Intra Court Appeal No. 408/2023

Muhammad Shahzad

Versus

Government of Pakistan through Secretary, Ministry of Interior and others

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JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

I.C.A. no. 408 of 2023
Muhammad Shahzad
versus
Government of Pakistan and others

Appellant by:	Mr. Ali Nawaz Kharal, Advocate
Respondents by:	Malik Shoukat Nawaz Awan, AAG
Date of Hearing:	**17.01.2024**

Sardar Ejaz Ishaq Khan, J: This intra-court appeal is from the judgment of the learned Single Judge in Chambers dismissing the appellant's writ petition for a direction to the respondents, the Ministry of Interior and the Directorate of Immigration and Passports, to renew his passport. The Federal Investigation Agency was also added as a respondent at a later stage when the comments of the first two respondents were filed disclosing the existence of FIRs by the FIA against the petitioner, which were stated as the cause for placing his passport on the passport control list.

2 By way of brief background, the petitioner, ordinarily resident in UAE, holds a UAE Resident ID and owns a company in the UAE which, the petition claimed, employs 200 plus workers. When the petitioner turned up at the Pakistan Embassy in early 2023 for renewal of his Pakistani passport, he was unable to do so, and on repeat inquiries was informed that his passport was placed on a control list. No written notice or order was ever served on him stating the reasons for placing his name on the passport control list. The memo of writ petition averred that the petitioner risked losing his UAE residency and the company's license and, resultantly, his business that he set up in the UAE if his passport was not renewed.

3 The judgment under appeal concluded with detailed reasoning and citation of case law that the act of the respondents in placing the petitioner's passport on the control list was illegal. That part of the judgment was never appealed from by the respondents and it has therefore attained finality.

4 The appeal is from the latter part of the impugned judgment where, despite finding the act of the respondents as patently illegal, the learned Judge in Chambers declined to extend the relief sought by holding that the writ jurisdiction was discretionary that could not be exercised in favour of the petitioner for he was a proclaimed offender in 11 FIRs registered against him under the Emigration Ordinance, 1979, for an unlawful attempt to enable the complainants to emigrate from Pakistan in violation of sections 17 and 22 of the Emigration Ordinance. The first sentence of paragraph 27 of the judgment under appeal says it all:

> 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.

5 The judgment under appeal cited *Mohammad Haseeb Fatani vs Federation of Pakistan* [1] as the authority for the principle that abscondence of a person disentitled him to ask for *any*[2] relief that was discretionary. *Haseeb Fatani* was a case of removal of the petitioner's name, while still in Pakistan, from the Exit Control List, which is an important distinguishing feature from the matrix of facts under consideration in this appeal as will become clear later in this judgment.

6 Learned counsel for the appellant contended that the discretionary relief has been improperly withheld in the specific circumstances of this case. He submitted that his client had no knowledge of the FIRs in which he was declared a proclaimed offender, and he had the knowledge of only those FIRs in which he duly appeared in 2022 while visiting Pakistan and, based on his confessional statement and the complainant resiling from his complaint, was awarded only a token sentence until the rising of the court with fines of Rs 15,000/- and 25,000/- which he paid.

7 Learned counsel's submission remains that his client had no knowledge of the other FIRs cited in the respondents' reply in the writ petition at all material times before their disclosure in the reply. Learned counsel takes issue with the wording of paragraph 28 of the impugned judgment observing that the

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[1] 2021 CLC 1222

[2] Not emphasised in the judgment, but emphasised here due to reasons that will become apparent later in this judgment.

petitioner did not deny prior knowledge of the FIRs, and submits that the respondents had not placed any order of proclamation nor any summonses or notices on record to demonstrate service on the petitioner qua accused nor of publication of the notice of proclamation. This is a correct submission, and we should like to think that, in order to demonstrate that the abscondence was willful and not accidental as claimed by the petitioner, the respondents were under a duty to place the relevant orders and notices along with proof of service if the ground of willful abscondence as the basis for opposing the discretionary relief was raised. We say, with much respect, that the impugned judgment proceeds solely on the basis of the petitioner being a proclaimed offender without adverting to his plea with reference to the record that the proclamation was carried out behind his back without proper notice, and dismissed the petition applying the principle, in its broadest formulation, that a fugitive was not entitled to apply for discretionary relief.

8 Tracing the lineage of this principle leads to the earliest decision in our jurisdiction appearing to be *Chan Shah vs The Crown*.[3] The appellant before the Supreme Court was *already convicted* of murder and sentenced to death by the Lahore High Court, and the principle was applied to a convict seeking to file an appeal. No reason was placed before the Supreme Court in Chan Shah for the convict's absence from the Supreme Court. This was not a case of a mere accused or a proclaimed offender.

9 The next case is *Gul Hassan and another vs The State*,[4] which was also a case of a convict decamping from police custody while in transit to district jail after his conviction by the court but, before absconding, executing a power of attorney in favor of a person for the purposes of filing the appeal. This too was a case of purposeful and deliberate escape from law after conviction and it was in this context that the Supreme Court observed that a *decamping prisoner* forfeited his right of audience. Again, the law report does not indicate that any reason was proffered to the court for the prisoner's absence. Again, this was not a case of a mere proclaimed offender who was not a convict.

[3] PLD 1956 Federal Court 43
[4] PLD 1969 SC 89

10 Then comes *Hayat Bakhsh and others vs The State*,[5] which was also a case of an absconding convict.

11 The application of the principle under consideration in a case other than a criminal appeal is found in *Haseeb Fatani* (supra), that led to the dismissal of a writ petition filed by an accused for removal of his name from the Exit Control List. As noted above, the judgment under appeal relies on that judgment. The petitioner therein was a proclaimed offender with decrees already passed against him by the Banking Courts in loan default cases and with evidence on record that the petitioner therein had fled to Canada to evade the satisfaction of the decrees, leading to the State Bank recommending placing his name on the ECL. The petitioner visited Pakistan and, on finding that his name was on the ECL, filed the writ petition for removal of his name. A Division Bench of the Sind High Court declined to exercise judicial discretion in his favor in the context where the High Court after the hearing was of the opinion that "*…there was every likelihood that petitioner would leave the country if his name was ordered to be removed from Exit Control List*". Again, no reason was given before the Division Bench by the petitioner for his inability to surrender before the trial court. More to the point, the law report expressly records at paragraph 13 that the petitioner had knowledge of the criminal proceedings filed against him incidental to the recovery suits filed under the Financial Institutions (Recovery of Finances) Ordinance, 2001.

12 In an erudite judgment scanning the case law and the principles derived therefrom, a Division Bench of the Islamabad High Court distilled the principles from the case law on the subject in *Raheem Ullah Khan vs The State*.[6] Authoring the judgment, Hon'ble Mr. Justice Babar Sattar summarized the principles as follows:

> 5. In view of the law laid down by the august Supreme Court the doctrine of fugitive disentitlement under Pakistani law can be summarized as follows:
>
> 1. Under Pakistani law, the only statutory bar to absconder's recourse to courts for enforcement of rights is stipulated under Order XXIII Rule 8 of the Supreme Court Rules, 1980.

[5] 1981 SCMR 1
[6] 2023 YLR 1246

> 2. Unlike the U.S Courts and courts of other foreign jurisdictions, in Pakistan, in view of Article 175(2), the courts do not claim any inherent powers and instead rely on the powers conferred under section 151 of Civil Procedure Code ("C.P.C.") and section 561-A of the Code of Criminal Procedure Code ("Cr.P.C") in relation to the treatment meted out to fugitives and absconders.
>
> 3. Perusal of Pakistani jurisprudence reveals that our superior courts have recognized the doctrine of fugitive disentitlement to the extent of criminal appeals or related criminal matters. The honourable superior courts have refused to hear appeals filed by absconders in criminal matters on the basis of following equitable principles:
>
> …

13 We conclude on the basis of the scan of the judgments that in all the cases where this principle was applied, *no reason, let alone a good one, was cited before the respective Courts for the accused not surrendering before the relevant Court.* None of the judgments reviewed which are binding on this Division Bench lay down an absolute rule without admitting any exceptions. Perhaps this may be a case of first impression where the exception is expressly pleaded, and therefore merits judicial consideration.

14 The exception pleaded is that under the laws of the UAE, the petitioner would be exposed to criminal proceedings in the UAE, apart from losing his residency ID and registration of his company that provides employment to over 200 workers if he were to leave the UAE for surrender before the trial Court in Pakistan without first renewing his residency ID and his company's license. This averment made in ground 'N' of the memo of appeal and elaborated during oral submissions has not been denied by the prosecution for want of knowledge of the applicable legal framework in the UAE and, therefore, for being made with the support of an affidavit, is to be given credence when not rebutted by the respondents. So, the claimed exception to the rule can be labelled as a potential risk to the liberty of the appellant and potential loss of livelihood, both being fundamental rights of the petitioner qua a citizen of Pakistan.

15 It is to be remembered that section 87 CrPC requires that a proclamation is to be issued only after the court issuing the proclamation has satisfied itself after taking evidence that the accused has absconded.

16 It is settled law that the expression 'abscondance' of necessity entails intentional and willful avoidance of the process and concealing oneself from the reach of law. The Supreme Court in *Bacha Said vs The State*[7] held that an absconder means a person who is intentionally evading and avoiding service of notice, summons, or warrants issued to him and intentionally makes himself inaccessible to the process of Law. But from the mere fact that a person is absent it should not be readily assumed without due enquiry and notice that he is an absconder. The appellant's case all along has been that he had no knowledge of the other FIRs against him and by extension was unaware of any proclamation issued against him. As the respondents and the FIA have not bothered to place on record copies of the record of proceedings relating to proclamation to establish the FIA's stance that the appellant was aware of the other FIRs, we would give the benefit of doubt to the appellant that he was not so aware for the aforesaid reasons and also for the reasons stated below.

17 The FIRs in which the petitioner was declared a proclaimed offender were registered in 2020, 2021 and 2022 under the Emigration Ordinance, alleging that the petitioner obtained money from the complainants for their work visas abroad but did not provide them the visas. *All the FIRs were registered by the FIA*. It is an admitted fact that the petitioner appeared before the trial court in April 2022 in 3 FIRs registered in 2018 by the FIA under the Emigration Ordinance, made a confessional statement, and was convicted by the trial Court with a token sentence vide order dated 04.07.2022 in view of the complainant resiling from the complaint, which presumably happened because the appellant returned the money he took from the complainant. So, the petitioner was very much present in Pakistan in April 2022 and attended trial with FIA prosecuting, *and no good reason has been given by the FIA or the respondents before this Court as to why he was not arrested in those FIRs in which he was declared a proclaimed offender*. The only logical course would be to accept the categorical averment of the appellant that he was never aware of those other FIRs in which he was declared a proclaimed offender and only became aware when the respondents' reply was filed in the instant writ petition giving the reason for the blacklisting of the appellant's passport due to the existence of those FIRs. It is to be recalled that the impugned judgment under

[7] PLD 1978 SC 102

appeal does not advert to the dates of the proclamations against the petitioner, nor whether summons or notices were duly served on the petitioner, for he was resident in the UAE all along and only came to Pakistan to face the trial in the 3 FIRs in which he was convicted with a token sentence.

18 Should the law take a dogmatic approach for an inflexible application of the rule under consideration, or should it take a pragmatic approach to administer justice tempered with mercy, while balancing the interests of an accused with that of the State? We would not wish to be labelled as blindfolded Judge who insisted on the petitioner surrendering before the trial court at the risk of losing the means of his livelihood and facing criminal proceedings in the UAE, when the objective of proclamation under section 87 CrPC, namely, ensuring the presence of the accused to join the investigation and to face trial, can equally well be achieved by passing appropriate orders to achieve both ends.

19 Justice is always sacrificed when a rule of law is applied dogmatically and without adverting to the exceptions or without attention to the reason underlying that rule. Reason is the soul of the law, and what is inconsistent with reason of the law is not permitted in law. The reason for the rule under consideration was given in *Chan Shah* as that one who seeks the aid of justice must not be a fugitive from the justice itself. But what if keeping away from the process of justice can be explained which explanation on a balance of probabilities does not appear implausible? And, we hasten to add, that the rule under consideration would also be applicable with less force in proceedings which do not arise out of the case in which the petitioner is a proclaimed offender – this appears to us to be the unstated explanation for the observation of the Supreme Court in *Mian Muhammad Shahbaz Sharif vs Federation of Pakistan*[8] that an absconder does not lose all his rights. Would the rule be still insisted upon in its full severity if, say, a proclaimed offender was grievously injured in an accident abroad but needed an insurance certificate from Pakistan which the insurance company was refusing to issue but which the petitioner desperately required to pay for medical services in the country where he resides? Or where a proclaimed offender was in prison abroad but needed his birth certificate and other credentials for parole abroad which the Pakistani

[8] PLD 2004 SC 583

authorities were refusing to issue? For those who would answer that, yes, the rule would still be applied with full severity, we would respond without hesitation: have a heart!

20 It appears to us that justice would fail with an inflexible application of this rule admitting of no exceptions when the ultimate objective of this rule can well be achieved by appropriate orders passed by the Court. We would therefore allow this appeal and order the respondents to renew the petitioner's passport subject to the following conditions:

i) The appellant will deposit cash surety with the Deputy Registrar (Judicial) of this Court in the cumulative sum that is alleged to have been taken by him from all the complainants in the pending FIRs, liable to forfeiture if he does not surrender before the trial court within one month of the date of renewal of his passport, and

ii) Should the appellant not surrender before the trial court within 1 month from the date of renewal of his passport, his passport will be liable to confiscation/inactivation under Rule 23(6)(b) of the Passport Rules, 2021, and this judgment shall constitute 'good evidence' for such confiscation/inactivation in terms of the said rule.

(Mohsin Akhtar Kayani)
Judge

(Sardar Ejaz Ishaq Khan)
Judge

Imran

ججمنٹ شیٹ
اسلام آباد ہائی کورٹ اسلام آباد
جوڈیشل ڈیپارٹمنٹ

انٹرا کورٹ اپیل نمبری 408/2023
محمد شہزاد
بنام
گورنمنٹ آف پاکستان وغیرہ

بجانب اپیل کنندہ: **مسٹر علی نواز کھرل ایڈووکیٹ**

بجانب جواب دہندہ/مدعا علیہ: **ملک شوکت نواز اعوان، اسسٹنٹ اٹارنی جنرل**

سماعت تاریخ 17.01.2024

محسن اختر کیانی جج:۔

مندرجہ بالا اپیل بناراضی حکم مورخہ 26.10.2023جاری شدہ رٹ نمبری 1314/2023 ہمارے سامنے پیش کی گئی جس میں تفصیلی گزارشات سننے کے بعد فیصلہ برادرم جج محترم سردار اعجاز اسحاق خان نے لکھا جس کو مجھے پڑھنے کا شرف حاصل ہوا جس میں اپیل کنندہ کی اپیل کو منظور کرتے ہوئے اسے موقع دیا گیا کہ وہ نقد شورٹی ڈپٹی رجسٹرار جوڈیشل کے پاس اپنے تمام درج شدہ فوجداری مقدمات میں غیر قانونی حاصل کردہ رقم کے برابر جمع کروائے جس کے بعد اس کے پاسپورٹ کی تجدیدو اجراء کی اجازت دی جائے گی نیز کہ یہ وہ دو ماہ کے اندر پاکستان واپس آکر جن مقدمات میں عدالتی مفرور ہے کا سامنا کرے تاہم میں مندرجہ بالا فیصلے سے اختلاف کرتا ہوں جس کی وجوہات درج ذیل ہیں:۔

2۔ مقدمہ کے متعلق تمام حقائق برادرم محترم جج سردار اعجاز اسحاق خان کے فیصلہ میں درج ہیں۔ اس لئے دُہرانے سے اجتناب کرتا ہوں۔ اپیل ہذا کے ساتھ لف شدہ ریکارڈ اس بات کی غمازی کرتا ہے کہ اپیل کنندہ اس وقت مندرجہ ذیل مقدمات میں عدالتی مفرور ہے جس کی تفصیل کچھ یوں ہے۔

S.No.	Description
1	F.I.R No.664/18 dated 10.08.2018, P.S F.I.A AHTC, Lahore under Section 17/22 of the Emigration Ordinance, 1979.
2	F.I.R No.665/18 dated 10.08.2018, P.S F.I.A AHTC, Lahore under Section 17/22 of the Emigration Ordinance, 1979.
3	F.I.R No.344/2020 dated 19.05.2020, P.S F.I.A AHTC, Lahore under Section 17/22 of the Emigration Ordinance, 1979.
4	F.I.R No.365/20 dated 04.06.2020, P.S F.I.A AHTC, Lahore under Section 17/22 of the Emigration Ordinance, 1979.

5	F.I.R No.368/20 dated 05.06.2020, P.S F.I.A AHTC, Lahore under Section 17/22 of the Emigration Ordinance, 1979.
6	F.I.R No.469/20 dated 08.10.2020, P.S F.I.A AHTC, Lahore under Section 17/22 of the Emigration Ordinance, 1979.
7	F.I.R No.178/2021 dated 14.10.2021, P.S F.I.A AHTC, Lahore under Section 17/22 of the Emigration Ordinance, 1979.
8	F.I.R No.172/2021 dated 04.10.2021P.S F.I.A AHTC, Lahore under Section 17/22 of the Emigration Ordinance, 1979.
9	F.I.R No.81/21 dated 28.04.2021, P.S F.I.A AHTC, Lahore under Section 17/22 of the Emigration Ordinance, 1979.
10	F.I.R No.82/2022 dated 12.04.2022, P.S F.I.A AHTC, Lahore under Section 17/22 of the Emigration Ordinance, 1979.
11	F.I.R No.80/2022 dated 11.04.2022, P.S F.I.A AHTC, Lahore under Section 17/22 of the Emigration Ordinance, 1979.
12	F.I.R No.663/18 dated 10.08.2018, P.S F.I.A AHTC, Lahore under Section 17/22 of the Emigration Ordinance, 1979.

3 ۔ اُوپر دی گئی تفصیلات بذریعہ خط مورخہ 21.10.2022 ڈائریکٹر /فوکل پرسن ڈائریکٹریٹ جنرل امیگریشن اینڈ پاسپورٹ ہیڈ کوارٹر اسلام آباد ایف ائی اے ریکارڈ پر موجود ہیں۔ درج بالا تفصیلات بر ریکارڈ سے ظاہر ہوتا ہے کہ اپیل کنندہ مختلف افراد کو غیر ملکی ملازمت کا جھانسہ دے کر ان سے لاکھوں روپے وصول کرنے کے بعد نہ تو انہیں کسی قسم کی ملازمت دلوا سکا ہے اور نہ ہی ایسے کسی ملک کا ویزا بمطابق وعدہ فراہم کر سکا ہے ملزم ہذا کے پاس زیر دفعہ 12 امیگریشن آرڈیننس 1979 کے مطابق غیر ملکی ملازمت پرموٹ کرنے کا لائسنس بھی موجودنہ ہےجس کے تحت ایسا کوئی کاروبار کیا جا سکے۔

4۔ مزیدبراں ریکارڈ پر موجود اسپیشل کورٹ ون لاہور کا فیصلہ مقدمہ نمبر 663/18 مورخہ 10.08.2018، پولیس اسٹیشن F.I.A AHTC لاہور زیردفعہ 17/22، امیگریشن آرڈیننس 1979اور فیصلہ مورخہ 04.07.2022 اور مقدمہ نمبر 665/18 مورخہ 10.08.2018، پولیس اسٹیشن F.I.A AHTC لاہور زیردفعہ 17/22، امیگریشن آرڈیننس 1979اور فیصلہ مورخہ 04.07.2022 اس بات کی تصدیق کرتا ہے کہ ملزم ہذا کو اقبال جرم پر سزا بمطابق قانون ہوئی تھی جس پراپیل کنندہ نے سزائے قید گزاری اور جرمانہ ادا کیا تھا۔

5۔ علاوہ ازیں عدالت کے ریکارڈ پر متفرق درخواست داخل کرنے کے بعد متفرق درخواست اعتراض میں اس بات کا اقرار کیا ہے کہ وہ سزا مکمل کرنے کے بعد قانونی طور پر پاسپورٹ کے اجراءکا حقدار ہو گیا یہ تمام واقعات اپیل کنندہ کے سابقہ اور موجودہ کردار کی واضح نشاندہی کرتے ہیں جس میں وہ دو مقدمات میں

سزا یافتہ ہونے کے بعد اس ملک سے باہر چلا جاتا ہے اور اسی دوران دیگر مقدمات میں ملزم گردانا جاتا ہے اور وہ تمام مقدمات عدالت میں اسی ملزم کی عدم حاضری کی وجہ سے زیر التوا ء ہیں۔

6۔ اسلام آباد عدالتِ عالیہ کے سنگل بنچ نے رٹ پٹیشن نمبری 1314/2023کی سماعت کے دوران اپیل کنندہ ملزم کے کردار کی تفصیل سے نشاندہی کرتے ہوئے اس بات کا ذکر کیا ہے کہ اپیل کنندہ ایک مفرور ہے اور اس ضمن میں عدالتی نظائر ایسے شخص کو کسی قسم کی مراعات دینے سے گریزاں ہے۔ عدالت عظمی نے **(باچا سید بنام سرکار)** PLD 1978 SC 102میں اصول کی وضاحت کی ہے کہ جو شخص نیتاً و عملاً عدالت کی سماعت کے دوران پیش نہ ہو اور تمام عدالتی کاروائی کو بالائے طاق رکھے ایسے شخص کو کسی بھی طور پر صرف غیر حاضری بوجہ لاعلمی کا فائدہ نہیں دیا جا سکتا۔ اسی طرح **(چن شاہ بنام کراون)** PLD 1956 Federal Court 43، **(گل حسن وغیرہ بنام سرکار)** PLD 1969 SC 89، **(حیات بخش وغیرہ بنام سرکار**1981 SCMR 1، **(رحیم اللہ خان بنام سرکار)** 2023 YLR 1246 میں بھی وضاحت کی گئی ہے کہ عدالتی حکم اور سماعت کی بےتوقیری کرنے والا شخص کسی بھی طرح غیر معمولی فائدے کے حصول کا اہل نہ ہے۔ عرف عام میں عدالت عظمی کے تمام فیصلہ جات اس بات کا تعین کرتے ہیں کہ مفرور کا عدالت میں بالواسطہ کسی بھی طریقے سے پیش ہونے یا کارروائی میں بغیر خود پیش ہوئے حصہ لینا بازو ممنوع ہے اور ایسے شخص کو کسی بھی قسم کی عدالتی کاروائی میں عدالت سننے کی مجاز نہ ہے اور عام اصطلاح میں شنوائی کا حق حاصل نہیں ہوتا۔ اس کی مزید مثالیں (**اول گل بنام زوار خان وغیرہ)** PLD 1985 SC 402، **(گل حسن وغیرہ بنام سرکار)**(89 PLD 1969 SC **(سید محمد بنام محمد سراج الدین)** 2014 MLD 437، **(رخسانہ بی بی بنام فیڈریشن آف پاکستان)** PLD 2023 Lahore 522 رہنمائی کے لیے موجود ہیں۔

7۔ اس طرح کے معروضی حالات میں جب کوئی شخص سابقہ سزا یافتہ بھی ہو اور مختلف مقدمات میں قانون کے دائرہ اختیار سے باہر ہو تو ایسے شخص کے لیے عدالت ہذا کے ڈویژن بینچ نے متفرق درخواست نمبری 344/2023 زیر سماعت

کریمینل اپیل نمبری 213/2019 بعنوان**(ملک محمد عمر خان بنام مسماۃ سعدیہ بی بی وغیرہ)** میں مندرجہ ذیل اصول وضع کیے ہیں:-

i. دفتر ہائے عدالت عالیہ بھی کسی سزایافتہ مفرور کی درخواست متفرق، اپیل، نگرانی، وغیرہ وصول کرنے کی مجاز نہ ہیں اور انکی ذمہ داری ہے کہ وہ ایسی اپیل نگرانی و متفرق درخواست کو ناقبل سماعت قرار دے کر اعتراض لگائیں۔

ii. مزید یہ کہ اگر کوئی ایسا ملزم یا شخص عدالتی مفرور ہو تو اس کے لیے یہ بات لازم ہے کہ وہ اپنے آپ کو عدالت کے حوالے کرے یا اپنی گرفتاری متعلقہ اداروں کو دے جس کے بعد اس کی اپیل، نگرانی و متفرق درخواست قانونی طور پر قابل عمل ہو سکتی ہے اس اصول کو**(میاں محمد نوازشریف بنام سرکار بذریعہ چیرمین نیب)** PLD 2022 Islamabad 13 میں واضح کیا گیا ہے نیز ایسا شخص جو اپنے آپ کو عدالت کے حوالے نہ کرے اور قانونی دائرہ اختیار میں داخل ہونے سے انکار کرے وہ ایسی استدعا کرنے کا مجاز نہ ہے جس کے تحت کوئی وکیل اس کی طرف سے وکالت نامہ داخل کر سکتا ہو اس حوالے سے**(انعام الرحیم بنام چیرمین قومی احتساب بیورو اسلام آباد وغیرہ** PLD 2018 Islamabad 251 میں اصول کی وضاحت کی گئی ہے۔اور اسی طرح امریکی سپریم کورٹ نے بھی مختلف مقدمات میں Fugitive Disentitlement کے conceptکی وضاحت اور تائید کی ہے۔ مندرجہ ذیل امریکی مقدمات کی مختصر وضاحت سے یہ معلوم ہوتا ہے کہ fugitive disentitlement اپنے اندر ایک جواز رکھتا ہے اور معقول توجیح پیش کرتا ہے۔

The history of fugitive disentitlement traces its roots back to 1876 when the case of **Smith v. United States (94 U.S. 97 (1876)** remained on hold for six years in supreme court because the petitioner escaped after conviction. The court held that taking issue with expending judicial resources to adjudicate an appeal from a criminal case against an absent defendant established the unenforceability of judicial decision.

The precedent settled in *Smith supra* was followed by the US supreme court in the case of **Eisler v. United States (338 U.S. 189 (1949)** and directed to remove the case from docket until the petitioner submits to the court's jurisdiction.

The justification of fugitive disentitlement was given in **Molinaro v. New Jersey, 396 U.S. 365, 366 (1970)**

- The Court considered it **wasteful to use judicial resources** to adjudicate a case when the defendant refused to accept their conviction should the court rule against them.
- While a case may still represent a judiciable case or controversy sufficient to warrant a decision by the Court, **fugitive status "disentitles** the defendant to **call** upon the **resources** of the Court for determination of his claims.
- A court hearing arguments, ruling, and issuing an opinion are all futile exercises without a party against whom to enforce the judgment.

  Delay of the proceedings, compromise of the discovery process, and the perceived affront to the court all frustrate the overall judicial system. (Empire Blue Cross & Blue Shield v. Finkelstein, 111 F.3d 278, 282 (2d Cir. 1997)[1]

مندرجہ بالا اصول کی مقدمہ United States v. Shalhoub 855 F.3d 1255, 1258 (11th Cir.2017)میں مزید وضاحت کی گئی ہے کہ حکم امر کی رٹ ایک غیر معمولی طریقہ تلافی ہے جس میں ایک مخصوص عمل سر انجام دینے کی تاکید کی گئی ہے مگر عدالت ایسی رٹ جاری نہ کر سکتی ہے جس سے کسی عدالتی مفرور کو اپنی مفروری اس کی غیر موجودگی میں چیلنج کرنے کی اجازت فراہم کرتی ہو۔

8- دستور پاکستان کے آرٹیکل چار کے مطابق شہریوں کا یہ ناقابل تنسیح حق ہے کہ وہ قانون کے تحفظ سے لطف اندوز ہو سکیں۔ تمام عدالتیں اور ریاستی ادارے قانون کے دائرے کے اندر رہتے ہوئے شہریوں کے حقوق کو تحفظ فراہم کرنے کے پابند ہیں۔ حقوق کے تحفظ کے اس عمل کو معاہدہ عُمرانی (social contract theory) کے تحت جانا جاتا ہے۔ یہ معاہدہ معاشرے میں مختلف سطوحات پر مابین شہریوں یا ریاست اور شہریوں میں پیدا ہونے والے تنازعات کو حل کرنے کے اصول وضع کرتا ہے ۔اس معاہدے کے مطابق شہری (صریحاًٍ یا خاموشاً) صاحبِ اقتدار کے سامنے اپنے کچھ اختیارات ترک کر دیتے ہیں تاکہ اس دست برداری/ اطاعت کے بدلے ان کے بنیادی حقوق کو تحفظ فراہم کیا جائے ۔اس اصول کو J.W. Gough, The Social Contract (Oxford: Clarendon Press, 1936 میں بیان کیا ہے کہ بیشتر سیاسی مفکرین اور فلسفی شہریوں اور ریاست/ حکومت کے اس تعلق کو اس طرح آپس میں جوڑتے ہیں کہ تمام شہریوں کو شخصی آزادی صرف اس

[1] Zachary Z. Schroeder, Fugitive Pull: Applying the Fugitive Disentitlement Doctrine to Foreign Defendants,
98 Wash. L. Rev. 287 (2023).

صورت میں حاصل ہو سکتی ہے کہ وہ خود کو ریاست کے ماتحت کر دیں اور اس بات کا اقرار کر یں کہ وہ قانون سے بالاتر نہیں ہیں، مزید یہ کہ وہ ریاستی اقدامات کے خلاف کوئی عمل ہرگز نہ کریں گے ۔دوسری طرف ریاستی ادارے شہریوں کے حقوق کو تحفظ اس طرح فراہم کریں گے گویا کوئی مذہبی فریضہ سرانجام دے رہے ہوں اور کسی طرح ان کے حقوق کو پامال نہیں کریں گے۔ شہری اس معاہدے کے مطابق صرف اسی وقت اپنے حقوق کا تحفظ لینے کے قابل ہوئے ہوتے ہیں جب وہ خود کو قانون اور ریاست کے تابع کر دیں۔

سولویں صدی کے مفکر John Locks اوراٹھارہویں صدی کے مفکرین نے کسی بھی سیاسی معاشرے کی تشکیل نو میں شہریوں کے حقوق، شخصی آزادی و دیگر فوائدکا تحفظ منظم حکومتی عمل کے ساتھ مشروط کر دیا ہے۔

9- مندرجہ بالا بحث اور مختلف قانونی نظائر سے یہ اصول عیاں ہے کہ مفرور ملزم یا مجرم اپنے آپ کو قانونی عدالتی و ریاستی دائرہ اختیار سے باہر رکھتے ہوئے کسی بھی طور پر ایسے حق استفادہ یا ذاتی حق جس میں قانونی کاروائی میں شمولیت، گھومنے پھرنے کی آزادی کو استعمال نہ کر سکتا ہے خاص کر جب وہ خود پاکستان کی حدود سے باہر بیٹھا ہو۔ لہذا اصولِ ترتیب برائے انجام دہی امور میں سب سے پہلے ایسے شخص کو پاکستان واپس آ کر اپنے آپ کو عدالت کے حوالے کرنا لازمی امر ہے جس کے بعد ہی وہ اپنے پاسپورٹ کے حصول کی درخواست دے سکتا ہے ۔

10- لہذا یہ عدالت حکم امر کسی ایسے شخص کے حق میں جاری کرنے کی روادار نہ ہے جو کہ ایک طرف تو عدالت کے اختیار سماعت سے باہر ہو اور دوسری طرف اسی عدالت سے اپنے پاسپورٹ کی تجدید و اجراءکی درخواست کرتا ہو جبکہ وہ بہت سے مقدمات میں مفرور ہو اور صرف عدالتی کاروائی میں شمولیت اختیار نہ کرتا ہو تو ایسے شخص کی کسی بھی قسم کی مشروط ضمانت ،بیان حلفی، اقرار اورقول کو تسلیم نہ کیا جا سکتا ہے کہ وہ اپنے وعدے کا پاس کرے گا جبکہ حکم امر کی رٹ ایک غیر معمولی نوعیت کا اختیار ہے جس کو صرف انصاف و قانون کے تقاضوں کی رہنمائی کے لیے استعمال کیا جا سکتا ہے اس اصول کی وضاحت عدالت عظمی نےمقدمہ **(صوبہ پنجاب بذریعہ سیکرٹری کمیونیکیشن اینڈ**

ورکس ڈیپارٹمنٹ لاہور بذریعہ چیف انجینئر (نارتھ/سنٹرل) پنجاب ہائی وے ڈیپارٹمنٹ لاہوربنام یاسر مجید شیخ وغیرہ) 2021 SCMR 624 میں کی ہے

11- مندرجہ بالا قانونی نکات و بحث کی روشنی میں عدالت اس نتیجے پر پہنچی ہے کہ اپیل کنندہ محمد شہزاد زیر دفعہ 17/22امیگریشن آرڈیننس 1979 میں 12 مقدمات میں ملزم ہے جس میں اس نے تمام شہریوں کے حقوق کو پامال کرتے ہوئے ان کی رقم غیر قانونی طریقے سے بحاصل کی ہے باوجود اس کے کہ نہ تو وہ غیر ملکی ملازمت دلوانے یا ویزہ کے اجراء میں کسی طرح معاون ہو سکتا تھا اور نہ ہی قانونی طور پر مجاز تھا۔

12- لہذا حکم زیرِ اپیل مورخہ 26.10.2023جو کہ رٹ نمبری 1314/2023 میں معزز سنگل بنچ نے جاری کیا گیاتھا کی تائید کرتے ہوئے میں اس کی وجوہات سے متفق ہوں کہ اپیل کنندہ کو صرف Rule 18 آف پاسورٹ رُولز 2021 کے تحت ایمرجنسی سفری دستاویز ہی (ETD) بابت یکطرفہ سفر جاری ہو سکتی ہے تاکہ وہ پاکستان آ کر تمام مقدمات میں شمولیت اختیار کرے اور اپنے آپ کو عدالتی دائرہ اختیار میں لائے جس کے بعد ہی اس کے پاسپورٹ کی تجدید و اجرا ء کا حکم قرین انصاف ہوگا۔

13- اس بحث کے نتیجے میں محترم فاضل جج جسٹس سردار اعجاز اسحاق خان صاحب کی تفصیلی وجوہات جو کہ پیرانمبر 20 میں دی گئی Cash Suretyکو کسی بھی طرح قانون میں دی گئی پابندیوں پر فوقیت نہ دی جا سکتی ہے اور نہ اپیل کنندہ کے بنیادی حقوق کو دی گئی شرائط سے قابل عمل کیا جا سکتا ہے بشرطیکہ وہ قانون میں دیے گئے طریقہ کار جس میں ضابطہ فوجداری وعدالتی احکامات پر پابندی سب سے پہلے ضروری امرپر عمل نہ کرے ان وجوہات پر اپیل قابل پذیرائی نہ ہے اور اندریں حالات یہ اپیل خارج کی جاتی ہے۔

(محسن اختر کیانی)
جج

رمضان

JUDGEMENT SHEET

IN THE ISLAMABADHIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Intra Court Appeal No. 408/2023

Muhammad Shahzad
vs.
Government of Pakistan through Secretary, Ministry of Interior & others

APPELLANT BY:	Mr. Ali Nawaz Kharal, Malik Qamar Abbas and Ms. Narmeen Jamal, Advocates.
RESPONDENTS BY:	Mr. Aqeel Akhtar Raja, Assistant Attorney General. Mr. Muhammad Hamza, Sub-Inspector, Police Station AHTC, FIA, Lahore.
DATE OF DECISION:	20.03.2025.

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BABAR SATTAR, J.- The appellant has impugned judgment dated 26-10-2023 whereby the learned Judge-in-Chambers, while finding that the denial of a passport to the petitioner and placement of his name on the Passport Control List **("PCL")** was not in accordance with the law, dismissed the petition on the basis that the appellant was a proclaimed offender in criminal matters registered against him pursuant to provisions of the Emigration Ordinance, 1979 **("Emigration Ordinance")**, which he did not disclose to the Court, and was therefore disentitled from seeking any relief of a discretionary nature from a constitutional Court.

2. The appeal was fixed before a Division Bench of this Court comprising Justice Mohsin Akhtar Kayani and Justice Sardar Ejaz Ishaq Khan. After hearing the appeal, Justice Sardar Ejaz Ishaq Khan rendered an opinion allowing the appeal subject to (i) the appellant depositing cash surety in the cumulative sum alleged to have been received by him in the criminal complaints pending against him, and (ii) the appellant surrendering before the trial

Court within one month of the renewal of his passport, failing which his passport would be liable to confiscation/inactivation in terms of Rule 23(6)(b) of the Passport Rules, 2021 **("Passport Rules")**. Justice Mohsin Akhtar Kayani disagreed with such determination and rendered his own opinion upholding the order of the learned Judge-in-Chambers to the effect that the appellant was only entitled to the issuance of an emergency travel document in terms of Rule 18 of the Passport Rules and that the condition of imposing cash surety as a prerequisite to issuance of a passport was in any event not backed by any provision of the law. Justice Kayani also opined that a court would not come to the aid of an individual who was an absconder from the law.

3. The matter was referred to the Chief Justice by order dated 13.02.2024 for entrustment of the case to a referee Judge to decide the appeal. In view of the opinions of my learned brothers, who heard the appeal, and the subject-matter of the appeal, the following questions were framed by order dated 18.03.2024:

1. As a factual matter does the record reflect that the appellant, while being aware that there were FIRs registered against him, deliberately refused to appear before the trial Court and obstructed the administration of justice?

2. Would a proclaimed offender be treated as an absconder and a fugitive from law attracting the doctrine of fugitive disentitlement?

3. Would the doctrine of fugitive disentitlement bar a person from asserting unrelated constitutional and/or civil rights, and would the courts refuse to adjudicate such rights in view of the fact that he/she is a fugitive

in relation to a criminal matter not related to the civil/constitutional matter?

4. The learned counsel for the appellant submitted that at the time of filing the petition, the appellant was unaware that there were eleven FIRs registered against him in relation to which he had been declared proclaimed offender by the Judge Special Court Central, Lahore. He stated that the appellant left Pakistan on 31.10.2018 unaware that certain FIRs were lodged against him. Once the appellant became aware that three criminal cases were pending against him, he appeared before the Judge Special Court Central Lahore, made a confessional statement, and was awarded punishment in terms of Sections 11 and 22 of the Emigration Ordinance till the rising of the Court alongwith imposition of fine. The appellant discharged his obligation to pay fine and by order dated 04.07.2022 the Judge Special Court Central directed that his name be removed from the blacklist on which it had been placed after he had been declared a proclaimed offender due to non-appearance before the Court, and that his CNIC be unblocked. By letter dated 21.10.2022 the Federal Investigation Agency (FIA) directed that the appellant's name be removed from the PCL, in compliance with the order of the Judge Special Court Central dated 04.07.2022, but that his name be placed on a blacklist maintained in relation to the PCL due to his nomination in another eleven cases registered under the Emigration Ordinance. Prior to this, the Deputy Director, FIA, had already requested the removal of the appellant's name from PCL/blacklist by letter dated 15.9.2022. He submitted that the eleven cases, in which the appellant was nominated in the years 2019 onward, were also pending in the Court of Judge Special Court Central, Lahore.

Thus, when the appellant appeared before the said Court on 04.07.2022, such cases were pending in the same Court. The FIA could have intimated him or brought the issue of his abscondence in the said FIRs before the Judge Special Court Central Lahore, and that he could have been arrested in such cases. But none of this happened. The appellant submitted himself before the Court in relation to the three cases that he was aware of, and consequently the order dated 04.07.2022 only dealt with three cases. In the event that he was aware of the remaining eleven cases he would have submitted himself in relation to such cases as well. But he could not do so as he was not aware of the existence of such cases, which were registered when he was outside the country. The appellant only became aware of the pendency of such cases only after he filed the petition before Islamabad High Court and the respondents filed a response stating that his placement on PCL was due to his abscondence in cases registered in the years 2020, 2021 and 2022. He relied on ***Mumtaz vs. State (1990 PCr.LJ 2055)***, ***Nizam ud Din vs. The State (1991 PCr.LJ 2229***), ***Faiz Muhammad Khan vs. The State (PLD 2019 FSC 1)*** and ***Muhammad Arif vs. The State (2019 SCMR 631)*** for the proposition that where notices were not served in accordance with law, the accused could not be treated as an absconder and that merely because a person could not be found upon issuance of notice by a criminal court, such absence was insufficient to treat the accused as a fugitive from law. He further submitted that in the case law cited by the Judges comprising the Division Bench, the doctrine of fugitive disentitlement had been limited to the hearing of criminal appeals against orders of conviction in which the accused had remained an absconder. The doctrine had

been developed as a means to enforce the judgment of a court against which an appellant was filing an appeal, and it had been held that the right to seek relief against a judgment of conviction could not be afforded to an absconder who had not submitted himself before the appellate court. Learned counsel for the appellant submitted that a trial court had to satisfy itself that an accused had intentionally concealed himself before reaching the conclusion that such accused was an absconder. In its dictionary meaning abscondence referred to someone who intentionally made himself inaccessible, which was not what the facts reflected in the present case. He submitted that the appellant would voluntarily return to Pakistan and face the law in the FIRs pending against him within 60 days of renewal of his passport. His only limitation was that his passport had expired and was not being renewed in UAE due to the placement of his name on the PCL. In the event that his passport was not renewed, his residence card, which had also expired in the meanwhile, could not be renewed either. This was placing in jeopardy the commercial license issued to his company in UAE. If his passport was not renewed, he would face deportation proceedings. This would put in peril all the employees of his company in UAE, who would also face deportation proceedings. The legal status of all employees of his company was linked to the legal status and standing of his company, which was linked to his own residence status, in turn linked to the validity of his passport. It was thus that the issuance of an emergency travel document in terms of Rule 18 of the Passport Rules would jeopardize his own status in UAE on a permanent basis, as well as the status of his company and all employees sponsored by such company. However, if he was issued a passport, he could renew his residence status and

return to Pakistan to submit himself before the trial court, which was seized of the criminal cases in which he was an accused. He submitted that even the learned Judge-in-Chambers came to the conclusion that the refusal to renew the appellant's passport was not sustainable in the eyes of law. What the learned Judge-in-Chambers did not appreciate was that in the facts of his case, there was no basis to conclude that he had intentionally made himself inaccessible to the trial court or that he had concealed the fact of criminal cases pending against him.

5. The learned Assistant Attorney General supported the judgment of the learned Judge-in-Chambers as well as the opinion rendered by the Justice Kayani. He submitted that the appellant was a proclaimed offender and an absconder from law. He was therefore disentitled from seeking a remedy before the High Court in its constitutional jurisdiction. The State was however willing to issue him an emergency travel document in terms of the judgment of the learned Judge-in-Chambers to enable him to travel back to Pakistan and face the criminal cases pending against him before Judge Special Court Central Lahore.

6. Let us first consider how the doctrine of fugitive entitlement has evolved in certain other common law jurisdictions, before returning to how it has been conceived and applied in Pakistan. We will then consider the application of the doctrine in view of our constitutional jurisprudence enumerating the scope of citizens' fundamental rights and access of justice. We will also consider the right of a person to be issued a passport as part of his constitutional right to liberty and freedom of movement.

7. Courts in the United States introduced the doctrine of fugitive disentitlement on grounds of public policy in exercise of their inherent powers. The doctrine has been applied by appellate US courts to dismiss appeals of defendants who are fugitives from justice during the pendency of their appeals. The US Supreme Court applied this rule for the first time in ***Smith v. United States 94 U. S. 97 (1876)***, to an escaped defendant who remained at large when his petition came before the court. It explained that under these circumstances there could be no assurance that any judgment it issued would prove enforceable. The court concluded that it is *"clearly within our discretion to refuse to hear a criminal case in error, unless the convicted party, suing out the writ, is where he can be made to respond to any judgment we may render."* On two subsequent occasions (i.e. ***Bohanan v. Nebraska 125 U. S. 692 (1887)***, and ***Eisler v. United States 338 U. S. 189 (1949))***, the US Supreme Court gave the same rationale for dismissals based on the fugitive status of defendants while their cases were pending.

8. Enforceability was not however the only explanation offered for the fugitive disentitlement rule. In ***Molinaro v. New Jersey 396 U. S. 365, 366 (1970)***, an additional justification for dismissal of an escaped prisoner's pending appeal was identified:

> *No persuasive reason exists why this Court should proceed to adjudicate the merits of a criminal case after the convicted defendant who has sought review escapes from the restraints placed upon him pursuant to the conviction. While such an escape does not strip the case of its character as an adjudicable case or controversy, we believe it disentitles the defendant to call upon the resources of the Court for determination of his claims.*

As applied by the US Supreme Court, the rule allowing dismissal of fugitive appeals has rested in part on enforceability concerns, and in part on the disentitlement theory that construes a defendant's flight during the pendency of his appeal as tantamount to abandonment of his right to contest his conviction in the matter. In ***Estelle v. Dorrough* 420 U.S. 534 (1975)**, the US Supreme Court, while holding that a Texas statute that provided for automatic dismissal of an appeal by a defendant who escaped from custody pending appeal did not violate the equal protection promise of the US Constitution, noted that such dismissal served an important deterrent function and advanced the interest of efficiency and dignity of the appellate process.

9. In ***Ortega-Rodriguez v. United States* 507 U.S. 234 (1993)**, the US Supreme Court introduced the requirement of "some connection between a defendant's fugitive status and the appellate process" for application of fugitive disentitlement doctrine:

> *…the justifications we have advanced for allowing appellate courts to dismiss pending fugitive appeals all assume some connection between a defendant's fugitive status and the appellate process, sufficient to make an appellate sanction a reasonable response...There is, for instance, no question but that dismissal of a former fugitive's appeal cannot be justified by reference to the enforceability concerns that animated Smith v. United States, 94 U. S. 97 (1876), and the cases that followed. A defendant returned to custody before he invokes the appellate process presents no risk of unenforceability; he is within control of the appellate court throughout the period of appeal and issuance of judgment.*
>
> *We cannot accept an expansion of this reasoning that would allow an appellate court to sanction by dismissal any conduct that exhibited disrespect for any aspect of the judicial system, even where such conduct has no connection to the course of*

appellate proceedings…Such a rule would sweep far too broadly, permitting, for instance, this Court to dismiss a petition solely because the petitioner absconded for a day during district court proceedings, or even because the petitioner once violated a condition of parole or probation. None of our cases calls for such a result, and we decline today to adopt such an approach…

Accordingly, we conclude that while dismissal of an appeal pending while the defendant is a fugitive may serve substantial interests, the same interests do not support a rule of dismissal for all appeals filed by former fugitives, returned to custody before invocation of the appellate system. Absent some connection between a defendant's fugitive status and his appeal, as provided when a defendant is at large during "the ongoing appellate process," Estelle, 420 U. S., at 542, n. 11, the justifications advanced for dismissal of fugitives' pending appeals generally will not apply.

10. The US Supreme Court in ***Degen v. United States 517 U.S. 820 (1996)*** considered the application of the doctrine of fugitive disentitlement in a civil matter filed against a criminal fugitive. The Court identified five considerations for extending the doctrine to a civil case against a criminal fugitive: (i) risk of delay or frustration in determining the merits of the claim, (ii) unenforceability of the judgment, (iii) the compromising of a criminal case by the use of civil discovery mechanisms, (iv) redressing the indignity visited on the court, and (v) deterring flight by criminal defendants. It was however held that, "*district court may not strike a claimant's filings in a forfeiture suit and grant summary judgment against him for failing to appear in a related criminal prosecution,"* while reasoning as follows:

Without resolving whether Degen is a fugitive in all the senses of the word debated by the parties, we acknowledge disquiet at the spectacle of a criminal defendant reposing in Switzerland, beyond the reach of our criminal courts, while at the same time mailing papers to the court in a related civil action and expecting them to be honored...A court-made rule striking Degen's claims

and entering summary judgment against him as a sanction, however, would be an arbitrary response to the conduct it is supposed to redress or discourage.

The right of a citizen to defend his property against attack in a court is corollary to the plaintiff's right to sue there. McVeigh v. United States, 11 Wall., at 267. For this reason we have held it unconstitutional to use disentitlement similar to this as punishment for rebellion against the United States, ibid., or, in at least one instance, for contempt of court, Hovey v. Elliott, 167 U. S. 409, 413-414 (1897)...It remains the case, however, that the sanction of disentitlement is most severe and so could disserve the dignitary purposes for which it is invoked. The dignity of a court derives from the respect accorded its judgments. That respect is eroded, not enhanced, by too free a recourse to rules foreclosing consideration of claims on the merits.

There would be a measure of rough justice in saying Degen must take the bitter with the sweet, and participate in the District Court either for all purposes or none. But the justice would be too rough. A court's inherent power is limited by the necessity giving rise to its exercise. There was no necessity to justify the rule of disentitlement in this case; to strike Degen's filings and grant judgment against him would be an excessive response to the concerns here advanced.

11. It was observed in ***Satoko Matsumoto v. Tatsuya Matsumoto*** ***792 A.2d 1222 (2002) 171 N.J. 110*** that since ***Degen*** the emphasis of US courts has shifted *"from considerations such as dignity, deterrence, respect and propriety" etc. to practical adjudicatory considerations such as risk of delay, prejudice to the opponent's case and the necessity of imposing harsh penalties in informing the decision of whether to dismiss a suit brought by a fugitive.* In ***United States v. Barnette*** ***129 F.3d 1179, 1183 (11th Cir.1997)*** it was emphasized that the *"fugitive disentitlement doctrine is discretionary rather than automatic and to be applied with caution"*. Whether or not the doctrine of disentitlement is

attracted in a civil matter involving a fugitive was articulated as follows:

> *If the cited cases were to be boiled down to their essence, it would be this: the fugitive disentitlement doctrine is an arrow in the judicial quiver that can be let loose in a criminal or civil case so long as the party's fugitive status is sufficiently connected to the litigation in which the doctrine is sought to be invoked and so long as nothing less than dismissal will suffice. What is crucial is the inquiry into whether an alternative short of dismissal will render enforcement of the underlying judgment certain and remove the risk of prejudice to the fugitive's adversary. If so, the only remaining relevant rationales for application of the doctrine are: (i) redressing the indignities visited upon our courts by the fugitives' absence and refusal to comply with lawful court orders; and (ii) deterring flight from criminal prosecution…Degen instructs us that those goals, while laudable, are insufficient to warrant the rough justice that would be visited upon the fugitive by precluding consideration of his or her appeal on the merits.*
>
> *Our courts have not previously been called upon to determine the applicability of the fugitive disentitlement doctrine to a civil case. We have no hesitation in doing so now in light of the great weight of well-reasoned federal and state authority on the subject and our prior adherence to the doctrine in criminal cases...The inquiry is not whether the order flouted is criminal or civil, or whether the case in which the doctrine is sought to be invoked is criminal or civil. In our view, it is the flight or refusal to return in the face of judicial action that is the critical predicate to fugitive disentitlement. We view the application of the doctrine in a civil case as a natural progression of the law.*
>
> *We adopt as our guide the following standards that we have distilled from relevant case law: the party against whom the doctrine is to be invoked must be a fugitive in a civil or criminal proceeding; his or her fugitive status must have a significant connection to the issue with respect to which the doctrine is sought to be invoked; invocation of the doctrine must be necessary to enforce the judgment of the court or to avoid prejudice to the other party caused by the adversary's fugitive status; and invocation of the doctrine cannot be an excessive response.*

12. The courts in UK are loath to apply the doctrine of fugitive disentitlement to disadvantage a fugitive in civil proceedings brought by or against him. In the matter of ***Polanski v. Cond Nast Publications Limited*** ***[2003] EWCA Civ 1573***, the question before the House of Lords was whether a video conferencing order could be passed to enable a fugitive to give evidence. It held as follows:

> *…A fugitive from justice is unwilling to come to this country to give evidence in person in civil proceedings properly brought by or against him. Can that be a sufficient reason for making a VCF order? Or would such an order, made for that reason, bring the administration of the law into disrepute?*
>
> *…These questions did not arise in past years. In the past oral evidence required physical presence. But recent advances in telecommunication technology have made video conferencing a feasible alternative way of presenting oral evidence in court. The issue before the House is whether the development of this new facility should ensure for the benefit of fugitives from justice as much as it does for other parties to litigation.*
>
> *…It may seem unattractive that a person can, at one and the same time, evade justice in respect of his criminal conduct and yet seek the assistance of the courts in protection of his own civil rights. But the contrary approach, adopted in the name of the public interest, would lead to wholly unacceptable results in practice. It would mean that for so long as a fugitive remained 'on the run' from the criminal law, his property and other rights could be breached with impunity. That could not be right. Such harshness has no place in our law...*

13. In Pakistan, our constitutional courts have recognized the doctrine of fugitive disentitlement to the extent of criminal appeals only. The Supreme Court has never laid down a general rule that a fugitive or absconder shall be denied standing before a court while seeking to enforce his/her civil or constitutional rights in order to punish him for absconding in a criminal matter. While the relevant jurisprudence has been cited in the opinions

of my learned brothers, this opinion will benefit from consideration of the relevant dicta in some detail.

14. In ***Chan Shah vs. The Crown*** ***(PLD 1956 Federal Court 43)*** it was held as follows:

> *…it is an essential condition of the administration of justice, in a case affecting an individual or individuals that the person concerned should submit to the due process of justice. We cannot conceive of a more flagrant violation of this condition than a case – like the present – where the individual seeks the interference of the Sovereign to obtain revision of a judicial order, when he is himself engaged in setting that judicial order at naught. We accordingly dismiss this petition, by reason of its being, in the existing circumstances, wholly unsuitable for the exercise of this Court's special jurisdiction in criminal cases.*
>
> *…Attorneys and Advocates who appear to present petitions, on the criminal side – other than those which lie as of right – are under a duty to see that they are acting in furtherance of justice. It seems to us that this duty is clearly violated when aid, for securing interference by this Court with a judicial order, is given by these officers of the Court to persons who, to their knowledge, are in contempt, i.e. as fugitives from justice, without at the same time ensuring that such persons conform to the judicial orders applicable to them. In the present case, the minimum requirement, in relation to this Court, was that the Attorney should have taken steps to secure the appearance of the petitioner before this Court on the first day that the petition came up for hearing.*

15. In ***Gul Hassan vs. The State*** ***(PLD 1969 SC 89)***, the Supreme Court reiterated the law laid down in ***Chan Shah*** and held that:

> *We fully subscribe to this view and reiterate that the attorneys and members of the bar will bear in mind the serious consequence of committing contempt of this Court in moving on behalf of a prisoner who is a fugitive from law. The appeal filed by the counsel on the basis of the power-of-attorney executed by Gul Hassan in favour of Khawaja Muhammad Khan before his*

absconsion was thus not properly constituted and should have been dismissed by the High Court on that ground alone.

In this view Gul Hassan being a fugitive from law and, contemner was not entitled to hearing and leave granted to him on limited questions of law was liable to be rescinded. As to the proceedings under section 374, Cr. P. C., we endorse the view adopted by the learned Judges in the High Court that if a prisoner decamps and thereby forfeits the right of audience the sentence of death may be confirmed in his absence.

16. In ***Hayat Bakhsh vs. The State*** ***(PLD 1981 SC 265)***, before the Supreme Court was the appeal of an appellant who had been acquitted by the trial court but convicted by the High Court, and he had not surrendered despite the orders of the Supreme Court.

There is considerable weight in the argument that when a convict becomes fugitive before filing petition for leave to appeal, his petition itself would not be properly constituted. This can be noticed as one line of reasoning in the case of Gul Hassan. The second proposition submitted by the learned counsel is also correct, because it flows from the first one: If a convict after filing a petition becomes fugitive and does not surrender, he deprives himself of the relief claimed in the petition. Similarly, there would be no difference if he absconds after obtaining special leave to appeal, or after obtaining a bail order…

The principle laid crown in the cases of Chan Shah and Gul Hassan do not in any way merit review. Rather, some of them need to be reiterated and reaffirmed. The Court would not act in aid of a person who is fugitive from justice; the inherent power cannot be invoked in his favour because it is essential condition of the administration of justice that the person concerned should submit to the due process of justice; where an individual seeks interference of the sovereign to obtain the reversal of a judicial order, he cannot succeed if he himself is engaged in setting that judicial order at naught; the Court would in order to avoid taking drastic action of the dismissal of a matter on account of such a conduct of the person concerned, would afford opportunity to him through some adjournments in the expectation that he might be induced to surrender; this all being in accord with the

> *basic principles governing administration of criminal justice, it is the duty of the person representing the accused, to secure so for as it is within his power, the appearance of the accused before the Court on the first day of the hearing and, thereafter, if so advised, to seek an order for bail or suspension of sentence, if it is an appeal by the convict.*

17. In ***Awal Gul vs. Zawar Khan*** ***(PLD 1985 SC 402)*** the Supreme Court cancelled the bail granted to the accused in a case where they had absconded for a significant period of time.

> *Unfortunately it has not been noticed in the High Court that all the accused in this case absconded. It has also been ignored that in proper cases, even at the trial, abscondence can be treated as a very important piece of evidence (as corroboration of eye-witnesses on showing the conduct of the accused)…It is now well established law that a fugitive from law and Courts loses some of the normal rights granted by the procedural as also substantive law. It is also a well-established proposition that unexplained noticeable abscondence disentitles a person to the concession of bail notwithstanding the merits of the case-the principle being that the accused by his conduct thwarts the investigation qua him in which valuable evidence (like recoveries etc.) is simply lost or is made impossible to be collected (by his conduct). He cannot then seek a reward for such a conduct (in becoming fugitive from law).*

In ***The State vs. Malik Mukhtar Ahmad Awan*** ***(1991 SCMR 322)*** *the Supreme Court observed that, "it is not an absolute rule that a fugitive should under no circumstances be enlarged on bail although, it may be added, abscondence does constitute a relevant factor when examining the question of bail." In* ***Sher Ali vs. The State*** ***(1998 SCMR 190)****, it was held that, "an act of abscondence on the part of an accused person will not disentitle him to claim bail on the ground of statutory delay, which right accrues to him after he has been arrested and the statutory period mentioned in clause (a) or clause (b) of aforementioned third proviso, as the case may be, has expired.*

However, if the act of abscondence has contributed towards the delay of the trial, in that event, an accused person would not be entitled to seek bail on the ground of statutory delay," on the basis of the principle that*, "the petitioner cannot take advantage of his own wrong."*

18. In ***Mian Muhammad Shahbaz Sharif vs. Federation (PLD 2004 Supreme Court 583)*** it was noted that, "*even a proclaimed offender when arrested has a right to be tried according to law and this right cannot be taken away from him. By remaining absconder one loses certain rights but not the right of trial according to law…*" In ***Benazir Bhutto v. State (1999 SCMR 1619)***, in the context of Order XXIII, Rule 8 of the Supreme Court Rules, 1980, it was held that, "*the above rule is in conformity with the fundamental rule of the administration of justice that persons seeking aid of justice in a criminal case should submit to the due process of justice. Clearly, the Court would not act in aid of person who is a fugitive from justice and the petition filed by such a person against his imprisonment seeking leave to appeal is not entertainable unless and until the condition precedent laid down in the above rule is fulfilled i.e. surrender first, entertainment of petition later*." In ***The State vs. Haji Nasim-ur Rehman (PLD 2005 SC 270)*** it was held that, "*it is obligatory upon the, convict, who approaches the Court that first of all, he should surrender to the order of imprisonment, meaning thereby that on surrendering before the Court, he should be taken into custody and then the Court might order his release on bail and if such person is not taken into custody or not admitted to bail, then he will be deemed to be fugitive from law and would not be entitled to any relief*..."

19. In ***Nizam Ali vs. The State*** ***(2012 YLR 21)*** the Sindh High Court, while reiterating that, "*a fugitive from law loses some of his rights both under procedural law and the substantive law*", also clarified that, "*an absconder from law does not lose all his rights and is not denuded of all his rights.*"

20. In ***Sharjeel Inam vs. Federation*** ***(2017 YLR 2423)***, the Islamabad High Court, while granting protecting bail to an accused, who was a proclaimed offender, to surrender before the trial court, held that:

> *In the instant case, the petitioner is merely seeking protective bail and he has shown his bona fides by surrendering himself before this Court. The learned counsel for the petitioner has made a statement before us that the latter could not land at Karachi due to serious threats to his life. However, we would avoid making any observation regarding the factum of abscondance or the dismissal of his earlier petitions filed before the High Courts of Sindh and Lahore, lest it may prejudice the case of either party before the competent Court. We are of the opinion that access to a competent Court is a fundamental right guaranteed under the Constitution. We feel that refusal to grant protective bail would tantamount to denial of the right of access to justice. Access to justice is fundamental to, and an integral part of the rule of law. Reference in this regard is made to 'Al-Jehad Trust and others v. FOP and others" [PLD 1996 SC 324], "Sh. Riaz ul Haq and another v. FOP and others" [PLD 2013 SC 501], "Khan Asfandyar Wali and others v. FOP, and others" [PLD 2001 SC 607] and "Watan Party and others v. FOP and others" [PLD 2012 SC 292].*
>
> *…To the extent of this petition and for the purposes of granting protective bail we are satisfied that the abscondance of the petitioner is not unexplained. Nevertheless, this factor would indeed be considered by the competent court to which access is being sought by the petitioner.*

21. The application of the doctrine of fugitive disentitlement to unrelated civil litigation was considered by the Lahore High Court in ***Muhammad Nawazish Ali Pirzada vs. Election***

Commission of Pakistan ***(2018 CLC 1301).*** After considering the law laid down by the Supreme Court in ***Hayat Bakhsh*** and ***Gul Hasan***, the Lahore High Court held as follows:

> *Indeed a person who is fugitive of law, will have no right of criminal appeal in the matter, in which he has been declared absconder, unless he surrenders, as held by august Supreme Court, in administration of criminal justice. However, it will be a fallacy to hold that a person who is declared absconder has no right to file any appeal before any forum, in respect of matters which have no nexus and relation to proceedings in which, he was declared absconder. By way of illustration, this will mean that a person who is absconder in criminal case, cannot be allowed to file appeal even in any civil matters, including banking matter, family matters etc. before any court of law. This will practically mean that all fundamental rights of said person for their enforcement through court of law will be suspended, which is neither the intention of legislation under the Act nor same is permissible under the Constitution.*

22. After considering the ratio of cases on the principle of fugitive disentitlement, a Division Bench of this Court in ***Raheem Ullah Khan vs. The State*** ***(2023 YLR 1246)*****,** summarized the relevant principles as follows:

> *1. Under Pakistani law, the only statutory bar to absconder's recourse to courts for enforcement of rights is stipulated under Order XXIII Rule 8 of the Supreme Court Rules, 1980.*
>
> *2. Unlike the U.S Courts and courts of other foreign jurisdictions, in Pakistan, in view of Article 175(2), the courts do not claim any inherent powers and instead rely on the powers conferred under section 151 of Civil Procedure Code ("CPC") and section 561-A of the Code of Criminal Procedure Code ("Cr.P.C") in relation to the treatment meted out to fugitives and absconders.*
>
> *3. Perusal of Pakistani jurisprudence reveals that our superior courts have recognized the doctrine of fugitive disentitlement to the extent of criminal appeals or related criminal matters. The honourable superior courts have refused to hear appeals filed by absconders in criminal matters on the basis of following equitable principles:*

a. Courts will not act in aid of injustice.

b. Courts will not allow abuse of process of court.

c. Essential condition of administration of justice that persons concerned should submit to the due process of justice (absconders violate this basic principle of administration of justice).

d. No one can be allowed to take advantage of their own wrong.

e. Allowing an absconder relief would amount to placing premium on absconsion and will amount to stultification of the authority of the Court by an unlawful act, which obviously cannot be the intention of the law.

f. Absconsion involves contempt of the process and authority of the court.

g. Power of Attorney or petition executed by a fugitive of law is not well constituted and therefore not entertainable.

h. Absconder loses right to audience before a court.

4. In relation to bail, the question of abscondence is a relevant consideration in grant of bail, but refusal of bail to an absconder is not an absolute rule, once he surrenders to the law. Where an absconder is seeking protective bail to be able to surrender before the competent court and provides a reasonable explanation for his abscondence, the court may in its discretion grant transitory bail to uphold the person's right to access to justice.

23. Under Pakistan's constitutional framework, it is the High Courts that, in exercise of their jurisdiction under Article 199 of the Constitution, primarily comprise the machinery for (i) enforcement of fundamental rights of citizens, and (ii) ensuring that the State exercises its authority in accordance with the law. In the context of fundamental rights of citizens it is settled that (i) while interpreting fundamental rights, where the language so allows, the courts ought to expand and not contract the scope of fundamental rights, (ii) fundamental rights to the extent guaranteed by the Constitution are inalienable, and neither the state can usurp them nor a citizen can contract out of them, and (iii) in regulating the exercise of discretionary authority, the doctrine of proportionality must be exercised to ensure exercise

of state authority for a legitimate state purpose is least restrictive for the enjoyment of fundamental rights.

24. Our jurisprudence within the realm of constitutional law has emphasized that fundamental rights must be liberally construed and the scrutiny of any fetters placed on their enjoyment should be strict. In ***Jibendra Kishore Achharyya Chowdhury vs. The Province of East Pakistan (PLD 1957 Supreme Court (Pak.) 9)***, while interpreting the right to religious freedom it was held to be "*a fundamental canon of construction that a Constitution should receive a liberal interpretation in favour of the citizen, especially with respect to those provisions which were designed to safeguard the freedom of conscience and worship. Consistently with the language used, constitutional instruments should receive a broader and more liberal construction than statutes, for the power dealt with in the former case is original and unlimited and in the latter case limited, and constitutional rights should not be permitted to be nullified or evaded by astute verbal criticism, without regard to the fundamental aim and object of the instrument and the principles on which it is based."*

25. It was held by the Supreme Court in ***Farooq Ahmad Khan Leghari vs Federation of Pakistan and others (PLD 1999 SC 57)*** that "*all efforts should be made to preserve and enlarge the scope of the Fundamental Rights while interpreting Constitutional provisions"*. It was held in ***Mian Muhammad Nawaz Sharif vs. President of Pakistan (PLD 1993 SC 473)***, while interpreting the scope of the fundamental right to freedom of association under Article 17 of the Constitution that, "*the Courts while interpreting a provision of the Constitution*

relating to enforcement of Fundamental Right, will lean towards its more liberal and beneficial construction".

26. It was emphasized in ***Al-Jehad Trust vs. Federation of Pakistan (PLD 1996 SC 324)*** that, "*the approach, while interpreting a Constitutional provision should be dynamic, progressive and oriented with the desire to meet the situation, which has arisen, effectively. The interpretation cannot be a narrow and pedantic. But the Court's efforts should be to construe the same broadly, so that it may be able to meet the requirement of ever changing society.*" The Supreme Court once again reiterated in ***Mushtaq Ahmad Moral vs. The Honorable Lahore High Court (1997 SCMR 1043)*** that, "*it has been consistently held inter alia by this Court that an article relating to a fundamental right should be construed liberally so that its benefit/protective umbrella may be extended*."

27. In ***Pakistan Muslim League (N) vs. Federation (PLD 2007 SC 642)*** it was held that, "*the idea behind the concept of fundamental rights is that the preservation of certain basic human rights against state intervention is an indispensable condition of free society*," and that "*a restriction is unreasonable if it is for an indefinite or an unlimited period or is disproportionate to the mischief sought to be prevented or if the law imposing the restriction has not provided any safeguard against arbitrary exercise of authority*."

28. In ***Muhammad Jameel Das vs. Pakistan (1999 CLC 541)*** the Lahore High Court reaffirmed the proposition that a citizen of Pakistan is entitled to equal protection of fundamental rights law under Article 4 of the Constitution even when he/she is outside Pakistan. It held that, "*the right of a Pakistani citizen*

to be dealt with in accordance with law in respect of his life, liberty, body, reputation or property is guaranteed under Article 4 of the Constitution of Islamic Republic of Pakistan, 1973. This recognises the supremacy of law for providing the aforesaid guarantee to every citizen till he is disqualified in accordance with law. Since it is a Constitutional guarantee, therefore, any law, which restricts or invades such right should be strictly construed. The mere fact that a citizen is out of the country would not deprive him of his fundamental rights guaranteed to him under the supreme law of the land. Any action, contrary to the guarantee provided under Article (supra) can be challenged for appropriate relief."

29. In ***Baz Muhammad Kakar vs. Federation (PLD 2012 Supreme Court 923)*** reiterated the fundamental right of a citizen to access justice. It was noted that, "*the right of access to courts and justice has been dilated upon in a large number of cases. In the case of Sharaf Faridi v. Islamic Republic of Pakistan (PLD 1989 Karachi 404) after referring to the cases of Syed Abul A'la Maudoodi v. Government of West Pakistan (PLD 1964 SC 673) and Ms. Benazir Bhutto v. Federation of Pakistan (PLD 1988 SC 416) it has been held that the right of access to justice to all is a well-recognized inviolable right enshrined in Article 9 of the Constitution. This right is equally found in the doctrine of "due process of law"…An examination of Articles 9 and 25 read collectively does not permit the Legislature to frame a law, which may bar right of access to the Courts of law and justice. The right of access to justice is internationally well recognized human right and is now being*

implemented and executed by granting relief under the Constitutional provisions."

30. The Supreme Court once again highlighted in ***Sheikh Riaz-ul-Haq vs. Federation (PLD 2013 SC 501)*** that the right to access to justice is an inviolable right guaranteed by Article 9 of the Constitution, that it a subset of the right to due process of law (now independently guaranteed by Article 10A of the Constitution), and "*includes the right to be treated according to law, the right to have a fair and proper trial and a right to have an impartial court or tribunal.*"

31. In ***Government of Pakistan vs. Dada Amir Haider Khan (PLD 1987 SC 504)*** the Supreme Court held that the refusal to issue a passport fell foul of Articles 4, 9 and 15 of the Constitution as the Constitution guaranteed, *"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…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…".*

32. The seminal case on the right to liberty, freedom of movement and the prohibition of suspending such fundamental rights on the basis of a pending criminal case or inquiry was ***Wajid Shamas-ul-Hassan vs. Federation of Pakistan (PLD 1997 Lahore 617)***, in which the Lahore High Court held that section 2 of EPC Ordinance provided no reasonable classification or guidance as to how discretion is to be exercised. It held that, *"if no reasons are assigned to an aggrieved person the remedy of review under section 3 of the [Exit from Pakistan (Control)*

Ordinance, 1981,] by making a representation becomes redundant. A citizen would not be in a position to make any effective representation in the absence of any reason or speaking order…right of a citizen to travel abroad is a fundamental right guaranteed by Articles 2A, 4, 9, 15 and 25 of the Constitution…" In the said case, a criminal charge had been framed against the petitioner and he had been granted bail by the Sindh High Court. The Lahore High Court therefore held that, *"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 F.I.R. in a criminal case cannot be a ground for depriving a citizen of the exercise of all fundamental and other Constitutional rights."*

33. The law laid down in ***Wajid Shamas-ul-Hassan*** was endorsed by the Supreme Court more recently in ***Federal Government vs. Miss Ayan Ali (2017 SCMR 1179)***, in which it was emphasized that, *"registration of a criminal case has no nexus with and is extraneous to the object of the Exit from Pakistan (Control) Ordinance, 1981."*

34. The issue of impounding of a passport came before the Sindh High Court in ***Shabana Noor Ahmed v. DG Immigration and Passport (PLD 2019 Sindh 456)***. While relying on the law laid down in ***Dada Amir Haider Khan*** (in which case too, the petitioner had been denied the issuance of a passport), the Sindh High Court took into account provisions of the Passport and Visa Manual, 2006, which were subsequently enacted in the form of Passport Control Rules, 2021. It was held that the principles related to freedom of movement were equally attracted where a

restraint had been imposed in terms of the Passport and Visa Manual, 2006.

35. In ***General (Retd.) Parvez Musharraf vs. Pakistan (PLD 2014 Sindh 389)*** the petitioner was facing trial for high treason, in which he was eventually handed a death penalty. During the pendency of the trial his name had been placed on the ECL. The Sindh High Court held that mere pendency of a criminal case was no ground to deny the citizen his fundamental right of freedom to travel. On appeal to the Supreme Court in ***Federation vs. General (Retd.) Pervez Musharraf (PLD 2016 SC 570)***, while upholding the judgment of Sindh High Court ordering the removal of Gen. (Retd.) Parvez Musharraf's name from ECL, the Supreme Court held that, *"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."*

36. The principles and propositions of law that can be derived from the judgments cited above can be summarized as follows:

a. For the doctrine of fugitive disentitlement to be attracted, there must be a direct nexus between the accused's fugitive status and the appellate process i.e. the fugitive or absconder is seeking to have penalties set aside which have been imposed by a court before which the accused did not surrender, and likewise has not surrendered before the appellate court from which he/she is seeking relief.

b. The principal concern of the court in applying the doctrine of fugitive disentitlement is to uphold the integrity and fairness of the process of law for the benefit of contesting parties, and to ensure that the court is able to

enforce the judgment it renders, which may not be possible where the accused absconds and does not submit to the jurisdiction of the court.

c. The doctrine of fugitive disentitlement has no application to a civil or constitutional claim unrelated to the criminal proceedings pending against the accused i.e. proceedings other than those initiated against a fugitive or absconder to give effect to any punishment of a civil nature, including forfeiture of property, imposed on the accused during criminal proceedings.

d. Courts are under an obligation to liberally construe fundamental rights guaranteed by the Constitution, and any restrictions placed on the enjoyment of such rights must be strictly construed such that the object of the law under which such restrictions are imposed is given effect in a manner that is least restrictive for the enjoyment of fundamental rights.

e. The right of access to justice is a fundamental rights guaranteed by Article 9 of the Constitution, the right to due process and fair trial is guaranteed by Article 10A of the Constitution, the right to freedom of movement and travel is guaranteed by Articles 9 and 15 of the Constitution, and every citizen, whether in Pakistan or abroad, is entitled to equal protection of law under Article 4 of the Constitution, which includes the right not to be prevented from doing what the law doesn't prohibit him/her from doing.

f. The doctrine of fugitive disentitlement must be applied by courts in a manner that is least restrictive to the fundamental rights of citizens, including the rights to due process of law, fair trial and access to justice. The application of the doctrine is neither automatic nor rigid, and must be tailored to facilitate an accused who wishes to submit before the law and the court adjudicating the criminal complaint or appeal against such accused.

g. The constitutional and legal rights of an accused do not stand suspended due to his/her fugitive status. The

executive authorities of the state remain under the obligation to treat every citizen in accordance with law, including an accused who is deemed to have the status of a fugitive or absconder. A court will not allow the state or a third party to ride roughshod over the civil and constitutional rights of an accused, unconnected with the criminal proceedings pending against him/her, merely because the citizen's current status is that of a fugitive or absconder.

37. Before we apply the aforementioned principles to the facts of the instant case, there are two issues that ought to be borne in mind. The first is that there exists a pernicious yet rampant practice of the accused in criminal cases being declared proclaimed offenders without careful determination of whether such accused have knowledge of the criminal proceedings brought against them and whether the requirements for service of summons etc. under provisions of the Code of Criminal Procedure have been complied with. The consequence is that while the formal legal status of an accused may be reduced to that of being a proclaimed offender or an absconder, the accused may have no knowledge of criminal proceedings pending against him and consequently no intent to refuse to surrender before the trial court. The second practice, which is equally rampant and no less insidious, is that placement of names of citizens on the ECL and PCL is used by the state as a means of punishment and/or to force citizens into exile. And the placement of names on such lists takes place without issuance of prior notice. In these circumstances, the existence of a plausible explanation as to why an accused has been unable to appear before a court to force criminal charges cannot be ruled out. It is in this backdrop that

the principles of law summarized above need to be applied in view of the facts and circumstances of this case.

38. In the instant matter, the learned Judge-in-Chambers in the impugned judgment concluded that the Federal Government's refusal to renew the passport of the appellant was not justified under provisions of the Passport Rules. The learned Judge-in-Chambers had also taken note of the fact that the charges against the petitioner under sections 17 and 22 of the Emigration Ordinance did not make out a case against him for human trafficking. The allegations against him were that he had accepted funds from complainants with the promise that they would be employed overseas, and such promise had not been kept. It is also of relevance that the scope of the doctrine of fugitive disentitlement was not raised before the learned Judge-in-Chambers. The appellant's petition was dismissed essentially on the ground that the fact of him being a proclaimed offender had not been disclosed in the memo of the petition and that the court would not exercise its discretionary jurisdiction in favour of a person who had not come to the court with clean hands.

39. We must also take into account the fact that while there are criminal cases pending in which the appellant has been identified as an accused and an absconder, this court has not been advised that the appellant's name was placed on the PCL by virtue of any order passed by the Special Court Central Lahore in terms of Rule 21(a) of the Passport Rules. Had the appellant's name been placed on the PCL pursuant to a court order in terms of Rule 21(a) of the Passport Rules, the petition would obviously not be maintainable as the appellant would have

a remedy before the Special Court Central Lahore or before the appeals court.

40. The learned counsel for the appellant has sufficiently explained that the appellant had no knowledge of the criminal cases pending against at the time of filing his petition before Islamabad High Court. It was submitted that the petitioner appeared before the Judge Special Court Lahore on 04.07.2022 in relation to criminal cases pending against him in three FIRs. The appellant made a confessional statement and was sentenced to pay fines that he did. At that time the appellant had already been nominated as an accused in the eleven FIRs due to which his name remains on the PCL, and may even have been declared a proclaimed offender in some of them. However, when he surrendered before the court, FIA did not seek to arrest him in these FIRs or bring to his knowledge the pendency of such cases. The Judge Special Court Lahore also did not exercise its authority to treat the appellant's surrender in relation to three criminal cases as a surrender in all pending cases. It makes no logical sense that an accused would appear before a trial court in three out of fourteen criminal cases, all pending against him in the same court, if he had the intent of refusing to submit before such court in relation to eleven of those fourteen cases. It has also not been established by the respondents to the satisfaction of this court that the requirements of provisions of Criminal Procedure Code, 1898, were satisfied before the appellant was declared a proclaimed offender by Judge Special Court Lahore. This Court would not wish to pass any judgment on the matter, as the definitively determining of the circumstances in which the appellant was unable to appear before the trial court in relation

to the eleven FIRs against him falls within the domain of Judge Special Court Central Lahore. Suffice it to say that the petitioner has satisfied this court that there was no concealment of facts that were within the knowledge of the appellant when he filed his petition before Islamabad High Court seeking the removal of his name from PCL.

41. In these circumstances this Court finds that the principle of fugitive disentitlement is not attracted to the facts of the appellant's case in relation to his prayer seeking removal of his name from the PCL or any other list preventing the renewal or issuance of a passport to him by Pakistan's embassy in UAE. As has been highlighted in the earlier part of the judgment, even in common law jurisdictions where the doctrine of fugitive disentitlement evolved, the focus of the courts has moved away from disentitlement of a fugitive or absconder as a retributory measure to considerations related to enforcement of judgments and upholding the rights of all parties involved in a trial to fairness and due process.

42. For the aforementioned reasons, I agree with the opinion rendered by the Justice Sardar Ejaz Ishaq Khan with regard to the appellant's petition being maintainable and the appellant not being found disentitled to pursue his constitutional right to be issued a passport by Pakistan's embassy in UAE. This Court, however, agrees with the observations in the opinion of Justice Mohsin Akhtar Kayani that to the extent that the appellant is entitled to bring a civil claim before this Court in its constitutional jurisdiction to have his name removed from the PCL, there is no law mandating that the appellant deposit cash surety as a precondition for renewal of his passport.

43. The appeal is therefore **allowed.** The name of the appellant shall be removed from the PCL forthwith and his passport will be renewed by Pakistan's mission in UAE. During the proceedings of this appeal, the learned Counsel for the appellant, upon being instructed, made a statement that the appellant would return to Pakistan within 60 days of renewal of his passport, to surrender before the Special Court Central Lahore and face the criminal charges brought against him. The period of 60 days was required to renew his residency status etc. in UAE. As this is a representation that has been made by the appellant to the court, he will be bound by it. In the event that he does not so return to Pakistan within 60 days of renewal of his passport and submit before Judge Special Court Lahore, there would be a strong presumption that he is seeking to avoid prosecution for criminal offences in Pakistan. The head of Pakistani mission in UAE would then be within his right to initiate appropriate proceedings in terms of Rule 23(6)(b) of the Passport Rules. Likewise, in the event that the appellant does not return to Pakistan in the aforementioned period, the respondents could also file an appropriate application before the Judge Special Court Central Lahore to seek an order for placement of the appellant's name on PCL and/or to seek the impounding of his passport in terms of Rule 21(a) of the Passport Rules.

44. There is no order as to cost.

(BABAR SATTAR)
REFEREE JUDGE

Approved for reporting

A.Rahman Abbasi.