ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P No.2617 of 2023

Hamid Khan through his Authorized Attorney.
Versus
Federation of Pakistan through Secretary, Ministry of Interior, Islamabad & others.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(02)	02.10.2023	Mr. Talha Javed, Advocate for the Petitioner. Mr. Fazal ur Rehman Niazi, DAG. Mr. Hassnain Raza, SPP for SECP. Tariq Pervez, Director, FIA. M. Azeem Akhtar, S.O (ECL), Ministry of Interior.

The petitioner is aggrieved by Memorandums dated 16.02.2022 & 30.03.2022 and decision of the Sub-Committee of the Cabinet dated 23.02.2023, pursuant to which his name has been placed on Exit Control List **("ECL").**

2. The learned counsel for the petitioner stated that the petitioner has been in United Kingdom since 2019. Subsequently an inquiry was initiated by respondents No.2 and 3 in which he could not appear before the Investigating Officer in person as he was outside the country. He, however, was represented through a representation through a duly authorized representative. He stated that the Court in Karachi has not declared him as absconder. He stated that the petitioner wished to come back Pakistan and appear before the Court but his name has been placed on ECL

and the impugned decision of the Sub-Committee of the Cabinet in this regard is not a reasoned order.

3. The learned Deputy Attorney General assisted by representatives of respondents No.1 and 3 submitted that proclamations had been issued against the petitioner under Sections 87 and 88 of the Code of Criminal Procedure, 1898 **("Cr.P.C")** and by order dated 08.09.2022 he was declared to be a proclaimed offender, which is why his name had been placed on ECL. He submitted that to the extent that the petitioner sought to return to Pakistan he could file an appropriate petition seeking transitory bail so that he is not arrested at the time when returns to Pakistan.

4. The submissions by the Federation seem misconceived and contrary to the record. The question before the Court is that of the legality of placement of the petitioner's name on ECL by an order passed by respondent No.1 dated 16.02.2022. It is apparent from the order itself that the petitioner's name had been placed on ECL pursuant to the authority of the Federal Government under Section 2 of Exit from Pakistan (Control) Ordinance, 1981 **("Ordinance")** on the recommendation of the Securities & Exchange Commission of Pakistan **("SECP")** and the Finance Division in relation to an investigation being carried out into affairs of a company.

5. A perusal of the order dated 08.09.2022 passed by the Special Court (Offence in Banks) Sindh also reflects that it was not until September that the petitioner was declared a proclaimed offender. At the time when the petitioner's name placed on ECL on 16.02.2022 he was already outside Pakistan as has been admitted by the respondents. The Federal Government at the relevant time was aware of the fact that the petitioner is not in Pakistan. In the report filed by the Federal Investigation Agency **("FIA")** it has been acknowledged that the petitioner was participating in the investigation being carried out by respondent No.3 through a representative. However, notwithstanding knowledge of the fact that the petitioner was not in Pakistan at the time when the impugned order dated 16.02.2022 was passed, his name was placed in the ECL pursuant to Section 2 of the Ordinance. Section 2(1) of the Ordinance states the following:

> *2. Power to prohibit exit from Pakistan.— (1) The Federal Government may, by order, prohibit any person or class of persons from proceeding from Pakistan to a destination outside Pakistan, notwithstanding the fact that such person is in possession of valid travel documents.*

6. It is patent from the language of the provision that the object of placing someone's name in the ECL is to prevent him/her from proceeding to a destination outside Pakistan and not to prevent someone from entering Pakistan. It is also settled proposition of law

that no citizen can be prevented from entering Pakistan, as preventing a citizen from returning to Pakistan is in breach of the citizen's right to freedom of movement guaranteed under Article 15 of the Constitution.

7. The question of whether the petitioner can be arrested upon arrival is a completely separate matter. To the extent that he has been declared an absconder while he was away from Pakistan and he now wishes to return to Pakistan to join the proceedings before the trial Court, he can file an appropriate petition seeking transitory bail to enable him to appear before the trial Court without being arrested at the Airport upon his return. But that question is not before this Court. The only question is whether respondent No.1 could exercise powers under Section 2 of the Ordinance placing the name of the petitioner on the ECL with knowledge of the fact that he was not in Pakistan, and the exercise of such power would not serve the purpose of preventing him from exiting Pakistan. The answer is in the negative.

8. The object and purpose of the provisions of the Ordinance is to prevent citizens from seeking to exit from Pakistan to a destination abroad and not to prevent citizens from returning to Pakistan. The manner in which the authority was exercised in placing the petitioner's name on ECL pursuant to memo dated 16.02.2022 was therefore in breach of Section 2 of the Ordinance and is ***set aside***. This judgment will, however, not prevent

respondent No.3 from arresting the petitioner in accordance with law upon his return to Pakistan should such arrest be required for purposes of a trial in accordance with orders of the trial Court. And as already noted above, the petitioner may seek protection against such arrest by filing an appropriate application seeking transitory bail to appear before the trial Court.

9. The petition is ***allowed*** in the above terms. The petitioner's name shall be removed from ECL forthwith.

(BABAR SATTAR)
JUDGE

Shakeel Afzal/