**JUDGMENT SHEET**

# ISLAMABAD HIGH COURT, ISLAMABAD, JUDICIAL DEPARTMENT

**W.P No.53 of 2025**

**Muhammad Amir Thahim**

**Versus**

**Federation of Pakistan, etc.**

| | |
|---|---|
| Petitioner by: | Barrister Raja Abdul Qadeer, Barrister Abdul Ahad Khokhar and Malik Muhammad Fiaz Kandwal, Advocates. |
| Respondents by: | Mian Faisal Irfan, Deputy Attorney General along with Mr. Muhammad Riaz, Assistant Director (Legal), FIA. |
| **Date of Hearing:** | **18.02.2025.** |

UNCERTIFIED

**INAAM AMEEN MINHAS, J:-** Through the instant writ petition, the petitioner has sought declaration that action of the respondents restricting his movement and placing his name on Provisional National Identification List (PNIL), Exit Control List (ECL), Passport Control List (PCL) or any other restricted list be declared illegal, unlawful, without jurisdiction, without merit, *mala fide*, *void abinitio*, alien to the jurisprudence, *corum non-judice*.

2. The brief facts of the case are that the petitioner's name was placed on the Passport Control List (PCL) by Respondent No.3 (Director General Immigration and Passport Control) on the recommendations of respondent No.2 (FIA) in connection with FIR No. 19/2023, registered with Police Station FIA ACC, Karachi. The

petitioner approached respondent No.3 for the removal of his name from PCL and also requested to provide a copy of with the grounds for placing the name of the petitioner on PNIL, PCL, ECL or any other restricted list maintained by the respondents but the respondents neither provided copy nor removed the name of the petitioner, hence this petition.

3. Learned counsel for the petitioner contended that the petitioner is a law-abiding citizen and is a civil servant performing his duty as Collector Customs in the Federal Board of Revenue (FBR) and the respondents, while exercising illegal powers, unlawfully restricted the movement of the petitioner by putting his name on PCL; that impugned act of the respondents is a direct violation of Articles 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973 and the respondents being public functionaries have not acted fairly and lawfully rather exercised powers arbitrarily. Learned counsel for the petitioner further contended that freedom is the most crucial human right and its protection is one of the fundamental pillars for upholding the rule of law; that the respondents before taking punitive action against the petitioner neither issued any show cause notice nor provided any opportunity of hearing. While placing reliance upon *Government of Pakistan and another vs. Dada Amir Haider Khan* (PLD 1987 SC 504) learned counsel for the petitioner contended that mere pendency of a criminal case is no ground curtailing the freedom of movement of any person, which is guaranteed as a fundamental right.

UNCERTIFIED

4. Conversely, learned Deputy Attorney General contended that the petitioner's name was placed on PCL on 07.02.2025 by respondent No.3 on the recommendations of respondent No.2 as being involved in FIR No.19/2023, as per the provision contained in Rule 22 (2) (b) of the Passport Rules 2021; that sole authority to place or remove the name of the petitioner from PCL is vested with respondent No.3; that role of respondent No.2 in the present case is of merely an executing/ implementing agency, whereas grievance of the petitioner is related to respondent No.3; that record of PCL is maintained and available with respondent No.3; that the instant writ petition is not maintainable as the petitioner has an alternate remedy in the shape of review before the Review Committee constituted by respondent No.3 in terms of Rule 22(3)(b) of Passport Rules, 2021.

5. I have heard learned counsel for the parties and perused the record.

6. As per the record, the name of the petitioner was placed on PCL by respondent No.3 on the recommendations of respondent No.2, who had received a request from Deputy Director Crime FIA Karachi Zone, vide letter No. FIA/DKZ/ACCK/FIR-19/2023/A-203-04, dated 09.02.2024 in connection with FIR No.19/2023 of FIA ACC, Karachi and respondent No.2 placed the name of the petitioner on PNIL in the light of standing order No.2/2018, dated 27.04.2018, which regulates PNIL. The relevant portion of the above mentioned standing order for placing the name of an individual on PNIL is reproduced for more clarity of the matter:-

UNCERTIFIED

**OFFICE OF DIRECTORATE GENERAL**
**FEDERAL INVESTIGATION AGENCY**
**ISLAMABAD**

No.PS/DG/FIA/2018/682 Dated:27-04-2018

**STANDING ORDER NO.2/2018**
**SOP TO REGULATE**
**PROVISIONAL NATIONAL IDENTIFICATION LIST (PNIL)**

***B. Scope***

*This SOP will govern the maintenance of a list by the FIA, entered in the IBMS called PROVISIONAL NATIONAL IDENTIFICATION LIST (PNIL), to prevent the Travel/ escape of fugitives involved in heinous crimes and all matters and mechanisms related to placement or removal of names from this list.*

## *C. TERMS OF REFERENCE*

## *I. IMMIGRATION WING (FIA HQs)*

*2. The placement of name/ particulars shall expire after lapse of 30 days from the date of placement. It will be the responsibility of the requesting agency to process the case for placement on ECL, through their Home Department and follow it up in the Ministry of Interior In case of pendency of ECL case with the Ministry of interior, the name will remain on the PNIL fill the final outcome of the decision of ECL placement by the Ministry of Interior or competent authority. In case the ECL case is not submitted to the Ministry of Interior, the name from PNIL will be automatically taken off on the expiry of 30 days from the date of placement on PNIL. A rejection of request for placement on ECL by the Ministry of Inferior/competent authority at any stage shall be deemed as rejection for placement on PNIL*

***Annexure-A***

*STANDING ORDER NO. 2/2018*
*SOP TO REGULATE*
*PROVISIONAL NATIONAL IDENTIFICATION LIST (PNIL)*

*LIST OF HEINOUS CRIMES FOR WHICH **FUGITIVES** CAN BE RECOMMENDED TO FIA TO BE PLACED ON **30 DAYS** PROVISIONAL NATIONAL IDENTIFICATION LIST BY PROVINCIAL POLICE OFFICER*

1. *Cases registered under section 7 of Anti-Terrorism Act. 1997.*
2. *Murder Cases (302 PPC).*
3. *Kidnapping for Ransom.*
4. *Rape/Trafficking of Minors/Child abuse.*
5. *Any sensational heinous crime which in the opinion of the Provincial Police Officer/ IGP is likely to have bearing on the law and order situation if the fugitive involved, escapes from the country to evade his apprehension.*

*SCOPE OF FIA-SCHEDULED CRIMES FOR WHICH FUGITIVES CAN BE RECOMMENDED TO FIA TO BE PLACED ON **30-DAY** PROVISIONAL NATIONAL IDENTIFICATION LIST BY A PROVINCIAL POLICE OFFICER.*

UNCERTIFIED

> *1. Any offence which is an FIA scheduled offence and is considered or has a component of offence against the state and in the opinion of the Zonal Director FIA qualifies as an offence for which the fugitive involved can be recommended for placement on ECL.*

7. As per the above standing order, respondent No.2 can place the name of any person, who is a fugitive and nominated in FIR of a heinous crime such like *Mujahideen* as per certification of the requesting agency. Whereas, the petitioner is neither fugitive from the law nor involved in a heinous crime as reflected from FIR No.19/2023, u/s 5(2) PCA, 1947 r/w sections 156(8) and (89) of the Customs Act, 1969, read with section 109 PPC. P.S. FIA ACC, Karachi. Mere registration of a single FIR neither fulfills the requirements as mentioned in the said standing order for placing the name of an individual on PNIL. Respondent No.2 blindly acted upon the request on behalf of Director FIA ACC, Karachi and did not apply his mind nor fulfill the requirements of standing order No.2/2018 and mechanically exercised the powers without forming any opinion put the name of the petitioner on PNIL and forwarded to respondent No.3 for placing the name of the petitioner on PCL. This entire exercise of respondent No.2 is based on *mala fide*, which amounts to colorful exercise of power and not tenable in the eyes of law.

8. Similarly, respondent No.3 placed the name of the petitioner on PCL on the request of respondent No.2 while exercising power under Rule 22 of the Passport Rules 2021, which is reproduced as under:-

> *22. Passport control list, (1) Federal Government is vested with the powers to regulate the departure from*

UNCERTIFIED

*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 desorption, namely:-*

*(a) under category 'A', names of those persons are placed who are involved in anti-state 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 passports 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.*

9. A plain reading of above referred section lays down the conditions for placing the names of the individuals on the PCL, which is divided into two categories 'A' and 'B'. Category 'A' includes the individuals, 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 a security point of view. Category 'B' pertains to the individuals, who have been refused passport under the rules.

10. In the present case, allegations neither pertain to Category 'A' nor cover Category 'B' attracting the petitioner's case under Rule 22 (2) (a) (b) of Passports Rules 2021. Respondent No.3, while exercising powers under the above-mentioned Rule does not fall within the criteria

UNCERTIFIED

outlined in Rule 22 (2) (b) of the Passport Rules, 2021 and the powers exercised by respondent No.3 while placing the name of the petitioner on PCL is contrary to the Rules.

11. Moreover, Rule 22 of the Passport Rules, 2021 also provides that the Federal Government is vested with the authority to regulate entry and exit whereas in the instant case there is no material on record indicating that such approval was obtained from the Federal Government before imposing travel restrictions on the petitioner. The Honorable Supreme Court in its landmark judgment in ***Mustafa Impex, Karachi vs. The Government of Pakistan through Secretary, Finance, Islamabad*** **(PLD 2016 SC 808)** explicitly defined the term 'Federal Government' as comprising the Federal Ministers and the Cabinet. Thus, any restriction on the petitioner's movement, if imposed without the requisite approval from the Federal Cabinet, is devoid of legal sanctity and stands in clear contravention of the law.

12. The impugned action of the respondents, which was executed through an arbitrary manner, amounts to a direct infringement of the petitioner’s fundamental rights as enshrined in Articles 4, 10-A, and 15 of the Constitution of Islamic Republic of Pakistan, 1973. These constitutional guarantees include the right to be treated in accordance with the law, the right to a fair trial and the freedom of movement. But in the present case, no show cause notice or any opportunity of hearing was granted to the petitioner by the respondents before placing his name on PCL. The constitutional Courts are the ultimate protectors of fundamental rights to safeguard such rights against arbitrary and

UNCERTIFIED

unlawful executive actions. The denial of these fundamental entitlements necessitates judicial intervention to rectify the injustice meted out to an individual and restore his constitutionally protected freedoms.

13. Furthermore, Article 15 of the Constitution of Islamic Republic of Pakistan, 1973 unequivocally bestows upon every citizen the inherent and inalienable right of freedom of movement, which includes the right to travel abroad and return to Pakistan without any unwarranted hindrance, subject to only reasonable restrictions imposed by law. Any limitation placed upon this right must be justified by cogent legal grounds and must be by adhering to the principles of proportionality and necessity. In the absence of such lawful justification, any restriction on a citizen's ability to travel constitutes a violation of their constitutionally protected freedoms. In support of this fundamental principle, reliance is placed upon the authoritative pronouncements of the Honorable Apex Courts in the judgments cited as ***Government of Pakistan and another vs. Dada Amir Haider Khan*****, (PLD 1987 SC 504)**, ***Federation of Pakistan through Secretary, M/o Interior vs. General (R) Pervez Musharraf*****, (PLD 2016 SC 570)**, ***The Federal Government through Secretary Interior, Government of Pakistan vs. Ms. Ayyan Ali*****, (2017 SCMR 1179)** and ***Sheikh Shan Ilahi vs. FOP through Secretary, Ministry of Interior, Islamabad*****, (PLD 2023 LHR 359),** wherein the Apex Courts have reaffirmed the sanctity of an individual's right to travel and the imperative need for any encroachment upon this right to be strictly in accordance with the law.

UNCERTIFIED

14. As far as argument of the learned Deputy Attorney General that instant writ petition is not maintainable as the petitioner has an alternate remedy before the Review Committee constituted under Rule 22(3)(b) of the Passport Rules, 2021, it is settled law that where the impugned order is illegal and there is apprehension of infringement of fundamental rights, such as the freedom of movement, this Court can exercise its constitutional jurisdiction under Article 199.

15. In view of the above discussion, the instant writ petition is **allowed** and act of the respondents for placing name of the petitioner on PCL is declared illegal, unlawful, without jurisdiction, without merit, *mala fide*, *void abinitio*, alien to the jurisprudence, *corum non-judice*.

**(INAAM AMEEN MINHAS)**
**JUDGE**

**Announced in open Court on 27.02.2025.**

**JUDGE**

**APPROVED FOR REPORTING**

R.Anjam

UNCERTIFIED