CITATION AWAITED

ORDER SHEET
ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT

W.P No.1081 of 2025

Qasim Bin Masood & others
v.
FIA through its DG, Islamabad, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	15.09.2025	Raja Rizwan Abbasi, Advocate for petitioner. Ms. Shaista Tabassum, AAG. Mr. Mohsin Afzal, A.D CCRC, Islamabad.

MUHAMMAD ASIF, J-. Through the instant writ petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the "**Constitution**"), the petitioners have called in question the action of Respondents Nos.1 & 2, whereby their names were placed on the Blacklist/Passport Control List ("**PCL**"), restraining them from travelling abroad; and have sought removal of their names from that list.

2. Succinctly stated facts are that the petitioners, being IT professionals and formerly employed with M/s Axact, Islamabad, were implicated in FIR No.56 dated 07.06.2015 registered under Sections 419, 420, 468, 471, 473, 109 and 34 PPC read with Sections 36/37 of the Electronic Transactions Ordinance and Section 4 of AMLA Act, 2010 with P.S. FIA Cyber Crime Circle, Islamabad. Initially they were admitted to bail, but were subsequently acquitted by the learned District & Sessions Judge (East), Islamabad, however, the acquittal appeal filed against their acquittal order, was partly accepted and matter was remanded for fresh decision, but in the post-remand proceedings, they were convicted. On filing of appeal, this Court, vide order dated 12.02.2025, suspended the conviction and sentence, and released the petitioners on bail.

3. When the petitioners attempted to travel abroad to

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perform *Umrah*, they were stopped at the airport and informed that their names had been placed on the Blacklist/PCL by Respondent No.2 (DG Immigration & Passport, Islamabad) on the recommendation of Respondent No.1 (FIA). Their representations to the concerned authorities for removal of their names remained unheeded; hence this petition.

During pendency of this writ petition, vide order dated 23.06.2025 this Court granted time to the learned counsel for the petitioners to file an appropriate application seeking permission to travel outside the jurisdiction of the Court during the pendency of the appeal, and adjourned the matter for today i.e. 15.09.2025. No such application was filed by the petitioners, hence, this court having no other option but to proceed and decide the petition on merits.

4. Learned counsel for the petitioner, *inter alia*, contends that impugned action of respondents, restraining the movement of petitioners is discriminatory and violative of the provisions of the Constitution, their fundamental rights have been jeopardized; act of respondents by placing their names on PCL/Blacklist is unwarranted, unlawful and illegal; that the conviction of the petitioners stands suspended by this Court and they enjoy presumption of innocence pending appeal; therefore treating them as convicts for the purpose of blacklisting is illegal, arbitrary and mala fide. Learned counsel further contends that neither any show-cause notice was issued, nor any speaking order was passed prior to placing their names in the PCL. The learned counsel accordingly prayed for the removal of the petitioners' names from the PCL/Blacklist.

5. Conversely, learned Assistant Attorney General representing the respondents contends that the petitioners were convicted of serious offences and their names were placed on the PCL in terms of Rule 22(2)(b) & (c) of the Passports Rules, 2021 on the recommendation of FIA. It is submitted that suspension of sentence does not amount to acquittal and until the appeal is finally decided the finding of guilt by the trial court subsists in

law; consequently the action of the respondents is taken to prevent flight and to protect public interest and national security. Thus, she prays for dismissal of the instant petition.

6. Arguments advanced by learned counsel for the petitioners as well as learned AAG have been heard and the record perused with their able assistance.

7. Respondent No.2 in parawise comments has stated that the names of the petitioners were placed on the PCL on 24.08.2018 on the recommendation of FIA, Islamabad conveyed vide letter dated 06.07.2018. It is specifically stated in the comments that such placement was made in terms of Rule 22(2)(b) & (c) of the Passports Rules, 2021.

8. Rule 22 of the Passports Rules, 2021 deals with the Passport Control List. The Rule contemplates two categories, Category "A" for persons involved in anti-state activities or whose travel is prejudicial to State interest, and Category "B" for persons refused passport facilities under the Rules or placed on recommendation of government agencies or departments. In this scheme the Federal Government is the repository of power to regulate entry and exit and the Division concerned and Directorate General are to prepare and maintain the PCL in accordance with the Rule.

9. It is found that the right to travel forms an essential part of the fundamental rights to life and liberty and can only be restricted under a valid law enacted in the public interest. Any restraint on movement must have lawful justification and cannot be imposed arbitrarily; executive discretion must be exercised fairly, reasonably and in good faith and within the bounds of law. Administrative instructions or policies cannot curtail constitutional rights beyond statutory authority, and mere pendency of criminal proceedings is not sufficient to prohibit movement; restrictions such as blacklisting must be applied sparingly, after application of mind, and must not be indefinite or disproportionate. This conclusion is anchored in *Federation of*

Pakistan v. General (Retd.) Pervez Musharraf (**PLD 2016 SC 570**), *Mian Muhammad Nawaz Sharif v. President of Pakistan* (**PLD 1993 SC 473**), *Pakistan Muslim League (N) v. Federation of Pakistan* (**PLD 2007 SC 642**), *Al-Jehad Trust v. Federation of Pakistan* (**PLD 1996 SC 324**), *Federal Government v. Ayyan Ali* (**2017 SCMR 1179**), and *Sheikh Shan Ilahi v. Federation of Pakistan* (**PLD 2023 Lahore 359**).

10. The case laws cited above are further amplified by other precedents which underscore the same principles i.e. the executive must not act mechanically on departmental recommendations; placement on an exit or passport control list cannot be automatic upon registration of an FIR or even upon pendency of proceedings; if a person is on bail, released or not a proclaimed offender, the authority must give cogent, specific reasons before curtailing his/her constitutional right to travel. Reference in this regard may be made to *Dada Amir Haider Khan* (**PLD 1987 SC 504**), *Wajid Shams-ul-Hassan v. Federation of Pakistan* (**PLD 1997 Lahore 617**), *Shabana Noor Ahmed v. DG Immigration & Passport* (**PLD 2019 Sindh 456**), *Sayed Zulfikar Abbas Bukhari v. Federation of Pakistan* (**PLD 2019 Islamabad 316**) and *Riaz Ahmed v. Government of Pakistan* (**PLD 2014 Islamabad 29**).

11. Applying these settled principles to the facts of the present case, the following salient features emerge from the record:

i. the petitioners' conviction and sentence were suspended by this Court vide order dated 12.02.2025 and they were released on bail;
ii. Respondent No.2 placed their names on the PCL on 24.08.2018 pursuant to a recommendation of FIA;
iii. no show-cause notice nor a speaking order explaining the grounds for blacklisting appears to have been issued to the petitioners prior to placing their names on the PCL; and
iv. Respondent No.2 has not shown that any fresh appraisal or periodic review of the petitioners' placement on the PCL was undertaken after the suspension order was passed by this Court.

12. It is correct that suspension of sentence does not *ipso facto* amount to acquittal; however, suspension neutralizes the operative effect of a conviction for the time being and enlivens the petitioners' right to be treated as persons entitled to procedural fairness. Even for persons who stand convicted, any preventive restriction on fundamental rights must have clear statutory backing and must be exercised after application of mind and by giving reasons. The Rules cannot be used in a mechanical fashion to perpetuate deprivation of a constitutional right without review and without the administrative authority stating cogent grounds. The absence of any record of reconsideration, of any fresh security assessment, or of any contemporaneous reasons why the petitioners should continue to be prevented from travelling, leads the Court to the conclusion that the placement on PCL was not the result of an exercise of reasoned discretion.

13. The respondents rely upon Rule 22(2)(b) & (c) of the Passports Rules, 2021 as the statutory basis for placement on PCL. Be that as it may, Rule 22 must be read in light of the Constitution and the principles elucidated by the Superior Courts. Where the rule is invoked the authority must show (i) that the case falls squarely within the categories enumerated in the Rule; (ii) that the decision was not taken mechanically, but after application of mind; (iii) that the restriction is proportionate to the mischief sought to be prevented; and (iv) that the person affected was given an opportunity to be heard, unless the urgency of the circumstance renders such hearing impracticable and then the authority must nevertheless record reasons for not giving such hearing. None of these safeguards are visible on the record before this Court in respect of the petitioners.

14. It is also material that Rule 22(1) contemplates that the Federal Government is vested with the power to regulate departure and entry and the Division concerned and Directorate General shall prepare and maintain the PCL; yet there is nothing on record to indicate that any approval by the Federal Government, where required, has been obtained in relation to

these entries, or that the competent Division applied its mind to the matter. For reasons of good governance and to avoid arbitrary exercise of power, entries on PCL cannot be made or maintained in a clandestine, mechanical and non-reviewable manner.

15. The respondents have not produced any material to show that the petitioners pose a continuing security risk, which cannot be addressed by less restrictive measures, for instance, by conditional travel permission, surrender of passports to the trial court, or by court-ordered restrictions tailored to ensure presence for trial. The record shows that the petitioners are on bail, their appeal is pending and their conviction is suspended; the principal rationale advanced in support of the PCL entry (fear of absconsion) has not been supported by evidence of any attempts to flee or of any threat to national security. In the absence of such material, continuing the bar on travel is disproportionate.

16. In the circumstances and for the reasons recorded above and in light of the authoritative pronouncements of the Hon'ble Supreme Court referred to earlier, I am of the view that the continued placement of the petitioners' names on the PCL/ Blacklist, without fresh reasons, without individual notice and without any periodic review following the suspension of their convictions, is arbitrary and without lawful authority. Such action imperils the fundamental rights of the petitioners guaranteed under Articles 4, 9 and 15 of the Constitution.

17. Resultantly, the instant writ petition is **allowed**. Placing of the names of the petitioners on the Passport Control List is declared to be unjustified, illegal, without lawful authority and of no legal effect. Respondent No.2 / Director General, Immigration & Passports, Islamabad is directed to remove the names of the petitioners from the PCL/Blacklist forthwith and, in any event, within one week from the date of receipt of this order. Respondent No.2 shall submit a compliance report before the Deputy Registrar (Judicial) of this Court upon removal of the names.

18. For future guidance, and to ensure conformity with the requirements of fairness and reasoned administrative action as laid down by the Superior Courts, Respondent No.2 and all subordinate authorities are directed that:

a) no person shall be placed on the PCL without a contemporaneous record of reasons showing application of mind;

b) wherever practicable a show-cause notice shall be issued before placing a person on PCL and an opportunity of hearing afforded;

c) where emergency action is taken without prior notice, reasons for omission of prior notice must be recorded in writing and the matter must be reviewed within a reasonable time; and

(d) periodic review of entries on PCL must be undertaken to ensure no person is kept on the list mechanically or indefinitely.

(MUHAMMAD ASIF)
JUDGE

APPROVED FOR REPORTING

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