Form No: HCJD/C-121

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD,
(JUDICIAL DEPARTMENT).

Writ Petition No.2212 of 2023

Dr. Shireen M. Mazari

Versus

Federation of Pakistan through Secretary Interior, Ministry of Interior, Islamabad and another.

Petitioner by: Barrister Ahsan Jamal Pirzada, Advocate.

Respondents by: Barrister Munawar Iqbal Duggal, learned Additional Attorney General.
Malik Muhammad Iqbal Kallue, learned Assistant Attorney General.
Ch. Muhammad Rafaqat Ali, learned Law Officer, ICT, Islamabad.
Syed Tahir Kazim, Law Officer, on behalf of IGP, Islamabad.
Muhammad Nawaz Khan, Director Immigration & Passport.
Khalid Javed Awan, S.I.

Date of hearing: 22.11.2023.

TARIQ MEHMOOD JAHANGIRI, J: Through the instant writ petition, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner is seeking removal of her name from the Passport Control List **("PCL")**.

02. Succinctly stated facts of the matter are that the petitioner came to know through an article published in the newspapers and some

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magazines that her name has been placed on PCL, hence the instant writ petition.

03. Learned counsel for the petitioner, *inter alia,* contends that impugned action of respondents, restraining the movement of petitioner is discriminatory and violative of the provisions of the Constitution, her fundamental rights have been jeopardized; act of respondents by placing her name on PCL is unwarranted, unlawful and illegal, hence is liable to be set aside.

04. Conversely, learned counsel for respondents have controverted the arguments advanced by learned counsel for the petitioner and has stated that petitioner is involved in several criminal cases, in order to restrain her from fleeing abroad her name was placed on PCL just to ensure her presence for completion of investigation/trial; fundamental rights of the petitioner have not been infringed; all the proceedings have been conducted strictly in accordance with law and has prayed for dismissal of instant writ petition.

05. Arguments advanced by learned counsel for the parties have been heard and record has been perused with their able assistance.

06. This court vide order dated 20.07.2023, passed a detailed order in **Writ Petition No.2141 of 2023** titled as *"Faisal Maqbool Shaikh vs. Federation of Pakistan through Secretary of Interior, Ministry of Interior,*

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Islamabad and 02 others." for removal of name of the petitioner (*Faisal Maqbool Shaikh)* from Passport Control List whose name was also placed on the basis of his involvement in a criminal case vide F.I.R. No.38 of 2022, dated 06.10.2022, under sections 420, 468, 471, 477-A, 109, P.P.C. r/w 5, 23 FER Act, 1947, Police Station FIA, CBC, Islamabad *(Foreign Funding Case).* When confronted, learned Additional Attorney General has informed that respondent / State has not challenged order dated 20.07.2023, in Intra Court Appeal or before Hon'ble Supreme Court of Pakistan and the same has attained finality. Facts and circumstances of the present case are almost identical with the case which has already been decided by this Court.

07. Senior Superintendent of Police, Investigation, Islamabad vide letter 23.05.2023, requested the D.I.G., and A.I.G., Operations, Islamabad Police for the cancellation of passport of the petitioner, on the ground that:

> ***"The I.Os of the cases have requested for the cancellation of passport of the accused"***

But Investigating Officer present in the Court after examining the record / case file of FIR No.485/22, stated that no such request is available in record.

08. Islamabad Police has submitted report / parawise comments, wherein reason for placing the name of the petitioner on Passport

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Control List is mentioned as under:

> ***"Due to involvement in different cases of Islamabad and the I.Os of the cases have failed to arrest them and there was an apprehension that they may be proceeded aboard to evade lawful arrest or investigation."***

But the facts of instant matter are contrary to the ground for placing name of the petitioner on PCL mentioned in the report submitted in this Court, as argued / admitted by law officer of Islamabad Police that the petitioner was arrested, sent behind the bars, obtained bail in all cases and is facing trial in accordance with law.

09. Name of the petitioner has been placed on PCL by the Directorate General of Immigration & Passports, Government of Pakistan, Islamabad upon the recommendation of Islamabad Police. Islamabad Police has filed comments, wherein it is mentioned that the petitioner is involved in seven (07) criminal cases / FIRs, out of which she has been discharged from two cases and has obtained bail in all cases registered against her. She has neither been declared proclaimed offender nor avoided to appear before the Courts, rather facing trial in all the cases in accordance with law.

10. Placement Circular No.18(5/23) dated 26.05.2023, issued by Directorate General of Immigration & Passports, Government of Pakistan, Islamabad, wherein names of 10 persons including the

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petitioner have been placed on **"PCL",** in pursuance of Para-21 & 22 of the Passport Rules, 2021.

11. Neither any show cause notice was ever issued to the petitioner for placing her name on PCL nor she was informed by the respondents / police that her name has been placed on PCL which clearly shows the malafide and ulterior motives of respondents. Main purpose of enactment of Passport Rules, 2021, is that the persons who are involved in terrorist / anti-state activities etc. in order to avoid arrest, try to flee abroad, should not be allowed to leave the country, so that law enforcing agencies arrest and produce them before the Courts of law to face the trial but in the instant case no such reason is extended by respondents as admittedly the petitioner in not involved in such likes cases; neither declared proclaimed offender nor became fugitive from law, rather was arrested, sent behind bars, released after obtaining bail after arrest and is now facing trial in all the cases. It has been held by the Hon'ble Supreme Court of Pakistan in a case titled as *"Muhammad Amin Muhammad Bashir Limited vs. Government of Pakistan through Secretary Ministry of Finance, Central Secretariat, Islamabad and others."* **(2015 SCMR 630)** that:

> "*The exercise of any discretionary power must be rational and have a nexus with the objective of the underlying legislation. Arbitrariness is the antithesis of the rule of law. The legislature, when it confers a wide ranging power, must be deemed to have assumed that the power will be, firstly, exercised in*

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> *good faith, secondly, for the advancement of the objects of the legislation, and, thirdly, in a reasonable manner. Section 24A of the General Clauses Act, 1897, reiterates the principle that statutory power is to be exercised "reasonably", fairly, justly and for the advancement of the purposes of the enactment" and further clarifies that an executive authority must give reasons for its decision. Any action by an executive authority which is violative of these principles is liable to be struck down. No other view is permissible."*

12. During the Course of arguments a question was put by this Court to the learned Additional Attorney General and learned counsel appearing on behalf of Islamabad Police but they have failed to satisfy the Court that in how many cases registered in Islamabad against terrorists, hardened criminals, accused of committing murders, gang rapes, abductions / kidnappings for ransom etc. names of the accused have been placed on PCL; learned AAG / learned counsel had no reply; they also failed to assist this Court that what were the exceptional circumstances that name of the petitioner has been placed on PCL who is a female, remained Associate Professor and also served as a chairperson of department of Defense Strategic Studies of Quaid-i-Azam University (QAU) Islamabad for a long period; she remained federal minister for human rights, obtained bail in all the cases registered against her, facing trial and never been declared proclaimed offender.

13. The Passport Rules, 2021, are issued vide S.R.O of Ministry of Interior, Islamabad dated 13.02.2022; section 22 of the rules *ibid* deals

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with the passport control list which is reproduced as under:

> *"**22. Passport control list.** (1) Federal Government is vested with the powers to regulate the departure from and entry into Pakistan and also visit to foreign countries of its citizens under the Act.*
>
> *(2) The Division concerned and Directorate General shall prepare and maintain a PCL for placement of names and other record of individuals who have been refused passport facilities under these rules under Category 'A' and 'B' respectively with the following description, namely:-*
>
> > *(a) under category 'A', the names of those persons are placed who are involved in anti-state activities or whose visit to foreign countries is considered to be prejudicial to the State interest, or, whose visit abroad is banned from security point of view. The names in this list shall be placed and removed by the Additional Secretary of the Division concerned.*
> >
> > *(b) under category 'B', the names of those persons are placed who have been refused passport under these rules other than anti-state activities specified in clause (a). The names of persons included in the category under this clause may also be placed on the recommendations of government agencies or departments;*
> >
> > *(c) _____*
> >
> > *(d) _____"* **(emphasis added)**

14. In the aforementioned section, placing of names on the Passport Control List is the domain of the Federal Government, whereas the Division Concerned and Directorate General has to prepare and maintain PCL.

15. The criteria for placing of names is provided in category 'A' & 'B'. According to category 'A', names of those persons are placed who are involved in taking part in anti-state activities and under category 'B'

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names of persons are placed who have been refused passport under the rules other than anti-state activities specified in clause (a).

16. In the instant case there is no allegation that the petitioner was ever involved in anti-state activities or her visit to foreign countries has considered to be prejudicial to the State interest. The petitioner has never been refused the issuance of passport, so her case does not fall under the criteria mentioned in Rule 22 *ibid*.

17. It is mentioned in Rule 22(1) that the Federal Government is vested with the powers to regulate the departure from and entry into Pakistan and also visit to foreign countries under the Act but in the instant case no approval of the Federal government has been obtained.

18. According to principle of law laid down by the Hon'ble Supreme Court of Pakistan in a case titled as *"Messrs Mustafa Impex, Karachi and others vs. The Government of Pakistan through Secretary Finance, Islamabad and others", (**PLD 2016 SC 808**)*, whenever a power is coferred on the Federal Government it is construed as a power given to the Prime Minister and the Federal Ministers / Cabinet to be exercised in the name of Federal Government. Reliance in this regard is also placed on the law laid down by the Hon'ble Supreme Court of Pakistan in following cases:

i. *"Controller General of Accounts vs. Fazal Ahmad, DAO EC (C&W Division Hangu) and others", (**2021 SCMR 800**)*

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ii. "Government of Sindh through Secretary Health Department and others vs. Dr. Nadeem Rizvi and others", **(2020 SCMR 1)**

19. Nothing has been placed on record that may indicate that the Federal Government has given approval regarding placing of name of the petitioner on Passport Control List (PCL) as provided in Rule 22 (1) of the Passport Rules, 2021.

20. The placing of petitioner's name on PCL is violative of her fundamental rights to due process, liberty, life, and freedom of movement which are guaranteed by the Constitution of Islamic Republic of Pakistan, 1973. The relevant Articles are reproduced herein below for ready reference:

> ***"ARTICLE 4. Right of individuals to be dealt with in accordance with law, etc.***
>
> *(1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen. Wherever he may be, and of every other person for the time being within Pakistan.*
>
> *(2) In particular—*
>
> *(a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;*
>
> *(b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and*
>
> *(c) no person shall be compelled to do that which the law does not required him to do."*
>
> ***"ARTICLE 9. Security of Person.*** *No person shall be deprived of life or liberty save in accordance with law."*
> ***"ARTICLE 10A. Right to Fair Trial.*** *"For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process."*
>
> ***"ARTICLE 15. Freedom of Movement, etc.*** *Every citizen shall have the right to remain in, and, subject to any reasonable restriction imposed by law in the public interest, enter and move freely throughout Pakistan and to reside and settle in any part thereof."*

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Guidance in this regard is obtained from the laws and principles laid down by the superior courts of the country which are as under:

(i) In the case of ***Government of Pakistan & another v. Dada Amir Haider Khan, (PLD 1987 SC 504),*** it has been held as follows:

> *"...As there is not much difference between Article 9 and Article 4(2)(a) and the former appears merely to be a deduction from the latter, Article 9, therefore, does not take the matter any further. However, Article 15, which confers upon every citizen, inter-alia, the right to enter and move freely throughout Pakistan, is of greater relevance.* ***Article 15 guarantees to every citizen the right to remain in, enter and move freely throughout Pakistan. But his right to enter the country if he is leaving it or has gone abroad and his right to step out and step in the country are subject to reasonable restrictions imposed by law in the public interest. By reading the provisions of Articles 4, 9 and 15, it is manifest that every citizen) has the liberty to go abroad and to re-enter Pakistan unless he is, precluded from doing so under some law made in the public interest****. The Passport Act, 1974, is one such law. Indeed its preamble itself recites that it has been enacted to regulate the departure from and entry into Pakistan and visits to foreign countries of citizens of Pakistan..."*
>
> *"****It is now established law that a discretion vested in a public authority must be exercised fairly, reasonably and in good faith****."*
>
> *"This Court in Messrs East and West Steamship Company v. Pakistan PLD 1958 SC 41 took a similar view Muhammad Munir, C.J. observing that "****where a statutory functionary acts mala fide or in a partial, unjust and oppressive manner, the High Court in the exercise of its writ jurisdiction has power to grant relief to the aggrieved party****."*
>
> *"...****Undoubtedly, to travel abroad could be barred if it was shown that the applicant was going abroad to meet the enemies of the country and his foreign visit could endanger the security of the State or was against the public interest. Nothing of the kind has been stated and the only reason given while refusing the passport to the respondent is that he was a person of "communist thought****"."*
>
> *"Moreover,* ***a citizen's right to travel abroad is an important aspect of the citizen's liberty and is closely related to the rights of free speech and association****."*

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(emphasis added)

(ii) In the case of ***Pakistan Muslim League (N) through Khawaja Muhammad Asif, M.N.A. & others v. Federation of Pakistan through Secretary, Ministry of Interior & others***, (**PLD 2007 SC 642)** it has been held as follows:

> *"**Every citizen has undeniable right vested in him as conferred under Article 15 of the Constitution to go abroad and return back to Pakistan without any hindrance and restraint but it must be kept in view that it is neither absolute nor unqualified** as is indicative from the language employed in Article 15 of the Constitution as a specific mention has been made "subject to any reasonable restriction imposed by law in the public interest", meaning thereby that such right is subject to the relevant law which is in existence at relevant time **but an action which is mala fide or colourable is not regarded as action in accordance with law**. **Similarly, action taken upon extraneous or irrelevant considerations is also not action in accordance with law. Therefore, action taken upon no ground at all or without proper application of the mind of an authority would also not qualify as an action in accordance with law and would, therefore, have to be struck down as being taken in an unlawful manner**" **(emphasis added)***

(iii) In the case of ***Federation of Pakistan through Secretary, Ministry of Interior v. General (R) Pervez Musharraf and others, (PLD 2016 SC 570)*** it has been held as follows:

> *"12. Apart from the above discussion, considering the question of inclusion or retaining the name of respondent No. 1 in the ECL, thereby, restricting his freedom of movement, **we also cannot lose sight of the fact that under Article 15 of the Constitution freedom of movement is one of the fundamental rights guaranteed to every citizen of the Country, which cannot be abridged or denied arbitrarily on mere liking or disliking, without any lawful justification for this purpose. More so, when Article 4 of the Constitution further guarantees right to every individual, to be dealt with in accordance with law..**" **(emphasis added)***

(iv) In the case of ***The Federal Government through Secretary Interior, Government of Pakistan v. Ms. Ayyan Ali & others***, (**2017 SCMR 1179)** it has been held as follows:

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> *"6....The High Court's judgment was upheld by this Court vide judgment dated 13.4.2016.* ***It was held that mere pendency of a criminal case cannot furnish a justification for restricting the movement of respondent No. 1.****..."*
>
> *"13....It was not only in the case of Wajid Shamsul Hassan v. Federation of Pakistan through Secretary Ministry of Interior, Islamabad (PLD 1997 Lahore 617), where* ***it was held that the liberty of a citizen cannot be curtailed by mere registering a criminal case, and that mere registration of FIR would not be a ground for depriving a citizen of the exercise of his constitutional right and further that registration of a criminal case has no nexus with and is extraneous to the object of the Exit from Pakistan (Control) Ordinance 1981****, but even in the case of respondent No.1, in relation to the second Notification/Memorandum,* ***this Court, while dismissing the petitioner's petition for leave****, through judgment dated 13.4.2016, has* ***held as follows****:-*
>
> > *"5.* ***Respondent No.1, no doubt, has been charged in a case mentioned above which is still pending adjudication in the competent Court of law. But mere pendency of a criminal case cannot furnish a justification for prohibiting her movement****...."*
> > ***(emphasis added)***

(v) In the case of ***Sheikh Shan Ilahi v. Federation of Pakistan through Secretary Interior, Ministry of Interior, Islamabad & 6 others, (PLD 2023 Lahore 359)*** it has been held as follows:

> *"25.* ***From the above discussion it follows that the right to travel and to go abroad is an integral part of the fundamental rights to life and liberty and can be restricted only under a law made in the public interest.*** *Here, the "law" means "enacted law", a law that is valid and non-discriminatory....And, in Pakistan Muslim League (N) and others v. Federation of Pakistan and others (PLD 2007 SC 642) the* ***Supreme Court of Pakistan held that it should not be for an indefinite period or disproportionate to the mischief sought to be prevented. The Executive has no inherent power except what is conferred on it by law. An action which is mala fide or colourable or taken upon extraneous or irrelevant considerations is not regarded as action in accordance with law. Similarly, an action taken by an authority on no ground or without application of mind is unlawful and liable to be struck down.*** *"*

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> *"45. Administrative authorities are obliged to exercise the discretion vested in them in the public interest justly, fairly and reasonably...."*
>
> *"48. There is no denying the fact that it is in the public interest that offenders should be brought to justice. It is more true in respect of the fugitives from law.* ***Nevertheless, every case has its own facts and the Federal Government cannot cancel, impound, confiscate or for that matter blacklist a person mechanically. It must thoroughly examine each case before taking any action.****..."*
>
> *"49. In Writ Petition No.5734/2021, the name of Petitioner Syed Anwar Shah was placed on the blacklist on the recommendation of FIA as he was a proclaimed offender in case FIR No. 107/2013. He has surrendered and the competent court has admitted him to bail.* ***It is true that the case against him has not been decided so far but that cannot be a ground to deprive him of the right to travel abroad****. The Deputy Attorney General stated at the bar that he would recommend removal of his name from the blacklist."*
>
> *"50. In view of the above, these petitions are accepted.* ***The blacklisting of both the Petitioners is declared to be without lawful authority and of no legal effect****."* ***(emphasis added)***

(vi) In the case of ***Farah Mazhar & 3 others v. Federation of Pakistan through Secretary, Ministry of Interior, Islamabad & 2 others*****,* (PLD 2022 Lahore 119)** it has been held as follows:

> *"12. None of the Petitioners are accused in any criminal case.* ***It is trite law that even registration of a case or pendency of a criminal case is not sufficient to include or place one's name on the Exit Control List****."*
>
> *"24. The analysis of the facts of the instant case,* ***the law of Pakistan developed and interpreted by the superior Courts of Pakistan and the international jurisprudence evolved on the subject leaves no doubt that the freedom and liberty are basic instinct of a human being. The very essence and existence of life is felt, acknowledged, recognized and endured with the act of movement. The act of movement starts in the womb of mother and ends with pronouncement of death. It is movement that distinguishes life from death and as such, the right to movement is cherished, protected and guarded from times immemorial****....****The discretion exercised by the executive is subject to judicial review. Article 15 of the Constitution is no exception.*** *It recognizes the right to movement as a fundamental right subject to*

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> *restrictions imposed by law in the public interest. This right is not limited to movement within Pakistan but extends and includes the right to leave and enter Pakistan.* ***Right to movement is an inseparable part of right to life. The exercise of executive authority is subject to judicial review. The state must come forward with legitimate and lawful cogent, reasonable, justifiable and substantive reasons to clog the right to movement of a citizen. Conversely, if the impugned action speaks of malice or is based on mala fide or is otherwise taken arbitrarily and capriciously or without hearing or is unreasonable or without any substantive reason or is based on irrelevant, extraneous and presumptive considerations, the same is liable to be struck down****."* ***(emphasis added)***

(vii) In the case of ***Sadaf Sharjeel & another v. National Accountability Bureau (Sindh) through Director General & another***, (**2022 YLR 2441 [Sindh])** it has been held as follows:

> *"16. In the case of* ***Rafique v. Federation of Pakistan (2018 MLD 597)*** *it was held as under;*
>
> *"****It is now settled law by the Hon'ble Supreme Court that an accused right to travel abroad as guaranteed under Article 15 of the Constitution cannot be lightly trifled with even if he is an accused in a criminal case.*** *In this respect, reliance is placed on the cases of Wajid Shams-ul-Hassan v. Federation of Pakistan (PLD 1997 Lahore P.617) Federal Government v. Ms. Ayan Ali (2017 SCMR 1179) and more recently unreported Supreme Court case of Dr. Asian Hussain v. Federation of Pakistan dated 29.08.2018."*
>
> *"18.* ***In this case the charge has not been framed despite a delay of over one year due to no fault of the petitioners, there are 12 accused and 56 PW's each of which will be subject to 12 separate cross-examinations by each counsel for the accused which would in effect mean that if we kept the names of the petitioners on the ECL until conclusion of the trial the petitioners would realistically have to remain in Pakistan for at least 3 years more as it is quite apparent that the trial is extremely unlikely to be completed within the next 3 years which in our view would be violative of the above mentioned fundamental rights of the petitioners especially as the petitioners have demonstrated when in the past they have been allowed to travel abroad they have always returned on time****." (emphasis added)*

(viii) In the case of ***Ali Muhammad Turab v. Federation of***

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Pakistan & 2 others, (PLD 2020 Islamabad 454) it has been held as follows:

> *"**The right of free movement whether within the country or across its frontiers, either in going out or in coming in, is a personal liberty within the meaning of Article 9 of the Constitution**, which says that, "No person shall be deprived of life or liberty save in accordance with law." **Freedom of movement is stated to be the essence of personal liberty. A citizen cannot be deprived of his fundamental right to travel abroad except according to the procedure established by law.**" **(emphasis added)***

(ix) In the case of ***Sayed Zulfikar Abbas Bukhari v. Federation of Pakistan through Secretary, Ministry of Interior, Islamabad & others*, (PLD 2019 Islamabad 316)** it has been held as follows:

> *"4. Learned counsel further contended **that mere pendency of inquiry does not entitle the National Accountability Bureau to place name of any person on ECL**...."*
>
> *"10. **Admittedly, when name of an individual is placed on ECL, his freedom of movement is curbed and the same tantamount to violation of fundamental rights and in such state of affairs, the power/authority is to be exercised by the executive sparingly after taking into account relevant facts and circumstances**. The referred recommendation is not to be followed by respondent No.1 i.e. Federation of Pakistan, in a mechanical fashion. In case reported as Government of Pakistan and another versus Dada Amir Haider Khan (PLD 1987 SC 504), **the august Apex Court observed that discretion vested in a public authority must be exercised fairly, reasonably and in good faith.** The case law relied upon by the learned counsel for the petitioner is instructive in the present facts and circumstances. In Mst. Nasreen Begum and another versus Ministry of Interior, Government of Pakistan through its Secretary and 2 others (PLD 2012 Islamabad 17), **this Court observed that mere pendency of inquiry would not justify denial of fundamental right of traveling abroad guaranteed to a citizen by the Constitution.** Similar observation was made by the Hon'ble Lahore High Court in case reported as Inam Akbar versus Federation of Pakistan through Secretary, Ministry of Interior and others (PLD 2016 Lahore 553).... **The upshot of the above case law is that respondent No.1 while placing name of the petitioner on Exit***

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> ***Control List did not apply mind and acted mechanically on the recommendation of National Accountability Bureau.*** *Even respondent No.2 does not seem to be earnest in the recommendation it made inasmuch as it has granted one time unconditional permission to the petitioner to travel abroad, whereas in the original recommendation, it is provided that it is apprehended that he might abscond.* ***Even otherwise, there is nothing on record to show that the petitioner has not cooperated with respondent No.2. Moreover, as noted above, Respondent No.1 while issuing the impugned memorandum acted without application of mind****." **(emphasis added)***

(x) In the case of ***Shabana Noor Ahmed v. Director-General Immigration & Passport, Islamabad & others, (PLD 2019 Sindh 456)*** *it has been held as follows:*

> *"11. Therefore, Clauses 51(B) and 21(b) of the Passport and Visa Manual 2006 could only have been invoked had Junaid been in Pakistan and wanting to leave Pakistan.* ***Even in that case, it has been consistently held by the Superior Courts of this country in cases arising from the Exit From Pakistan (Control) Ordinance, 1981 that mere pendency of a criminal case is not sufficient justification for prohibiting a citizen from exiting Pakistan and for interfering with his Fundamental Right of freedom of movement enshrined in Article 15 of the Constitution of the Islamic Republic of Pakistan, 1973****...."*
>
> *"12.* ***The pronouncement of law by the aforesaid case-law is that a citizen's Fundamental Right of freedom of movement under Article 15 of the Constitution cannot be impeded merely due to pendency of a criminal case against him****...." **(emphasis added)***

(xi) In the case of ***Dr. Joseph Wilson v. Federation of Pakistan through Secretary Ministry of Interior & others, (2017 PCrLJ 1569***) it has been held as follows:

> *"29.* ***There appears to be consensus of judicial opinion on the point that the mere fact that an inquiry or an investigation was being conducted by NAB or any other agency against the petitioner was not by itself a sufficient reason to place his name on E.C.L****. Even the pendency of criminal proceedings, including proceedings before an Accountability Court (without an order or a request from the Court for the curtailment of an accused's freedom to travel abroad) is not considered a sufficient ground to place a*

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> ***citizen's name on E.C.L.*** *While this has been the general trend of judicial pronouncements, yet each case has to be examined on its own merits, and the peculiar facts of a case may cause a Court of Constitutional causes to decline relief to a petitioner seeking to have his name removed from the E.C.L.* ***(emphasis added)***

(xii) In the case of ***Tanveer Hussain Manji & 3 others v. Federation of Pakistan through Secretary Interior & 3 others, (2016 CLC 1534)*** it has been held as follows:

> *"****There is no doubt that freedom of movement or right to travel is fundamental right of a citizen as enshrined under Articles 4 and 9*** *of Constitution of Islamic Republic of Pakistan, 1973.* ***Every citizen of Pakistan has the liberty to go abroad and return to Pakistan unless precluded from doing so, in the public interest****…"* ***(emphasis added)***

(xiii) In the case of ***Yusuf J. Ansari v. Government of Pakistan through Secretary Ministry of Interior, Islamabad & another, (PLD 2016 Sindh 388)*** it has been held as follows:

> *"Mr. Naek has rightly referred to the case-law developed by the superior Courts whereby a* ***consistent view is taken that right of free movement which indeed includes the right of travelling abroad subject to reasonable restriction has been guaranteed under Article 15 of the Constitution of Islamic Republic of Pakistan and in case such right is to be curtailed by applying reasonable restriction then such power must be exercised fairly, reasonably and in good faith and the order whereby such restriction is imposed should not be passed mechanically on the request of any ministry or department and unless against the public interest such order must detail reason and should reflect application of mind****"* ***(emphasis added)***

*(****xiv****)* In the case of ***Gen. (Retd.) Pervez Musharraf through Attorney v. Pakistan through Secretary Interior and others, (PLD 2014 Sindh 389)*** it has been held as follows:

> *"29….****It is quite clear that registration of a criminal case or institution of criminal proceedings does not automatically imply that the accused should be disallowed to move outside Pakistan and or to put his name on E.C.L.*** *Had it been the intention of legislature then it would have made the corresponding provisions in*

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> *the Cr.P.C. or any other special enactments made for the trial of offences.* ***Mere registration of FIR does not permit nor warrant the automatic inclusion of any such accused person on E.C.L.*** *but once bail is granted, it is the province of that court to regulate the custody of that particular accused....”*
>
> *“36....Let us remind to the learned Attorney General that according to the prosecution story the petitioner is also involved in four other criminal cases in which extradition would not be denied in any treaty with any foreign country.* ***If in any case, the accused is absconded, the law is not helpless but a procedure to deal such situation is already provided under the Criminal Procedure Code and other relevant laws****....”* ***(emphasis added)***

(xv) In the case of ***Riaz Ahmed v. Government of Pakistan & others, (PLD 2014 Islamabad 29)*** it has been held as follows:

> *“7.* ***Right to movement/travel is a fundamental right of every citizen guaranteed under Articles 4, 9 and 15 of the Constitution. It is universally recognized right enshrined in Article 12(4) "Everyone shall be free to leave any country, including his own" of the Covenant on Civil and Political Rights****, adopted by the United Nations General Assembly on 16th December, 1966 and enforced with effect from 23rd March, 1976. Therefore, no one could be allowed to deprive a citizen from his/her fundamental rights, save in accordance with due process of law...”*
>
> *“9. The authorities are under obligation to solve the problems of the general public in a fair and just manner and to decide their applications within a reasonable time. They are not supposed to sit over the issues for indefinite period without any decision.”*
>
> *“10.* ***In the instant case the act of respondents is sheer violation of fundamental rights, where the respondents have neither conducted any trial against petitioner in connection with his alleged involvement in terrorist activities nor has he been exonerated of the charges.*** *The government authorities are the patrons of the citizen and they have to adhere to law for resolving the genuine issues of the aggrieved persons.”* ***(emphasis added)***

(xvi) In the case of ***Mian Ayaz Anwar v. Federation of Pakistan through Secretary Interior & 3 others, (PLD 2010 Lahore 230)*** it has been held as follows:

> *“26.* ***The jurisprudence discussed above establishes***

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that right to travel is part of human liberty as travel signifies freedom and liberty. Therefore, the right to travel outside the country is a fundamental right and an intrinsic part of right to liberty which is guaranteed under Article 9 of our Constitution.”

“27. Taking this further, there is little doubt in saying that ***the world today has shrunk due to online connectivity, internet, media and faster means of travel. People today travel across the globe to pursue higher education, to seek more challenging and rewarding employment, to carry out academic research or to discover and expand their business into new markets of the world. Travel, therefore, has become an integral part of modern life.*** *Right to education, right to livelihood and right to carry out lawful. profession are incomplete without having access and the right to travel to any part of the world and in particular to the educational or business centres of the world.* ***To me right to travel, especially international travel, besides being right to liberty is also an integral part of right to life or right to a meaningful, challenging, satisfying and purposeful life. Therefore, I hold right to international travel to be a right to life in addition to right to liberty.****...”*

“32. ***Article 4 of the constitution also echoes the same right and further buttresses the procedural due process required when dealing with fundamental rights of a citizen.*** *Articles 4 and 9 provide that a person shall not be deprived of life or liberty save in accordance with law. "Save in accordance with law" has a substantive and a procedural part.* ***First, the Law must substantively qualify the test of being a "Law" made in the collective public interest and for common good, fully satisfying the basic fundamentals of law and having passed the test of fundamental rights provided in the Constitution. Second, the "law" or the action thereunder must also provide for procedural due process i.e., must abide by all the fundamental principles of law e.g., natural justice, right of hearing, lawful exercise of discretion, fairness, etc.*** *”*

“33. The right to life and liberty of a citizen can only be restricted or abridged if it is in "accordance with law." `Law' here means Law that caters to larger collective public interest. ***Therefore, the fundamental right of an individual guaranteed under the constitution can only surrender and succumb to a lawful collective interest of the community or the society. Public Interest or collective community interest is a basket of various public interests including public morality, public order, public health, national security and foreign policy of the country besides fundamental rights of the others. Public interest is an essential ingredient of any law that proposes to take away, abridge or***

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> ***interfere with the fundamental rights of an individual****…." **(emphasis added)***

(xvii) In the case of ***Wajid Shams-ul-Hassan v. Federation of Pakistan through Secretary, Ministry of Interior, (*PLD 1997 Lahore 617)** it has been held as follows:

> *"14. In view of the above discussion, I have no doubt in my mind that **the right of a citizen to travel abroad is a fundamental right guaranteed by Articles 2A, 4, 9, 15 and 25 of the Constitution of Islamic Republic of Pakistan, 1973. Abridgement of this fundamental right by the State through the legislative or an executive measure has to be tested on the touchstone of the Constitutional provisions. The life, liberty or property of a citizen cannot be taken away or adversely affected except in accordance with law.…The liberty of the petitioner could not be curtailed by mere registering a criminal case for which he may or may not be criminally liable. Mere registration of FIR in a criminal case cannot be a ground for depriving a citizen of the exercise of all fundamental and other Constitutional rights. The registration of a criminal case has no nexus with and is extraneous to the object of the Statute."** **(emphasis added)***

21. It is settled principle of law that if law required a particular thing to be done in a particular manner, it had to be done accordingly, otherwise it would be non-compliance with the legislative intent. In this regard, reliance is placed on a case titled as ***"Zia ur Rehman vs. Syed Ahmed Hussain and others",*** (2014 SCMR 1015).

22. In another case titled as ***"Federation of Pakistan and another vs. E-Movers (pvt) Ltd and another",*** (2022 SCMR 1021), it is held by the Hon'ble Supreme Court of Pakistan that:

> *"24. The Constitution of the Islamic Republic of Pakistan ('Constitution') is the fountainhead of the rule*

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> *of law in Pakistan. 'To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen.* ***The rule of law constitutes the bedrock of governance. When the law stipulates that something has to be done in a particular manner that is how it should be done. And any person who exercises authority must do so in accordance with law****. The right to be treated in accordance with law was invigorated and bolstered when the Constitution was amended to provide an additional Fundamental Right by adding Article 10A to the Constitution stipulating that, 'For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.* ***The due process requirement must be met in the determination of rights and obligations****. The Constitution does not define due process. Therefore, it would not be appropriate to limit its scope by defining it. But this does not mean that the due process requirement is a meaningless concept. Rather due process incorporates universally accepted standards of justice and is not dependent upon any law or laws. It is an all encompassing expression which may not be curtailed with reference to particular laws.* ***Due process is to be understood holistically by keeping in mind the entire Constitution, which excludes arbitrary power, authoritarianism and autocratic rule****." **(emphasis added)***

Reliance is also placed on the cases reported as **PLD 2016 SC 995, 2017 SCMR 713**, **2017 SCMR 1427**, **PLD 2018 SC 189** & **PLD 2017 Islamabad 64**.

23. In view of above discussion, instant writ petition is **allowed**, placing of name of the petitioner on PCL is declared to be unjustified,

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illegal, without lawful authority and of no legal effect. Respondent No.4 / Director General, Immigration & Passport, Islamabad is directed to remove name of the petitioner from PCL within a period of one week and submit compliance report before Deputy Registrar (Judicial) for perusal of the Court.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Announced in open Court on this day of December, 2023.

JUDGE

Ahmed Sheikh /-

Approved for Reporting

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