Form No: HCJD/C-121

**ORDER SHEET**

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

**Writ Petition No. 834/2025**

Abdul Qadir

***Versus***

Federation of Pakistan through Cabinet Secretary & others

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| Petitioners By: | Mr. Rehan Kayani and Barrister M. Usama Rauf, Advocates. |
| Respondents By: | Mr. Fahad Khan Tareen, Assistant Attorney General.<br>Mr. Hafiz Ahsaan Ahmed Khokhar, Advocate for FBR.<br>Mr. Moazzam Habib, Advocate alongwith respondent No.3.<br>Malik Abdur Rehman, State Counsel.<br>Mr. Nawaz Khan, Director (Policy), Directorate General of Immigration & Passports, Islamabad.<br>Mr. Muhammad Azeem Khan, Section Officer (ECL) Ministry of Interior, Islamabad.<br>Mr. Muhammad Riaz, Assistant Director (Legal), FIA |
| DATE OF HEARING: | 26.08.2025. |

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***BABAR SATTAR, J.*** – The petitioner is aggrieved by placement of his name on the Exit Control List ***("ECL")***, on the Passport Control List ***("PCL")*** and on the Provisional National Identification List ***("PNIL")***.

2. The learned counsel for the petitioner submitted that according to respondent No.4 the name of the petitioner has been placed on the aforementioned lists on the recommendation of respondent No.5. He submitted that the petitioner has been implicated in two cases of sales tax fraud. However, in both of the cases by orders dated 08.08.2024 and 17.10.2024 the petitioner has been acquitted. He submitted that notwithstanding the fact that no appeal has been filed or that criminal charges

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are otherwise pending adjudication against the petitioner, it is settled law that merely on the basis of allegations of a criminal offence committed by a person, his name cannot be placed on the ECL. He submitted that the manner in which the petitioner's name has been placed on the aforementioned lists is tantamount to a colourable exercise of authority by the respondents.

3. The learned counsel for the petitioner argued that the right to travel into and out of Pakistan was a subset of personal liberty and to restrain exit or entry from the country was to impose a restraint on the liberty of the person. The curtailment of movement under Articles 4, 9, 10-A, 15 and 25 must satisfy due process, be preceded by notice and reasons and reflect a demonstrable application of mind manifested in a speaking order as required by section 24-A of the General Clauses Act. He submitted that placement of a citizen's name on the ECL was a power vested in the Federal Government (i.e. the Cabinet), and could not be exercised by Secretary Interior Division or another officer of the Federal Government. Orders lacking Cabinet sanction were coram non judice and liable to be set aside. He submitted that the PCL regime could not be triggered unless and until passport facilities were lawfully refused through penal action under the Passports Act, 1974 ***("Passport Act")*** and the Passport Rules, 2021 ***("Passport Rules")***, and only the Federal Government could take such action after affording a citizen due process. The Directorate General, Immigration and Passport, could not, *suo motu*, place names of citizens on the PCL. He argued that the PNIL had no statutory parentage and rested only on an FIA Standing Order (No.02/2018), issued in breach of the guarantee of Article 15 of the Constitution. Placement on the

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PNIL without a written order or application of mind constituted exercise of unfettered discretion, antithetical to rule of law.

4. The learned counsel for the petitioner, while relying on tax-jurisprudence, argued that mere allegations of tax default did not justify placement of fetters on the petitioner's right to travel. Absent determination of tax liability by an independent adjudicatory forum, branding a citizen a "defaulter" was unlawful. The case built by the Tax Department was against a separate juristic person (i.e., M.D. Industries (Pvt.) Ltd.), and in such matter, injunctive relief had been granted by the ATIR remains against the demand generated and thus the recommendation to stop the petitioner from travel lacked legal footing. He argued that, the State could not suspend fundamental rights on a presumption of guilt. He submitted that the Directorate General of Immigration and Passport ***("DG I&P")*** had rubber-stamped the recommendations of the tax department to place the petitioner's name on the PCL without inquiry, which amounted to abdication of discretion and violated Articles 4, 10-A and 15 of the Constitution as well as section 24-A of the General Clauses Act. He submitted that the High Court, in constitutional jurisdiction, was duty-bound to enforce fundamental rights and must grant effective ancillary relief to do complete justice even when not expressly prayed for. He prayed that the placement of the petitioner's name on all stop-lists (ECL/PCL/PNIL) be annulled and his right to unhindered travel be restored.

5. Upon conclusion of hearings, the learned counsel for the petitioner also made written submissions. Appended along with such submissions was a judgment of the Appellate Tribunal

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Inland Revenue ***("ATIR")*** dated 05.08.2025, pursuant to which the ATIR had considered the appeal filed by MD Industries (Private) Limited against the tax demand generated for the tax period December 2021 to January 2024. It is on the basis of the tax liability of MD Industries (Private) Limited for the aforementioned period that a charge of tax fraud was brought against the petitioner, on which basis his name was placed on the ECL, the PCL and PNIL. The ATIR, in its judgment, held that, *"we are of the considered opinion that the assessing officer has failed to establish any involvement of the applicant in tax fraud…"* The learned counsel for the petitioner accordingly contended through his submissions that the foundational basis for bringing a charge of tax fraud against the petitioner no longer existed in view of the findings of the ATIR.

6. The learned Assistant Attorney General submitted that the name of the petitioner was placed on the ECL on the recommendation of the Federal Board of Revenue ("**FBR**"). He took the Court through the relevant statutory framework through which names were placed on the ECL and argued that the vires of any Rules had not been challenged in the instant petition. He contended that a citizen whose name was placed in the ECL had the remedy of filing an appropriate representation before the Federal Government. He submitted that the name of the petitioner was recommended to be placed on the ECL after Secretary Revenue Division had approved such recommendation, as the petitioner was deemed a tax defaulter being a Director of MD Industries Private Limited. Such recommendation was made through letter dated 29.11.2024 and suffered from no illegality.

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7. The learned counsel for the FBR submitted that the petitioner was the Director of MD Industries Private Limited. Proceedings were initiated against MD Industries Private Limited by RTO Quetta in exercise of authority under Section 11(E) of the Sales Tax Act, 1990 ("**Sales Tax Act**") and the tax department came to the conclusion that MD Industries Private Limited had illegally claimed sales tax input on the basis of fake and flying invoices. Consequently, it was recommended that the name of the petitioner be placed on the ECL pursuant to rule 2(d) of the Exit from Pakistan (Control) Rules, 2010 ***("Exit Control Rules")***, which provided for placement of the name of an individual on the ECL if he was the Director of a firm in default of tax or liabilities in the amount of Rs.10 million or more. He submitted that MD Industries Private Limited had challenged the demand before the Balochistan High Court and the petition was dismissed by order dated 08.04.2025. He further submitted that the recommendation for placement of the petitioner's name on the ECL was initiated by the FBR and endorsed by the Ministry of Interior. On 18.01.2025 the Federal Cabinet approved the placement of such name on the ECL. Consequently, the reason for placement of the petitioner's name on the ECL and the process adopted for doing so was in accordance with the law. He further submitted that it was very infrequent that the power to recommend the placement of a tax defaulter's name on the ECL was exercised by FBR, and there were only two cases in which such power had been exercised in the year 2025.

8. The learned counsel, appearing on behalf of the Federal Investigation Agency (FIA), submitted that the name of the

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petitioner was placed on the PCL and the ECL on the recommendation of the FBR. FIA was an implementing agency in such matters and was vested neither with the power to place somebody's name on the ECL or the PCL nor with the power to remove a name placed on the ECL, as such power was vested in the Federal Government and fell within the domain of the Ministry of Interior.

9. Let us first consider the jurisprudence on the manner in which the right of a citizen to liberty and freedom of travel can be interfered with before we consider the facts of the instant case. There are at least five aspects of administrative and constitutional law that are relevant for our present purposes. The first relates to the manner in which discretion is to be exercised by the executive organ of the State, especially in relation to fundamental rights. It was held by the Lahore High Court in ***Montgomery Floor and General Mills Ltd. v. The Director, Food Purchase (PLD 1957 Lahore 914)*** that, *"no discretion vested in an executive officer is an absolute and arbitrary discretion. The discretion is vested for public purpose and must be exercised for the attainment of that purpose."*

10. In ***Zahur Ilahi v. The State (PLD 1977 Supreme Court 273)*** the Supreme Court emphasized that where an executive action was taken with the intent of misusing powers, the act would be struck down by the Court. The law on exercise of discretionary authority as a trust has further evolved since 1977 and it is now a settled principle that discretion must not only be structured but must also be exercised in a just, fair and reasonable manner through a reasoned order in pursuit of the

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object of the statutory instrument, pursuant of which it is being exercised.

11. Within the domain of constitutional law, it was held by the Supreme Court in ***Farooq Ahmed Khan Laghari v. Federation of Pakistan (PLD 1999 Supreme Court 57)*** that, *"all efforts should be made to preserve and enlarge the scope of the Fundamental Rights while interpreting Constitutional provisions."* In the context of the right of a citizen to freedom of movement, it was held by the Supreme Court in ***Pakistan Muslim League (N) v. Federation of Pakistan (PLD 2007 Supreme Court 642)*** (when President Pervez Musharraf's government was seeking to prohibit Mian Nawaz Sharif, former Prime Minister of Pakistan, from returning to Pakistan from exile), that fundamental rights place a constraint on both executive and legislative organs of the State and that a citizen's right to freedom of movement, especially when being exercised to return to the country from abroad, cannot be fettered. The Supreme Court in this case endorsed the concept of limited powers of the government where action by State authorities can only be taken within the four corners of the law empowering them to take such action and further that the action must be in pursuit of the objects of the statutory instrument under which power is being exercised. The Supreme Court held that in a case where the State was seen as restricting the fundamental rights of a citizen, the constitutional courts would exercise strict scrutiny while subjecting such action to judicial review. Thus, within the domain of administrative and constitutional law, the exercise of discretionary authority, when impinging upon the fundamental rights of a citizen, is to be subjected to strict

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scrutiny. And during such judicial review, it is for the state to satisfy a constitutional court that the exercise of discretionary authority was just, fair and reasonable and the impugned actions were a product of due process in pursuit of the objects of the law under which discretion was vested in the executive.

12. The Supreme Court considered the refusal of issuance of a passport to a citizen in the case of ***Government of Pakistan v. Dada Amir Haider Khan*** ***(PLD 1987 Supreme Court 504)***. It held that the refusal to issue a passport fell afoul 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…".*

13. The right of a citizen to due process and to be heard forms a part of our constitutional jurisdiction. Such rights to natural justice have always been given effect by courts while interpreting statutory requirements and the said rights now form part of the fundamental rights of citizens guaranteed by Article 10-A of the Constitution[1]. How the right to due process is to be upheld and how the fundamental rights of citizens are not to be interfered with except in accordance with law in a manner that is least restrictive for the adjournment of such rights has been detailed in various judgments that have been reproduced in ***Dr. Shireen M. Mazari v. Federation of Pakistan*** ***(2024 MLD***

[1] *Fauji Foundation v. Shamimur Rehman* ***(PLD 1983 SC 457),*** *Chairman, NAB v. Nasar Ullah* ***(PLD 2022 SC 497)****, Federation of Pakistan v. E-movers Pvt. Ltd.* ***(2022 SCMR 1021),*** *CIR v. M/s Rose Food Industries* ***(2023 SCMR 2070)***

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***1020)*** and need not be recapitulated here. What flows from the discussion above is that no one's name can be placed on PCL without the Federal Government or an officer authorized by the Federal Government in terms of section 8 of the Passport Act having passed a reasoned order that the passport of the petitioner is liable to be impounded, confiscated, cancelled or inactivated in terms of Rule 23 of the Passport Rules. Where such order has been passed without issuing the show cause notice to a citizen and affording him an opportunity to defend himself the action would fall foul of the requirements of section 8 of the Passport Act[2] read together with section 24A of the General Clauses Act, 1897, and Article 10-A of the Constitution. The order for placement of a citizen on the PCL cannot be issued in a mechanical fashion without recording reasons and stating the grounds applicable to the circumstances of the citizen in terms of Rule 23(6) read with Rule 21 of the Passport Rules. Unless a penal order directing that the passport of a citizen be impounded, confiscated, cancelled or inactivated is passed while identifying the relevant grounds that mandate that the citizen's right to liberty and travel ought to be interfered with in accordance with law, such order would not be sustainable in the eyes of law. It is only where an order finding that a citizen's passport is liable to be impounded, confiscated, cancelled or inactivated has been so passed that can the relevant Division of the Federal Government and the Directorate General, Immigration and Passport discharge their ministerial function of placing the name of such individual on the PCL in terms of Rule 22(2) of the Passport Rules.

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[2] *Shabana Noor Ahmed v. D.G. Immigration and Passport* ***(PLD 2019 Sindh 456)***

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14. The second area within which jurisprudence has been produced in relation to the right to liberty and freedom of movement flows from the first aspect highlighted above and relates to substantive and procedural due process. In terms of Section 24-A of the General Clauses Act, all executive authorities are under an obligation to exercise authority in a just, fair and reasonable manner while documenting the reasons for exercise of authority. A reasoned order is therefore a *sine-qua-non* for exercise of discretion, especially when it impinges on the fundamental rights of a citizen. The substance of the reasons then forms part of the inquiry undertaken by a Court while exercising judicial review powers, whereby the Court can satisfy itself that the reasons are just and proportionate to the legitimate State interest being pursued by executive authorities to pursue the objects of the law under which such authority is being exercised. The other aspect of due process rights is the antiquated doctrine of natural justice. Every citizen has a right to be heard before any action is taken by the state that curtails his rights and liberties. The principles of natural justice have always been read into statutory instruments and executive authorities have been required to uphold such principles imperative for enjoyment of fundamental rights guaranteed to the citizens by the Constitution. Notwithstanding settled law that such principles of natural justice were to be read into every statute, the legislature in its wisdom enacted Article 10A of the Constitution to give the right of due process constitutional standing. Much of the case law where citizens have challenged actions of the State curtailing their right to liberty and freedom of movement highlights the obligation of the State to uphold the due process

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right of citizens and the actions of placing citizens on ECL or NFL etc. have been struck down where the same had been passed without affording the affected citizen the right to be heard or otherwise in a mechanical fashion without recording valid reasons for such penal action.

15. The scheme of the Passport Act and the Passport Rules as discussed above makes it abundantly clear that a reasoned order declaring that the passport of a citizen is liable to be impounded, confiscated, cancelled or inactivated is a precondition to the placement of a citizen's name on the PCL. No citizen can arbitrarily be prevented from exercising his fundamental right to liberty and his fundamental right to travel freely guaranteed by Articles 9 and 15 of the Constitution[3]. Where such right is being curtailed, the same has to be done in accordance with law, and the penal action restricting the exercise of such fundamental rights is to be exercised in a manner that is least restrictive to such fundamental right[4]. This constitutional scheme also underscores why it is imperative that a reasoned order be passed declaring that the passport of a citizen is liable to be impounded or confiscated or cancelled or inactivated before the Federal Government seeks to interfere with the right of such citizen to liberty and/or to travel freely by placing the citizen's name in the PCL. The other commonsensible reason for why an order in terms of Rule 23 of the Passport Rules must precede the placement of a citizen's name on the PCL is that without such an order, the immigration officers or the officers within the DG I&P would have no basis to determine

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[3] *PML(N) v. Fed. of Pakistan* ***(Ibid),*** *Sheikh Shan Ilahi v. Fed. Of Pakistan* ***(PLD 2023 Lahore 359),*** *Tabish Badar v. Ministry of Interior* ***(2023 CLC 1457)***

[4] *Sabir Iqbal v. Cantonment Board* ***(PLD 2019 SC 189),*** *Shehryar Afridi v. Fed. Of Pakistan* ***(W.P. No.2491 of 2023 IHC)***

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whose name is to be placed in the PCL. The various grounds for refusing the issuance of a passport mentioned in Rule 21 of the Passport Rules also reflect that there is need for the Federal Government to pass judgment in relation to a citizen that one of the grounds mentioned in Rule 21 of the Passport Rules is applicable to the citizen-in-question. In Rule 23(5) of the Passport Rules, where the Head of a Pakistan Mission abroad exercises its authority to impound the passport in terms of Rule 23(4) of the Passport Rules, the matter is to be forwarded to the Director General or the Additional Secretary of the Ministry of Foreign Affairs to consider whether the passport is to be confiscated, cancelled or inactivated, which determination is in turn to be made keeping in view the grounds mentioned in Rule 23(6) of the Passport Rules. The application of the grounds mentioned in Rule 23(6) or those mentioned in Rule 21 of the Passport Rules requires adjudication. And for purposes of such adjudication an appropriate notice is to be issued to the citizen-in-question in terms of section 8 of the Passport Act read together with Article 10-A of the Constitution. And it is after the adjudicatory process that penal action can be taken in terms of impounding, cancelling, confiscating or inactivation of a passport of a citizen through a reasoned order, after which the name of such citizen can be placed in the PCL depending on whether such order places the citizen in category 'A' or category 'B' listed under Rule 22(2)(a) and (b) respectively.

16. A seminal case where upholding the right to liberty, freedom of movement and the prohibition against suspending such fundamental rights on the basis that a criminal case or inquiry was pending against the citizen came up in ***Wajid***

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***Shamas-ul-Hassan v. Federation of Pakistan*** ***(PLD 1997 Lahore 617),*** in which the Lahore High Court held that section 2 of EPC Ordinance provides no reasonable classification or guidance as to how discretion is to be exercised. It was 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."*

17. The law laid down in ***Wajid Shamas-ul-Hassan*** remains good law and was endorsed by the Supreme Court in ***Federal Government v. 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.".* Similarly, the Lahore High Court in ***Mian Ayaz Anwar v. The Federation*** ***(PLD 2010 Lahore 230)*** counseled that the right of freedom to travel in and out of the country had been guaranteed in England in the year 1215 through Article 42 of Magna Carta. It also cited Article

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13 of the Universal Declaration of Human Rights that guarantees the right to leave and return to one's country. In Article 12 of the International Covenant on Civil and Political Rights, guaranteeing the freedom to leave one's country. It also cited judgments of the United States Supreme Court, including ***Kent v. Dulles* 357 US 116 (1958)**, and ***Aptheker v. Secretary of State* 378 US 500 (1964)**, where the US Supreme Court considered the right to travel and passport restrictions and held that, *"freedom of movement is the very essence of our free society… like the right of assembly and the right of association, it often makes the other rights meaningful—knowing, studying, arguing, exploring, conversing, observing and even thinking."* It also cited judgments of the Indian Supreme Court in ***Satwant's case* (A.I.R. 1967 Supreme Court 836)**, where the right to travel abroad was declared to be part of the of personal liberty guaranteed under Article 21 of the Indian Constitution.

18. The third aspect of the matter is that mere pendency of a criminal or civil case, registration of an FIR, a tax demand or liability, or a bank default, in itself, in absence of a court order directing placement of the name on ECL, PCL or PNIL, would not be sufficient ground to place the name of citizen on the ECL/PCL/PNIL, that too in a mechanical fashion without properly exercising discretion and application of mind. There are umpteen cases where the same principle of law that the pendency of a civil or criminal case against a citizen is no basis to fetter his right to liberty and freedom of movement. This principle was endorsed and upheld by the Lahore High Court in ***Sheikh Mohammad Mansoor v. Government of Pakistan* (2008**

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***MLD 955)*** where the name of the citizen had been placed on ECL on the recommendation of NAB, the Lahore High Court struck down such placement. Similarly in ***Sohail Latif v. Federation of Pakistan (PLD 2008 Lahore 341)***, the Lahore High Court struck down the action of placing a citizen's name on ECL on NAB's recommendation. In ***Munir Ahmed Bhatti v. Government of Pakistan (PLD 2010 Lahore 697)***, the Lahore High Court held that involvement in a civil or criminal case was no basis to place a citizen's name on ECL. In ***Masood Ahmed v. Federation of Pakistan (2010 YLR 28)***, the Lahore High Court struck down the action of placing a citizen's name on ECL on NAB's recommendation.

19. In ***Mian Munir Ahmed v. Federation of Pakistan (2008 YLR 1508)*** and ***Zurash Industries v. Federation of Pakistan (PLD 2011 Karachi 385)***, the Sindh High Court noted that pendency of a civil or criminal case was no basis to place a citizen's name on ECL. In ***Gen. (Retd.) Parvez Musharraf v. 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 ECL and the Sindh High Court held that mere pendency of a criminal case was no ground to deny the citizen a fundamental right of freedom to travel and that the apprehension that the petitioner would flee from Pakistan was no basis to deprive him of his fundamental right to liberty. On appeal, the Supreme Court in ***Federation v. Gen. (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, held that *"freedom*

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*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."*

20. In ***Syed Masood Hussain Shah v. Federation of Pakistan (2015 MLD 124)***, the Sindh High Court removed a citizen's name from ECL who had been placed in such list on NAB's recommendation. In ***Mohammad Sadiq v. Federation of Pakistan (PLD 2016 Sindh 263)***, the Sindh High Court reiterated that dependency of a criminal case is no basis to place a citizen's name on ECL. In ***Tanver Hussain Manji v. Federation of Pakistan (2016 CLC 1534)***, the Sindh High Court struck down the action of placement of a citizen's name on ECL on NAB's recommendation. In ***Yusuf J. Ansari v. Government of Pakistan (PLD 2016 Karachi 388)***, the Sindh High Court did the same in relation to another citizen whose name had been placed on the NFL on NAB's recommendation.

21. The same principle has been affirmed and reiterated within the jurisdiction of Islamabad High Court in ***Riaz Ahmed v. Government of Pakistan (PLD 2014 Islamabad 29)*** where it was held that the name of the petitioner placed on ECL on the recommendation of the Inter-Services-Intelligence (ISI) for being involved in terror activities was unconstitutional. In ***Mst. Nasreen Begum v. Ministry of Interior* (PLD 2012 Isb. 21)** the Islamabad High Court held that the pendency of a criminal case was no basis to place the citizen's name on ECL. In ***Dr. Joseph Wilson v. Federation of Pakistan (2017 PCr.LJ 1569)***, the jurisprudence produced on the right of liberty and freedom of movement was summarized and it was held that, *"to*

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*prevent a man from leaving the country or from entering it, is to impose a physical restraint on his person. It is to deprive him of a personal liberty."* In such case, the name of the petitioner had been placed on ECL on the basis of a recommendation by NAB, which action was struck down for being unconstitutional. The question of placement of the name of a citizen on NAB's recommendation came before this Court once again in ***Syed Zulfikar Abbas Bukhari v. Federation of Pakistan*** ***(PLD 2019 Islamabad 316*****)** wherein a Division Bench of this Court held that*, "when name of an individual is placed on ECL, his freedom of movement is curbed and the same tantamount to violation of fundamental rights, and in such state of affairs, the power/authority is to be exercised by the executive sparingly after taking into account relevant facts and circumstances…".* The issue of placement of names on the PCL came before this Court in ***Dr. Shireen M. Mazari*** in which it was declared that the name of a citizen cannot be placed on the PCL arbitrarily without following the due process of law and without passing a reasoned order. Subsequently, this Court had the opportunity to revisit the scheme of Passport Rules in ***Nadir Mukhtar v. DG Immigration and Passport*** ***(Writ Petition No.130 of 2025)*** in which the Court enumerated the scope of authority vested in the Director General, Immigration and Passport and held that the name of a citizen cannot be placed on PCL without recording valid reasons establishing the applicability of specific grounds prescribed in Rule 21 of the Passport Rules.

22. The Sindh High Court in the case of ***Shabana Noor Ahmed v. DG Immigration & Passports*** ***(PLD 2019 Sindh 456)***, held that the law laid down in relation to the EPC

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Ordinance with regard to the right to liberty and freedom of movement was fully applicable where an action had been taken to fetter such right under provisions of the Passport Act. It was held that, *"mere pendency of a criminal case is not sufficient justification for prohibiting a citizen from exiting Pakistan and for interfering with his Fundamental Right of freedom of movement enshrined in Article 15 of the Constitution."* The Sindh High Court also relied on the law laid down by the Shariat Appellate Bench of the Supreme Court in ***Federal Government of Pakistan v. Government of Punjab (PLD 1991 Supreme Court 505)***, wherein the proviso to Section 8(2) that permitted the requirement to issue notice to a citizen if his/her passport was being impounded for a period not exceeding four months to be declared repugnant to the injunctions of Islam.

23. The fourth aspect of Constitutional law relates to the presumption of innocence that attaches to a citizen unless proven guilty in accordance with law, and how such principle is to be been given effect in treating a citizen as a tax defaulter without prior adjudicatory proceedings. The question of whether criminal charges could be initiated against a taxpayer under provisions of the Sales Tax Act on the allegation that such taxpayer had claimed input tax on the basis of fake invoices and was consequently liable for tax fraud was considered by the Lahore High Court in ***Taj International (Pvt.) Ltd. v. FBR (2014 PTD 1807).*** The Lahore High Court found that no criminal charges could be brought against a taxpayer on the basis of an allegation that such taxpayer was liable for tax fraud without there being prior tax assessment proceedings that culminate in upholding a tax demand generated by the tax

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department, which determination supports the charge that the taxpayer is liable for tax fraud. It was held that it was only after determination of tax liability as a civil matter through assessment and adjudication that criminal prosecution could be initiated in a case of tax fraud. The tax department challenged the judgment of the Lahore High Court before the Supreme Court. The judgment of the Lahore High Court was upheld by the Supreme Court in Civil Appeals No.350 & 268 of 2016 by judgment dated 04.12.2024, reported as ***Directorate of Intelligence & Investigation-FBR v. Taj International (Pvt) Ltd & others (2025 SCP 235)***. While interpreting provisions of the Sales Tax Act, the Supreme Court held the following:

> *"Review of the penalties above, clearly shows that the measure of sentence is linked with the "amount or loss of tax involved." In fact, the above linkage, uses the tool of penalty as a mode of recovery of tax. Hence, criminalization under the Act goes beyond the pale of retribution and deterrence and appears to be principally focused on recovery of tax…it is settled law that recovery of tax is possible only after the tax has been duly assessed and the amount of "tax due" determined under the Act. Recovery under civil law is initiated once tax has been assessed through the civil adjudicatory process provided under the Act. Tax assessment becomes doubly necessary, when recovery stands criminalized and entails criminal consequences. Other than the penalties hinged on "amount or loss of tax involved," criminalization of recovery of tax is also evident from section 37A(4) of the Act. This provision permits compoundability of the offence if the amount of tax due and penalties as determined under the Act are paid at any stage of the criminal proceedings. Criminal mode of recovery, reinforces the requirement of prior assessment of tax liability under the Act…*

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> *Collective reading of sections 11, 25(5), 33, 37A and 72B of the Act indicates that the criminalization under the Act is principally to effectuate recovery or is being largely used to effectuate recovery. Two clear pointers are: dependence of fine on the "amount or loss of tax involved" and the window of compoundability available to the taxpayer who can pay the "amount of tax due along with such default surcharge and penalty as determined under the provisions of this Act." If the purpose was simple retribution and deterrence, there was no need to load the fine with the amount or loss of tax involved. However, if the fine under criminal prosecution is to be loaded with the amount or loss of tax, such a criminal construct must be prefaced with the mandatory requirement of assessment of tax through civil adjudication provided under section 11 of the Act. This precondition is the minimum constitutional requirement to ensure fair trial and due process under Articles 4 and 10-A of the Constitution.*
>
> *…the process of hauling up taxpayers and effecting recovery of self-determined amount of sales tax by the officer of the Inland Revenue is brutally unconstitutional."*

24. The Supreme Court concluded that, *"under the Sales Tax Act there is no provision of law which authorizes the tax officials to presume any tax liability in the absence of assessment proceedings and to proceed against a registered person or any other person within the supply chain."* The Supreme Court also warned that unless provisions of the Sales Tax Act are read in harmony with one another and are, *"invoked as per scheme of the law after assessments/adjudication of the amount of sales tax due, it can be abused by initiating criminal proceedings, including arrest of a registered person, on the mere allegation of tax fraud and default in payment of presumed tax*

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*liability which is yet to be determined through process of assessment or adjudication."* With the Supreme Court having settled that no criminal proceedings could be initiated on the basis of an allegation of tax fraud, a natural corollary of this principle would be that no other penalties can also be imposed on a citizen on the basis of an allegation that the citizen is liable for tax fraud without a prior determination having been made through the process of assessment or adjudication establishing tax fraud.

25. The placement of a citizen's name on the PCL, the ECL and the PNIL on the basis that a citizen is liable for tax fraud is in the nature of punishment that suspends the citizen's right to liberty, freedom of travel and equality guaranteed by Articles 9, 15 and 25 of the Constitution and is tantamount to suspending the civil rights of a citizen without affording him/her due process and fair trial guaranteed by Article 10A of the Constitution. Just as criminal proceedings cannot be initiated on the basis of allegations of tax fraud under provisions of the Sales Tax Act, no punishment can be imposed on a citizen on such allegations by suspending his right to liberty and freedom of travel under provisions of the ECL Ordinance, the Passport Act or in purported exercise of executive authority to place a citizen's name on the PNIL. This Court had issued notices to the Attorney General for Pakistan and the Advocate General for Islamabad under provisions of the Code of Civil Procedure to assist with questions of law in the instant matter. The learned law officers and the learned counsels for the respondents failed to identify the legal basis that clothes the PNIL with lawful authority. FIA Standing Order (No.02/2018) pursuant to which authority has been

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claimed to place names of citizens on PNIL lacks a statutory basis. It also does not reflect any objective criteria on the basis of which executive authority can be exercised to encumber the fundamental rights of citizens to liberty and freedom of travel, even if briefly. FIA Standing Order (No.02/2018) is ultra vires Articles 4, 9, 10A, 15 and 25 of the Constitution and in view of Article 8 of the Constitution, no executive authority can be claimed or exercised on its basis to create the PNIL or place a citizen's name on the PNIL.

26. The charge against the petitioner in the instant case is that he qualifies as a defaulter for purposes of rule 2(d) of the Exit Control Rules. Rule 2 of the Exit Control Rules lists the grounds available with the Federal Government to prohibit a person from proceeding to a destination outside Pakistan and rule 2(d) of the Exit Control Rules provides that a person can be so prohibited if he/she is a key Director of a firm, *"in default of tax or liabilities of not less than 10 million rupees."*

27. It is the case of the Federal Government that the petitioner is a defaulter under provisions of the Sales Tax Act and was therefore liable to be placed on the ECL in terms of rule 2(d) of the Exit Control Rules. The term defaulter is defined in Section 2(6A) of the Sales Tax Act and means, *"a person and in the case of company or firm, every director, or partner of the company, or as the case may be, the firm, of which he is a Director or partner or a proprietor and includes guarantors or successors, who failed to pay the arrears."* The term arrears is defined in Section 2(2A) of the Sales Tax Act as, *"in relation to a person, means, on any day, the sales tax due and payable by the person under this Act before that day but which has not yet*

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*been paid."* In holding that a person is a defaulter under provisions of the Sales Tax Act there must be a finding made after assessment and adjudicatory proceedings that a demand for sales tax due and payable remains outstanding against the person and is yet to be paid. In view of the law laid down by the Supreme Court in ***Taj International***, a person cannot be classified as a tax defaulter only on the basis of assumptions made by the tax department with regard to the applicability of provisions of the Sales Tax Act to the tax affairs of a person. The Sales Tax Act provides for an adjudicatory scheme and it is only once the tax assessment has been undertaken and a demand generated has been upheld during the adjudicatory process by a forum outside the hierarchy of the tax department, i.e. the ATIR, that a person can be deemed to be a defaulter and appropriate penal proceedings can be initiated against him under provisions of the Sales Tax Act. And it is only after such determination that any ancillary proceedings can be initiated against such taxpayer that have the effect of curtailing his fundamental rights, including an action in terms of rule 2(d) of the Exit Control Rules for placement of the taxpayer's name on the ECL or the PCL. Such power cannot be exercised on the basis of a presumption that pending adjudicatory proceedings or a criminal charge brought against a person, such person can be presumed to be a tax defaulter and subjected to curtailment of his fundamental rights till such time that he proves his innocence.

28. The fifth aspect of the jurisprudence on the State breaching the right to liberty and freedom of movement is the question of remedies. In ***Wajid Shamas-ul-Hassan***, the Lahore High Court all but declared that the provisions of EPC Ordinance,

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pursuant to which the freedom of movement was fettered by the Government was *ultra vires* the constitutional guarantees but restrained itself from issuing such declaration in view of the fact that the vires of the law had not been challenged in such case. In ***Mian Ayaz Anwar*** the Lahore High Court considered the case of a citizen whose name had been placed on ECL as he owed over Rs.100 million in liability and stayed its hand from declaring the statutory provisions and sub-statutory provisions pursuant to which the right to liberty and freedom of travel was being curtailed by the Government to be *ultra vires* the Constitution by reading down such provisions and holding that substantive and procedural due process requirements must be met by executive authorities before fettering such rights.

29. In ***Wasatullah Jafferi v. Ministry of Interior (PLD 2014 Sindh 28)*** the name of a citizen had been placed on the ECL on NAB's recommendation. The Sindh High Court, while striking down such action as being unconstitutional, imposed a cost of Rs.100,000/- on the delinquent officer on whose recommendation the right of the citizen had been breached.

30. The Lahore High Court, in the case of ***Jahangir Mehmood Cheema v. Gov. of Pakistan (PLD 2015 Lahore 301),*** dealt with a matter where determination as to the status of the petitioner being a defaulter was yet to be determined by court, the name of the petitioner was nonetheless placed in ECL on the behest of The Bank of Punjab who claimed that a sum of Rs.268 Million is recoverable from the petitioner's company of which he is a director. The Lahore High Court held that "*It is by now, an established principle of law that no one can be termed a "defaulter" unless declared so by a court of competent*

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*jurisdiction under the laws framed for the said purpose. It is an admitted fact that courts established under the Banking Laws are the sole authority to adjudicate upon the question of default in cases involving commercial loans. A perusal of the law relating to banks and customers i.e. Financial Institutions (Recovery of Finances) Ordinance, 2001 ("FIO") clearly indicates that special courts, with exclusive jurisdiction have been established to adjudicate disputes between the banks and customers. Unless such courts, after following the procedure provided in the law, adjudge a customer to be a defaulter and issue a decree against him, a customer cannot be deemed to be a defaulter. It is clear and obvious and has not been denied by other side that the suit filed by the bank is still pending and no determination has been made by the Banking Court relating to the status of the petitioners as a defaulter."*

31. Also, in the case of ***Dr. Joseph Wilson***, the allegation on the petitioner was that he had caused loss to the National Exchequer of Rs. 21 Million Rupees. However, this Court held that since the requirements of due process, inter alia, issuance of notice had not been complied with and the reference by NAB was yet to be filed, the placement of the name on ECL was arbitrary. The court also held that, *"[W]henever a reference is filed against the petitioner, the learned Accountability Court would be competent to direct that the petitioner's name be placed on the E.C.L."*

32. The law on the scope of a citizen's right to liberty and freedom of movement and travel as well as the right to due process and to be treated in accordance with law is well settled. It is also settled that the pendency of a criminal matter is an

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insufficient basis to place a citizen's name on any list fettering his right to liberty and freedom of movement, and innumerable judgments have been issued in cases where names of citizens have been placed on ECL on NAB's recommendation. Similarly, the obligation of the Ministry of Interior and Director General, Immigration and Passport, to uphold substantive and procedural due process rights of citizens before placing their names on ECL is also well settled. The question that remains is that of consequences that must flow to government officials/agencies that recommend the name of a citizen to be placed on ECL merely due to the pendency of a criminal matter against him/her and the liability of the official agency that acts on such a recommendation and places a citizen's name on ECL/PCL, curtailing his/her right to liberty, freedom of movement, due process, could not be treated arbitrarily. In relation to the fettering of such right under the Passport Act, the law was laid down by the Supreme Court in ***Amir Haider Khan*** in 1987, and the law in relation to the ECL was laid down by the Lahore High Court in ***Wajid Shamas-ul-Hasan*** in 1997. The principles of law have been reiterated over and over again, as has already been detailed above. The Lahore High Court has considered striking down the statutory provisions under which the fundamental rights of citizens are breached by executive functionaries but stayed its hand, exercising restraint, with the hope that the executive authorities of the state would take corrective action. That has not happened. And in case after case where a citizen's name has been placed on ECL, such as the present case, the same old arguments are rehashed, considered and rejected, with the citizen suffering the denial of his

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fundamental rights during the period when such rights remain suspended due to the action of executive authorities placing the name of the citizen on some NFL, while the executive functionaries liable for the unconstitutional and illegal act ultimately go scot-free.

33. It is evident that the denial of a citizen's right to liberty and freedom of movement is in itself a punishment. It is also a settled proposition that every individual is innocent until proven guilty in accordance with law. And in order for a citizen to be proven guilty, it is for the State to establish beyond reasonable doubt the guilt of the citizen. During the time that a citizen faces criminal charges, his/her fundamental rights remain intact, and cannot be denied on the basis of pending charges, the truth of which remains to be determined. During such period, the courts are under an obligation to strike a balance between the fundamental rights of the accused and the collective interests of the society, which balancing exercise is to be undertaken in a manner that is least restrictive of the fundamental rights. It is in performing such function that courts employ the doctrine of proportionality, but it is not in contention that the State cannot refuse to uphold the fundamental rights of a citizen on the presumption that he may be proven guilty in relation to an inquiry or trial that is underway.

34. In view of the above discussion in the facts of the present case, the petitioner could not be considered to be in default of tax or liabilities in terms of rule 2(d) of the Exit Control Rules, merely because RTO Quetta had formed an opinion that he was liable for sales tax fraud for illegally seeking income tax adjustment. And on the basis of such opinion, a penalty could

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not be inflicted on the petitioner in the form of curtailing his civil rights and liberties by placing his name on the ECL or PCL or PNIL pending determination of the fate of any criminal charge brought against him or adjudicatory proceedings initiated against him under provisions of the Sales Tax Act. The placement of his name on the ECL, the PCL and/or PNIL on the basis of allegations brought against him constituted colourable exercise of authority and was in breach of settled law on how a person's right to liberty and freedom of travel can be curtailed, as has been discussed above.

35. In placing the petitioner’s name on the ECL, PCL and the PNIL the officials of the Federal Government acted in breach of constitutional guarantees and provisions of the Passport Act and the Exit Control Ordinance and the Rules framed thereunder, which provisions have been unambiguously interpreted by the Superior Courts of Pakistan. In doing so the relevant officials have exposed themselves to action in terms of provisions of the Civil Servants (Efficiency and Discipline) Rules, 2020. The refusal of public officials to abide by the law, as interpreted by Superior Courts, is also tantamount to disobeying the command of the law and the Constitution. And in appropriate cases proceedings can also be initiated against such officials under provisions of Article 204 of the Constitution read with the Contempt of Court Ordinance, 2003. Further, to the extent that an aggrieved citizen is so minded, the curtailment of constitutionally guaranteed rights of a citizen without affording such citizen the right to due process and fair trial as guaranteed by Article 10A of the Constitution, also exposes the public officials to be sued for damages. Public officials are expected to be fiduciaries, who are

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endowed with the responsibility to apply the law to uphold its majesty and ensure that the citizen is afforded the protection of law and is treated in accordance with law as required by Article 4 of the Constitution. To employ provisions of the law as a persecutory device to arm-twist a citizen or bring pressure to bear upon a citizen for collateral purposes, and to conceive of powers vested in public officials to be exercised on behalf of the State as part of lawfare, transforms such public officials into malefactors liable to be proceeded against under the available provisions of law.

36. The manifestation of colorable exercise of authority by the Federal Government in the instant case stands highlighted by virtue of the judgment of the ATIR the case of ***MD Industries (Pvt.) Ltd.***, wherein the ATIR has declared that MD Industries Private Limited is not liable for tax fraud. While the adjudicatory process has given MD Industries Private Limited a clean chit of health, the petitioner has been burdened with an infringement of his fundamental rights that have remained suspended since the placement of the petitioner's name on the ECL and PCL, and such infraction can no longer be remedied and the petitioner cannot be made whole for his rights and liberties that the state has kept suspended. If so minded, the petitioner would be within his right to initiate appropriate proceedings to sue the state for damages under the law of tort.

37. For the reasons stated herein above, the petition is **allowed**. It is declared that the placement of the petitioner's name on the ECL, the PCL and/or the PNIL was tantamount to colorable exercise of authority in breach of provisions of the Passports Act, the Exit Control Ordinance and Articles 4, 9, 10A,

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15 and 25 of the Constitution. Such actions are declared to be of no legal effect. The Ministry of Interior is directed to ensure that the name of the petitioner is removed from the ECL, the PCL and the PNIL forthwith, and no fetters are placed on the rights of the petitioner to travel on the ground that he is liable for tax fraud, unless of course it is determined through the adjudicatory process provided under provisions of the Sales Tax Act that the petitioner is a defaulter.

**(BABAR SATTAR)**
**JUDGE**

This judgment has been signed and released on **14.11.2025.** Let the office notify the parties accordingly.

**(BABAR SATTAR)**
**JUDGE**

**Approved for Reporting**

Abdul Rahman Abbasi.

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