JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

WRIT PETITION NO. 3761 OF 2024

ZAKA UD DIN DEWAN.

VS

FEDERATION OF PAKISTAN, ETC.

Petitioner by	**:**	**Barrister Raja Abdul Qadeer, Barrister Abdul Ahad Khokher and Mr. Muhammad Fiaz Kandwal, Advocates for the Petitioner.**
Respondents by	**:**	**Raja Zamir ud Din Ahmed, AAG.** **Mr. Muhammad Nawaz Khan, Director Policy for Respondent No. 3.** **Ms. Amber, S.I, FIA.**
Date of hearing	**:**	**14.02.2025**

MUHAMMAD AZAM KHAN, J.

1. Through the instant petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 **("Constitution")**, the Petitioner has challenged placement of his name on Provincial National Identification List (PNIL), Passport Control List **("PCL")** and Exit Control List (ECL).

2. The brief facts giving rise to filing of the instant petition are that the Petitioner intends to travel abroad to perform Umrah, however, he is unable to travel due to restrictions imposed by the Respondents. The Petitioner wrote a letter and visited the office of the Respondents for removal of his name for the PNIL, PCL and ECL as well as for the provision of a copy with grounds for placement of his name on the said lists or any other restricted list but in vain.

3. The learned counsel for the Petitioner argued that action of the Respondents to ban the Petitioner's right to travel, despite the court's order, is characterized by malice and bad faith; that the action of the Respondents is arbitrary, derogatory, and devoid of credible evidence, taken hastily to frustrate the court's order and due process; There is no legitimate, lawful, rational, reasonable, justifiable, or substantive basis for the Respondents' actions, which are based on irrelevance and assumption, therefore, same is liable to be struck down; that travel ban imposed on the Petitioner by the Respondents, despite a court order, constitutes discrimination and violates the constitutional principles; that the liberty, movement and freedom

of a person is the most crucial human right and specifically favored by the common law and their protection is one of the foundational pillars for upholding the rule of law; that the ban imposed on the Petitioner violates basic fundamental rights, lacking procedural fairness and transparency; that the Petitioner was condemned without being heard, and was not provided with any notice, opportunity to show cause, or a personal hearing; that right to movement is the fundamental right under International Human Rights Laws including the Universal Declaration of Human Rights and the International Covenant on Civil and Political rights; that it is well-established law that the mere pendency of a case is not a valid reason to restrict a citizen's freedom of movement or to prevent him from freely traveling in and out of the country; that the petitioner is not involved in any activities warranting restrictions; that the Respondents failed to recognize that imposing movement restrictions without due process of law not only limits an individual's physical liberty but also diminishes his dignity and autonomy, hindering their ability to seek employment opportunities and engage in lawful activities; that the impugned action of the Respondents for placing restrictions to travel and not removing the same despite apex and higher court's decision as well as law developed in the common law jurisdiction on the subject is unwarranted, unlawful and illegal, and nullity in the eye of law and is repugnant, violative to the fundamental rights guaranteed by the constitution, as such is not sustainable; and that the instant petition may kindly be accepted and the impugned action of the Respondents for restricting the movement of the Petitioner and placing his name on PNIL, ECL and PCL or any other restricted list, be declared illegal, unlawful, without jurisdiction, without merit, *mala fide*, *void ab initio*, alien to the jurisprudence, *coram non-judice*, and thus consequently be set-aside. The learned counsel in support of his contentions placed reliance on *Dr. Joseph Wilson versus Federation of Pakistan through Secretary, Ministry of Interior and others,* **2017 PCrLJ 1569** and an unreported Judgment of this Court passed in *Muhammad Imran Riaz versus Federation of Pakistan, etc.,* **W.P. NO. 1519/2024**

4. On the other hand, the learned Assistant Attorney General **("AAG")** contested the instant writ petition on the ground that the Petitioner is nominated in case FIR No. 96/23, beside this two other FIRs are also registered against him. He further argued that this honorable Court lacks the jurisdiction to entertain the instant writ as the Petitioner has challenged the recommendation of the Home

Department, Government of Punjab, hence, he should have approached the Lahore High Court, Lahore and not this Court.

5. I have heard the learned counsel for the Petitioner as well as the learned AAG and have also perused the available record.

6. The Report submitted on behalf of the Respondent No. 2, the Federal Investigation Agency **("FIA")**, indicates that, according to the latest Stop List from the Assistant Director Analysis & Stop Lists/IBMS, FIA Integrated Border Management System (IBMS) at FIA Headquarters, Islamabad, the Petitioner's name is currently only active on PCL. The Petitioner's name was placed on PCL by the Respondent No. 3, the Directorate General of Immigration & Passports, Islamabad, upon the recommendation of AGI/Legal for the Deputy Inspector General of Police, Punjab, vide Letter No. 22547/L-II-264-PCL/23 dated 30.11.2023, in connection with FIR No. 96/23 dated 10.05.2023, registered under Sections 302/ 324/436/ 452/ 440/ 427/ 353/ 186/ 290/ 291/ 152/ 153/ 148/ 149/147/109/505/120-b/225-B/337-L-II/337-A-I/337-F-5/337-A-3/336/449/153-B/153-A/146/131/121/121-A/120-B, Pakistan Penal Code, 1860 **("PPC")** and Section 7 of the Anti-Terrorism Act, 1997 registered with Police Station, Sarwar Road, Lahore **("Subject Case")**. It is further stated in the Report that the sole authority to place or remove the Petitioner's name from PCL lies with the Respondent No. 3, the Directorate General of Immigration & Passports, Islamabad, and that the role of FIA in this matter is merely that of an executing or implementing agency. The Report further clarifies that the Petitioner's grievances are relevant to Respondent No. 3, and that the record of PCL is maintained and accessible with the Respondent No. 3.

7. According to the Report submitted by the Respondents Nos. 1 and 3, the Petitioner's name was placed on PCL on 10.01.2024, based on the recommendation of the Home Department Punjab, Lahore, through Letter dated 26.12.2023, due to the Petitioner's involvement in the Subject Case.

8. The Petitioner's counsel submitted certified copy of the Order dated 05.08.2024 passed by the learned Special Judge Anti-Terrorism Court, Lahore whereby the pre-arrest bail of the Petitioner has been dismissed as withdrawn as the learned counsel on behalf of the Petitioner submitted that the Petitioner joined investigation and was held not-guilty during investigation and intends to withdraw

the pre-arrest petition. The said petition was withdrawn in presence of Nayyer Naveed, learned Deputy District Public Prosecutor for the State, Rao Abdul Jabbar, learned Special Prosecutor for the State and Muhammad Ashraf Javed Inspector/Investigating Officer. The brief statement of Muhammad Ashraf Javed, Inspector/Investigating Officer **("I.O")** is also written on the margin of order sheet which shows that the Petitioner has been held innocent during investigation which has been duly signed by the said I.O. The learned counsel further argued that neither any Notice was served upon the Petitioner nor Show Cause Notice was issued to put the Petitioner on notice and without approval of the Federal Government, which consists of the Prime Minister and the Cabinet, the name of the Petitioner was placed on PCL under Rule 22 of the Passports Rules, 2021. The relevant portion of the said Rule 22 is reproduced as under:-

> *"22.* ***Passport Control List.****—(1) Federal Government is vested with the powers to regulate the departure from and entry into Pakistan and also visit to foreign countries of its citizens under the Act.*
>
> *(2) The Division concerned and Directorate General shall prepare and maintain a PCL for placement of names and other record of individuals who have been refused passport facilities under these rules under category 'A' and 'B' respectively with the following description, namely:-*
>
> > *(a) under category 'A', the names of those persons are placed who are involved in anti-state activities or whose visit to foreign countries is considered to be prejudicial to the State interest or, whose visit abroad is banned from security point of view. The names in this list shall be placed and removed by the Additional Secretary of the Division concerned;*
> >
> > *(b) under category 'B', the names of those persons are placed who have been refused passport under these rules other than anti-state activities specified in clause (a). The names of persons included in the category under this clause may also be placed on the recommendations of government agencies or departments;*
> >
> > *(c) normal period of retaining a person on the PCL is five years. However, a person may be kept on PCL even beyond five years provided the referring department or agency recommends for further retention having full justification in this regard. The Additional Secretary of the Division concerned in case of category 'A' and Director General in case of category 'B' may consider omission of name of any person from such list on appeal even before the normal period of five years; and*
> >
> > *(d) both the categories 'A' and 'B' are subject to periodical review by a Review Committee under sub-rule (3) in consultation with the relevant agency or department on whose recommendations the individual was placed on PCL, and*

The Petitioner's case is claimed to fall under Category 'A' of Rule 22 mentioned above, but according to the law, the approval of the Federal Government is required for this classification. The learned AAG argues that the Petitioner falls under Category 'B' of Rule 22, which is outlined as follows:

> *"(b) under category 'B', the names of those persons are placed who have been refused passport under these rules other than anti-state activities specified in clause (a). The names of persons included in the category under this clause may also be placed on the recommendations of government agencies or departments".*

A plain reading of the above said rule reveals that Category 'B' applies to individuals whose passports have been refused. In this case, the Home Department of Punjab recommended the inclusion of the Petitioner's name on the Passport Control List being involved in the Subject Case, but this was done without the approval of the Federal Government and without providing the Petitioner with a Show Cause Notice to clarify his position or status. Above all, the Petitioner's counsel has produced certified copy of the order dated 05.08.2024 passed by the learned Special Judge Anti-Terrorism Court, Lahore vide which his pre-arrest bail was dismissed being withdrawn in the Subject Case on the ground that during investigation, the I.O. held him being not involved in the Subject Case. Further reliance is placed on *Dr. Shireen M. Mazari Versus FOP etc.,* **2024 MLD 1020**, *Rasikh Ellahi Versus FOP etc.,* **2024 YLR 2616**, *Tariq Shafi Versus FOP etc.,* **W.P. No. 224/2024** , *Faisal Maqbool Sheikh Versus FOP etc.,* **WP 2141/2023**, *Fawad Ahmed Versus FOP etc.,* **WP 2129/2024**, *Sadaf Sharjeel Versus NAB etc.,* **2022 YLR 2441**, *Farah Mazhar Versus FOP etc.,* **PLD 2022 Lahore 119**, *Syed Zulfiqar Abbas Bukhari Versus FOP etc.,* **PLD 2019 Islamabad 316**, *Dr. Joseph Wilson Versus FOP etc.,* **2017 PCrLJ 1569**, *Mahboob Ali Abro Versus Ayan Ali etc.,* **2016 PSC 938** *and Sohail Latif etc. Versus FOP etc.,* **PLD 2008 Lahore 341**.

9. The learned AAG raised objection regarding maintainability of the instant Petition while arguing that this Court does not have territorial jurisdiction over the matter, as the Home Department of the Government of Punjab recommended the Petitioner's name to the FIA Authority for placing the same on PCL and it falls under the jurisdiction of the Lahore High Court. In response, the Petitioner's counsel argued that through this writ petition Letter dated 30.10.2024 issued by the Secretary, Ministry of Interior, Government of Pakistan, Pak-Secretariat,

Islamabad, is being challenged and therefore, this Court has the territorial jurisdiction to hear and decide the case.

10. Article 15 of the Constitution guarantees as under:-

> "*Every citizen shall have the right to remain in, and, subject to any reasonable restriction imposed by law in the public interest, enter and move freely throughout Pakistan and to reside and settle in any part thereof.*"

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

i. *Controller General of Accounts Vs. Fazil Ahmad, DAO EC (C&W Division Hangu) and others", **(2021 SCMR 800);***
ii. *"Government of Sindh through Secretary Health Department and others Vs. Dr. Nadeem Rizvi and others", **(2020 SCMR 1);***
iii. *Dr. Shireen M. Mazari Vs. Federation of Pakistan", **(2024 MLD 1020 Islamabad);** and*
iv. *Faisal Maqbool Sheikh Vs. Federation of Pakistan, **(Writ Petition No. 2141 of 2023).***

12. The Petitioner's name was placed on PCL based on the recommendation of the Home Department of Punjab, Lahore, through Letter dated 26.12.2023, due to involvement in the Subject Case. However, the Petitioner's pre-arrest bail petition was dismissed as withdrawn vide Order dated 05.08.2024, on the grounds that the Petitioner was found not guilty during the investigation, as indicated by the statement of the I.O., which was incorporated in the order of the learned Special Judge Anti-Terrorism Court, Lahore dated 05.08.2024.

13. Nothing is placed on record that could indicate that the Federal Government granted approval for placing the Petitioner's name on PCL, as provided by Rule 22(1) of the Passports Rules, 2021. Therefore, the inclusion of the Petitioner's name on PCL violates his fundamental rights to due process, liberty, life, and freedom of movement, all of which are guaranteed by the Constitution.

14. Based on the foregoing discussion, I am of the considered opinion that there is no valid justification for placing the Petitioner's name on the PCL. Consequently, the present Writ Petition is hereby **allowed**, and the Respondents are directed to remove the Petitioner's name from the PCL, as it is unjustified, illegal, lacks lawful authority, and is of no legal effect.

(MUHAMMAD AZAM KHAN)
JUDGE

Sajid/--

Approved for Reporting
Blue Slip added.