Passport Act

17. The Lahore High Court also adverted to the Exit from Pakistan (Control) Ordinance, 1981 which does envisage an Exit Control List ("**ECL**"). Despite the same, pursuant to Rule 2 (2) of the Exit from Pakistan (Control) Rules 2010 the same cannot be applied to people involved in private disputes where government interest is not at stake, except cases of fraud against foreign banks and reputable companies with significant foreign investments; persons involved in crime like murder and dacoity etc., unless special grounds are furnished by the relevant home departments; directors who represent foreign investment in business; and women or children undergoing Education who are appearing as directors merely due to their family relationship with major shareholders. Thus it transpires that mere registration of FIR (other than the exceptions laid down in Rule 2 (2) of the Exit from Pakistan (Control) Rules 2010) is not even sufficient grounds to place the name of a person in the ECL which list controls exit from Pakistan under the Exit from Pakistan (Control) Ordinance, 1981 let alone placing a person's name in the PCL which is not envisaged in the Passport Act at all.

18. Nevertheless, Rule 22 of the Passport Rules provides for a PCL, the vires of which have not been challenged before me. Be that as it may, sub-section (1) of Rule 22 provides that the power to regulate the departure from and entry into Pakistan vests with the Federal Government. Whereas under

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sub-section (2) thereof the Division concerned and Directorate General is to prepare and maintain the PCL for placement of names of those individuals who have been refused passport facilities under these Rules under Category 'A' and 'B'. This Court in *Faisal Maqbool Shaikh (Supra)* therefore observed that placing of the names in the PCL is within the domain of the Federal Government while the Division concerned and Directorate General simply prepares and maintains the PCL.

19. Rule 22 (2)(a) of the Passport Rules provides that under Category 'A' names of persons involved in anti-state activates may be placed and removed by the Additional Secretary of the Division concerned whereas under Rule 22 (2)(b) of the Passport Rules names of persons who have been refused passport under these Rules for reasons other than anti-state activities specified in Clause (a) may be placed in Category 'B' and that the names of persons in this Category may also be placed on the recommendation of Government Agencies or Departments.

20. Since the power to regulate entry and departure into or out of Pakistan vests with the Federal Government which according to *Messrs Mustafa Impex, Karachi and others Vs. The government of Pakistan through Secretary Finance, Islamabad and others*, PLD 2016 SC 808, is the collective entity described as the Cabinet constituting the Prime Minister and Federal Ministers the authority conferred upon the Additional Secretary of the Division concerned under Rule 22 (2)(a) to place and remove names in the PCL appears to be in excess of their powers. However, the case of the present Petitioner is not under Rule 22(2)(a).

21. Insofar as Rule 22(2)(b) is concerned a government agency or department may at the most make a recommendation for placement of the name of any person. However, the fact remains that such recommendation cannot be beyond the scope of Rule 21, which has already been discussed herein above and it has been found that refusal to renew the Petitioner's passport is not justified under the provisions thereof. Even otherwise, given that the power to regulate entry and departure into or out of Pakistan vests with the Federal Government as enshrined in Rule 22(1), even if a government agency or department recommends placing the name of the Petitioner in the PCL, the same cannot be done without the decision or

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approval of the Federal Government. The Respondents have placed before this Court the recommendation of FIA to place the name of the Petitioner in the PCL on account of pending FIRs however nothing has been placed on the record to show that the Petitioner's name was in fact placed on the PCL by the decision or with the approval of the Federal Government.

Proclaimed Offender

22. The learned AAG insisted that the present petition is liable to be dismissed as the Petitioner is a proclaimed offender. When asked as to how the Petitioner can appear in the legal proceedings filed against him in Pakistan in the absence of a valid travel document enabling him to return to country the learned AAG submitted that the Petitioner can be issued an emergency travel document as pursuant to Rule 18(3)(c) and (d) of the Passport Rules and in this regard cited the judgment of the Honourable Lahore High Court reported as *Rukhsana Bibi Vs. Federation of Pakistan*, PLD 2023 Lahore 522.

23. Rule 18 of the Passport Rules is reproduced herein below:

> *"18. Emergency travel documents.— (1)* ***Emergency travel document (ETD) shall only be issued to bonafide citizens of Pakistan*** *and on verification of CNIC or NICOP or such other document bearing CNIC number or passport and where such identity document is not available, on confirmation of national status from security agency.*
>
> *(2) ETD shall be valid only for single return journey to Pakistan.*
>
> *(3) ETD shall be issued by Passport Officer in Pakistan missions abroad in the following cases, namely:—*
>
> *(a) a person who is not in possession of a valid passport and requires to return back to Pakistan in emergency or is deported by a foreign government;*
>
> *(b) a passport holder whose passport has been confiscated, impounded, cancelled or inactivated;*
>
> ***(c) a person who has been refused passport under these rules; or***
>
> ***(d) a person whose name is borne on passport control list."*** [Emphasis added]

24. The purpose of an emergency travel document **("ETD")** appears to be to enable a bona fide Pakistani citizen to return to Pakistan from aboard in the situations covered under Rule 18(3) of the Passport Rules.

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25. Rule 18(3)(c) envisages issuance of an ETD to a person who has been refused issuance of a passport under the Passport Rules. The learned AAG submitted that the ETD may be issued to the Petitioner under Rule 18(3)(c) as the Respondents are treating refusal to renew a passport as refusal to issue a passport under the Passport Rules. However, it has already been concluded herein above that the Respondent's reliance upon Rule 21(m) is misconceived. Since the Respondent's refusal to renew the Petitioner's passport under the Passport Rules is not sustainable the question of issuance of ETD pursuant to Rule 18(3)(c) does not arise.

26. Similarly, Rule 18(3) (d) has been relied upon in view of the Respondents' contention that the name of the Petitioner is on the PCL. However, as observed herein above, there is nothing on the record to evidence that the Petitioner's name was placed on the PCL by the Federal Government although admittedly it is the Federal Government who has the power to regulate entry and departure into and out of Pakistan whereas FIA can merely make a recommendation for placement in the PCL and the Division concerned and the Directorate General simply prepare and maintain the PCL. Again since the placement of the Petitioner's name on the PCL is without requisite authority, resorting to issuing an ETD on account thereof does not seem justified.

27. To summarize the above discussion, if it was a case of mere pendency of criminal cases, the Petitioner would have a good case for seeking removal of his name from the PCL and direction to the Respondents to renew his passport. However, the case of the Petitioner is not of mere pendency of criminal cases against him. It is settled law that a fugitive from law and courts loses some of the normal rights granted by procedural and

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also substantive law. It has not been denied that proceedings under Section 87 and 88 of Cr.P.C. have been initiated and the Petitioner is a proclaimed offender. As observed in *Muhammad Haseeb Fatani Vs. Federation of Pakistan*, 2021 CLD 951, it is a well-established proposition of law that abscondence of a person disentitles him to ask for any relief which is discretionary. Therefore, the Honourable Sindh High Court in similar circumstances in the said case dismissed the Constitutional Petition filed before it for removal of petitioner's name from the ECL.

28. The Petitioner before this Court has also invoked the Constitutional jurisdiction of this Court which is discretionary in nature. Not only is it an admitted position that he is a proclaimed offender but to make matters worse, the Petitioner in the instant case did not even disclose in the Memo of Petition that he is nominated in criminal proceedings in Pakistan and or that he has been declared absconder although knowledge thereof was not denied when such criminal proceedings were brought to light by way of the Respondents No. 1 and 2's comments filed before this Court. For all the foregoing reasons I am not inclined to exercise this discretionary relief in exercise of Constitutional jurisdiction in favour of the Petitioner as the Petitioner's conduct does not entitle him to the same.

29. This brings me back to the question as to how the Petitioner can appear to face charges before the Courts in Pakistan without a valid travel document. First of all, it is noted that the Petitioner has not indicated any desire to return to Pakistan to face the criminal charges pending against him or for any other reason. He is seeking renewal of his Pakistani passport for the purpose of renewing his Resident Identity Card in the U.A.E. and his company's license there.

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30. Secondly, Rule 18(3)(a) envisages issuance of an ETD to a person not in possession of a valid document who, *inter alia*, requires to return to Pakistan in an emergency Rule 18(3)(b) is not attracted to the extent that the Petitioner's passport has not been confiscated, impounded, or cancelled by the Federal Government under the powers conferred by way of Section 8 of the Passport Act. However, the Petitioner could arguably fall under the category of a person whose passport has been rendered inactive on account of its expiry as inactivation is not required to be carried out by order of the Federal Government under Section 8 of the Passport Act. Therefore, in case the Petitioner wishes to return to Pakistan to surrender before the courts of this country, he may apply to the Pakistani mission abroad who will consider his application in accordance with Rule 18 as discussed herein above.

31. Consequently, the instant writ petition is hereby **dismissed**.

(SAMAN RAFAT IMTIAZ)
JUDGE

JUNAID

Approved for Reporting
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