JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

Writ Petition No. 51 of 2025

Umar Sultan

VS

Federation of Pakistan, etc.

Petitioner by	**:**	**Barrister Raja Abdul Qadeer and Barrister Abdul Ahad Khokhar, Advocates.**
Respondents by	**:**	**Ms. Azra Batool, AAG with Mr. Muhmmad Riaz, Assistant Director, Legal, FIA, Islamabad.**
Date of hearing	**:**	**17.02.2025**

MUHAMMAD ASIF, J. 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. Facts 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 from 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, is characterized by malice and bad faith; that the action of the Respondents is arbitrary, derogatory, and devoid of credible evidence, taken hastily and without due process of law; There is no legitimate, lawful, cogent, 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,

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 unheard, 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 *Syed Zulfiqar Abbas Bukhari v. FOP, etc* **(PLD 2019 Islamabad 316),** Dr. Shireen M. Mazari v. FOP, etc **(2024 MLD 1020)** and *Rasikh Ellahi v. FOP, etc* **(2024 YLR 2616).**

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. 153/23, besides this two other FIRs are also registered against him. Hence, their petition may kindly be dismissed.

5. I have heard the learned counsel for the parties and gone through the record with their able assistance.

6. As per the report submitted by Respondent No. 2, the Federal Investigation Agency **("FIA")**, shows that, the Petitioner's name is currently active on PCL and ECL. The Petitioner's name was placed on PCL by the Respondent No. 3, the Directorate General of Immigration & Passports, Islamabad, upon the recommendations of AGI/ Operation for Islamabad Capital City Police Officer **("ICCPO")**, Islamabad vide letter No. 36993-95/ICCPO/C dated 24.08.2024 in case FIR No. 03 dated 18.03.2023, registered under Sections 395, 380, 440, 435, 506, 427, 148, 149, 186, 353, 188, 411, Pakistan Penal Code, 1860 **("PPC")** and Section 7 of the Anti-Terrorism Act, 1997 registered with Police Station, CTD, Islamabad forwarded by Respondent No. 1/Ministry of Interior, Islamabad vide its letter No. 2/1/2023-Pass (P&C) dated 28.08.2023. The Ministry of Interior Islamabad 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 of an executing or implementing agency. The Report further simplifies 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. While perusing the comments filed by the Respondent No. 1 it emerges that the Petitioner's name was placed on ECL on 23.06.2023, with the approval of Federal Government vide Cabinet Decision No. 357/Rule-19/2023 dated 22.06.2023 on the recommendations of Chief Commissioner ICT/SSP Investigation Islamabad, as the accused is involved in case FIR No. 3/2023 registered with CTD, 153/2023 and 154/2023 registered with police station Ramna.

8. Likewise, the respondent No. 3 submitted in his comments that petitioner's name was placed on PCL on 04.09.2023 on the recommendation of the AIG Operations, ICCPO vide letter NO. 36993-95/ICCPO/C dated 24.08.2023 in Case FIR No. 03 dated 18.03.2023 under Sections 395, 380, 440, 345, 506, 427, 148, 149, 186, 353, 188, 411, PPC and Section 7 of the Anti-Terrorism Act, 1997 registered with Police Station, CTD, Islamabad

9. Record further depicts that the Petitioner's counsel provided certified copies of the bail granting Order dated 02.04.2024 passed by the learned Special Judge

Anti-Terrorism Court-I, Islamabad whereby the pre-arrest bail of the Petitioner has been allowed in all the three FIRs, wherein the Petitioner joined investigation and his pre arrest bails were confirmed in multiple FIRs. Neither any show cause notice was issued nor the petitioner was put on notice. 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*

10. Category 'A' of the Rule 22 supra, attracts to the case of the petitioner however, the learned AAG argues that the Petitioner's case 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".*

11. While examining the said rule it reveals that Category 'B' applies to individuals whose passports have been refused. In this case, the AIG Operations Islamabad ICCPO and Chief Commissioner Islamabad/SSP Investigation recommended the inclusion of the Petitioner's name on the Exit Control List and Passport Control respectively on the basis of involvement in the cases registered against petitioner, without providing the Petitioner with a Show Cause Notice to clarify his position or status. The 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."*

12. 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 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. *Messrs Mustfa Impex, Karachi and others v. The Government of Pakistan through Secretary Finance, Islamabad and others.* ***(PLD 2016 SC 808)***
iv. *Dr. Shireen M. Mazari Vs. Federation of Pakistan",* ***(2024 MLD 1020 Islamabad);*** *and*
v. *Faisal Maqbool Sheikh Vs. Federation of Pakistan,* ***(*Writ Petition No. 2141 of 2023).**

13. The Petitioner's name was placed on PCL based on the recommendation of the AIG Operation for ICCPO through Letter dated 24.08.2023, due to involvement in the multiple FIRs. However, the Petitioner's interim pre-arrest bail petition was allowed vide Order dated 02.04.2024, which was confirmed by the learned Special Judge Anti-Terrorism Court-I, Islamabad vide Order dated 18.04.2024.

14. 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.

15. In view of the above, there is no valid reason for placing the Petitioner's name on the PCL. Consequently, the instant Writ Petition is **allowed**, and the Respondents are directed to remove the Petitioner's name from the ECL/PNIL/PCL, as it is unjustified, illegal, lacks lawful authority, and is of no legal effect.

(MUHAMMAD ASIF)
JUDGE

Announced in open Court on 27.02.2025.

//Kamran//*

ISLAMABAD | 02.2025
APPROVED FOR REPORTING **JUDGE**
BLUE SLIP ADDED