CITATION AWAITED

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P No.2334 of 2025

Ijaz Ur Rehman

Vs.

The State, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	15.10.2025	Mr. Zafar Hussain, Advocate for petitioner. Ms. Sumaira Khursheed, State Counsel a/w Inspector Muhammad Umar Hayat, Islamabad Police.

MUHAMMAD ASIF, J-. Through this Writ Petition, filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the "**Constitution**"), the petitioner has assailed the order dated 29.05.2025 passed by the learned Additional Sessions Judge (West), Islamabad, in Criminal Revision Petition, and the order dated 21.04.2025 passed by the learned Judicial Magistrate, Section 30, Islamabad (West), in Case FIR No.41/24, whereby the application of the petitioner for acquittal under Section 249-A Cr.P.C was dismissed.

2. The essential facts giving rise to the present petition are that Respondent No.4, being the Director/Zonal Head of the National Database and Registration Authority ("**NADRA**"), lodged the aforementioned FIR under Sections 419,420,468,471 PPC & Section 14 of Foreigners Act,1946 at Police Station Kohisar, Islamabad, alleging that the petitioner, Ijaz Ur Rehman, is an Afghan national who had fraudulently obtained a Pakistani Computerized National Identity Card ("**CNIC**") by preparing forged documents. The petitioner was subsequently arrested and then granted post-arrest bail by the learned Judicial Magistrate, vide order dated 29.01.2024. The bail order notably recorded that the petitioner's

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CNIC was available on record and had not been blocked or cancelled, and that the case fell within the ambit of "further inquiry.".

3. During the pendency of the trial, the petitioner moved an application for *superdari* of his original CNIC. The learned Judicial Magistrate, vide order dated 24.09.2024, directed the petitioner to appear before the Regional Verification Board of NADRA. In compliance with the court's direction, the petitioner appeared before the Board. The Board, after a thorough examination of the petitioner's family tree, archival records, and processing history, issued its conclusive report dated 01.10.2024, which reads as under:-

> ***"Subject: <u>Court Case Ejaz Ur Rehman VS Chairman NADRA</u>***
> ***Ref: RHO/ISB/Legal/Court-Main-1 Dated 26th Sep 2024***
>
> ***1. Petitioner Ejaz Ur Rehman bearing CNIC No. 3520254384821 appeared before the Regional Verification board on dated 24-09-2024 as per directions of Honorable court in response to an FIR registered against him by NADRA as per Section 30. Applicant confessed that he visited NSC Blue area with an agent for modification of address for going abroad. He gave Rs 30,000/- to an agent for address change.***
>
> ***2. During Board proceeding it reveals that petitioner Ejaz ur Rehman Paternal grandmother Nargis Bibi is CNIC / MNIC holder 35202-2141029-0 (265-34-167986) holder. The record of given MNIC is verified from archive record and issuance of 1974 Family linkage of Petitioner with his father and grandmother is established through NADRA available tools i.e NIS family tree and processing history.***
>
> ***3. Based on above mentioned facts, Board has decided to clear the applicant."***

4. Consequent to this definitive report, the learned Judicial Magistrate allowed the *superdari* application vide order dated 02.10.2024, specifically noting as under:-

> ***"Report from NADRA has been received according to which the Board has cleared the petitioner as family linkage of petitioner with his father is established... SHO/IO concerned is directed to handover CNIC, death certificate and FRC to the petitioner after due verification."***

5. Based on this exonerating report from the very authority that had initially raised suspicions about his nationality, the petitioner moved an application under Section 249-A Cr.P.C. before

the learned Judicial Magistrate, contending that the charge against him had become groundless and there was no probability of his conviction. This application was dismissed by the learned Judicial Magistrate, vide order dated 21.04.2025. The operative portion of the impugned order reads as under:-

> ***"4. Perusal of record reveals that the accused / petitioner is specifically nominated in the FIR that he is Afghan National residing in Pakistan without any lawful permission. Besides, after thorough investigation, the accused has been placed in column No. 3 of the Challan. Further, Charge is yet to be framed and prosecution has yet not been granted sufficient opportunities to produce evidence. It is the stance of petitioner that petitioner is Pakistani National having a valid CNIC, therefore, there is no possibility of conviction of accused in the instant case. As par settled law, any accused can be acquitted u/s 249-A Cr.P.C. when no material is available on file to connect the accused with commission of the offence or there is no probability of conviction of the accused even if entire prosecution evidence is recorded. However, in the instant matter, it is premature to hold at this stage that there is no possibility /probability of conviction of accused in the instant case. Hence, application u/s 249-A CrPC filed by the accused / petitioner (Ijaz Ur Rehman son of Nayyer Jan) is hereby dismissed."***

6. Aggrieved by this dismissal, the petitioner preferred a Criminal Revision before the learned Additional Sessions Judge, which was dismissed, vide the second impugned order dated 29.05.2025. The revisional court, while acknowledging the NADRA report, surprisingly introduced a new dimension to the case. The relevant portion of the revision order states as under:-

> ***"4. Main contention of learned counsel for petitioner is that petitioner is not afghan national and certificate has been issued by NADRA. It is true that record of NADRA states that petitioner is CNIC holder which was verified from archive record and that family linkage of petitioner with his father and grandmother was established through NADRA available tools but the fact remain that petitioner tried to change his address fraudulently through two agents. In this way, this allegation of submitting fake address is still available against petitioner so, it cannot be said that charge against petitioner is groundless and there is no probability of accused being convicted. Hence, impugned order of learned trial court does not suffer from any illegality or irregularity."***

7. Learned counsel for the petitioner argues with vehemence that the impugned orders suffer from a patent error of law and a failure to exercise jurisdiction. He contends that the NADRA Verification Board's report is a conclusive piece of

evidence that completely demolishes the foundational allegation of the FIR. He maintains that once the issuer of the document itself certifies its authenticity and the holder's citizenship, the essential ingredients of the alleged offences vanish, rendering the charge groundless. He, thus, prays for the acceptance of the instant petition and the acquittal of the petitioner.

8. Conversely, the learned State Counsel, while fairly admitting the existence and contents of the NADRA report, supports the impugned orders and argues that the matter should proceed to trial where the prosecution can test the evidence. She submits that the issue of fraudulent address modification survives and warrants a full-fledged trial.

9. I have heard the learned counsel for the petitioner and State Counsel at some length and have perused the available record with their able assistance.

10. The petitioner had sought his acquittal from the learned Trial Court u/s 249-A Cr.P.C. For ready reference, Section 249-A is reproduced as under:-

> **249-A. Power of Magistrate to acquit accused at any stage**: Nothing in this Chapter shall be deemed to prevent a Magistrate from acquitting an accused at any stage of the case if after hearing the prosecutor and the accused and for reasons to be recorded, he considers that the charge is groundless or that there is no probability of the accused being convicted of any offence.

A plain reading of the above provision reveals that the legislature has imposed no embargo on an accused to seek acquittal at any stage of the case. The only prerequisites are the hearing of the parties and the recording of reasons, leading to a singular conclusion that the charge is groundless or there exists no probability of conviction. If the trial court reaches to the conclusion that the charge against the accused is groundless or there is no probability of accused being convicted of any offence, he shall be acquitted of the charge through an order in which such reasons have to be recorded for reaching to the conclusion that charge(s) against

the accused is/are baseless. There is no cavil with the proposition that powers under Sections 249-A and 265- K Cr.P.C available to the learned Trial Court are similar to powers of High Court u/s 561-A of Cr.P.C.

11. The scope and object of this provision, and its sister provision Section 265-K Cr.P.C., have been authoritatively delineated by the august Supreme Court in a number of judgments. In the case of *Ahmed Yousaf vs. The State and another* **(PLD 2024 Supreme Court 273),** the august Supreme Court of Pakistan held that the words "any stage" include stages before or after the framing of the charge, and the exercise of this power is mandatory to prevent an abuse of the process of the court. The relevant excerpts from the said judgment are reproduced below for expediency:-

> ***"3. The Code has granted an inherent jurisdiction by virtue of sections 249-A and 265-K to the trial courts, as the case may be, to acquit any or all accused at any stage of the judicial proceedings for reasons to be recorded, after providing an opportunity of hearing to the parties. The words "any stage" used in both the sections include the stages before or after framing of the charge or after recording of some evidence. Such power can only be exercised where the Court is of the opinion that no charge could be framed because of lack of jurisdiction; because the material available before it is insufficient for the purposes of constituting an offence; that if charge is framed, but the Court considers it to be groundless and to allow the prosecution to continue with the trial would amount to an abuse of process; or that in all circumstances, where there is no probability of conviction of the accused, even after a full-fledged trial. Thus, if circumstances for exercise of inherent powers exist, the Court must use such powers at any stage of the proceedings on its own or upon an application by the accused... The power assigned to the Courts by the legislature is to avoid the abuse of process of the Court; to protect the integrity of the criminal justice system; to safeguard a person involved in the case from the agony of a purposeless, malicious, and frivolous criminal prosecution; or otherwise, to secure the ends of justice. The exercise of the inherent powers is mandatory in nature, therefore, any departure therefrom would be a violation of the substantive provisions of law and would prejudice the interests of the accused, which is an illegality."****

In the said judgment, the Supreme Court further elaborated on the mandatory nature of these provisions:-

> ***"If the Court considers that the available material is sufficient to proceed with the trial and refuses to quash the judicial proceedings, it does not preclude the Court from exercising its inherent power subsequently after recording some evidence or***

> ***surfacing any material for the purpose of quashing the proceedings. However, the exercise of such power by the Courts must be in exceptional circumstances, with great caution and by applying its mind judiciously."***

The Supreme Court also made significant observations about the abuse of process:-

> ***"The Courts instead of becoming an apparatus for malicious and purposeless judicial prosecution by entertaining baseless and frivolous complaints must exercise their powers in accordance with law, without fear and favour. If the Courts overlook such constitutional mandate and fail to exercise their inherent powers, it will harm the integrity, impartiality, and independence of our criminal justice system. It will undermine and erode the public trust and confidence in our Courts."***

12. Likewise, in the case of *Niaz Ahmed and another v. Aijaz Ahmed and others* **(PLD 2024 Supreme Court 1152)**, the Supreme Court provided an exhaustive analysis of the standard of "no probability of conviction" under Section 265-K Cr.P.C., which is identically applicable to Section 249-A. The Court elucidated: *"The expressions 'consider' and 'no probability of conviction' within the provision are crucial… The word 'probability' means the quality or state of being probable; the extent to which something is likely to happen or be the case. Section 265-K of the Cr.P.C is designed to prevent unnecessary trials when a conviction is unlikely. Thus, available evidence, whether presented or pending, must be carefully evaluated to assess the possibility of conviction. Evidence must be thoroughly examined rather than just briefly reviewed hence conscious application of judicial mind is mandatory for assessment of incriminating material collected during the course of investigation in order to test the same on the touchstone of 'probability'."*

13. In the case of *Niaz Ahmed* (Supra) the Supreme Court further crystallized the grounds that establish "extraordinary circumstances" warranting acquittal before the conclusion of a full trial. These include, *inter alia*:

> (**i**) that even if the facts alleged by the prosecution are taken to be true on their face value, they do not make out/constitute the commission of any offence by the

accused;

(**ii**) that there is no evidence or incriminating material supporting the alleged offence;

(**iii**) the evidence gathered is insufficient for a conviction, even if presented at trial.

14. Guided by the above principles enunciated by the August Supreme Court, the case at hand must be examined in light of the settled parameters governing an acquittal under Sections 249-A of the Cr.P.C. The entire prosecution rests upon a single foundational pillar, that the petitioner, being an Afghan national, fraudulently obtained a CNIC. It is, however, an admitted position that the NADRA Verification Board, which is the supreme statutory authority responsible for the verification and authentication of national identity, has categorically declared through its report dated 01.10.2024 that the petitioner is a genuine citizen. This report is not a mere opinion but a conclusive and authoritative finding rendered by the very organization that initiated the criminal process. Since this determination emanates from the complainant itself, it effectively dismantles the very foundation of the prosecution case, leaving no probability of conviction within the contemplation of law.

15. The legal consequences are inescapable. The offence under section 14 of the Foreigners Act is contingent entirely upon the person being a "foreigner," a status conclusively negated by NADRA. Similarly, the offences of forgery and cheating under the PPC are predicated on the document being forged and the identity being fabricated. When the issuer of the document certifies its authenticity, the elements of forgery and cheating evaporate. This case squarely falls within the "extraordinary circumstances" outlined in the case of *Niaz Ahmed* (Supra). Firstly, even if the prosecution's initial allegation is taken as true, the subsequent NADRA report conclusively proves it false, meaning the facts, as now conclusively established, do not constitute the commission of

any offence. Secondly, with the core allegation eviscerated, there remains no credible or incriminating material to support the charges of forgery, cheating, or being a foreigner.

16. The reasoning adopted by the courts below cannot sustain legal scrutiny. The learned Magistrate's finding of "prematurity" is in direct contravention of the Supreme Court's clear dictum in *Ahmed Yousaf* (Supra) that such power can be exercised "at any stage." By refusing to undertake the "careful evaluation" of the conclusive NADRA report as mandated in the case of *Niaz Ahmed (Supra)*, the learned Magistrate fell into error.

17. The learned Additional Sessions Judge compounded this error by resurrecting the peripheral issue of a "fraudulent address change." This aspect was merely a contextual detail in the FIR's narrative and was never the substance of the charge. Even if taken at its highest, the alleged use of an agent for an address change, without any evidence of forgery of the underlying identity, does not remotely constitute the serious offences of forgery and cheating under the PPC. This speculative reasoning is *de hors* the record and legally untenable.

18. For the reasons discussed above, it is manifestly clear that the charge against the petitioner is groundless. The sole incriminating premise has been conclusively demolished by the state's own primary authority. To compel the petitioner to endure a protracted trial in the face of such exonerating evidence would be a travesty of justice, a sheer misuse of the process of law, and a wastage of the court's precious time. The petitioner has already suffered a lot since lodging of FIR in question. Resultantly, while exercising inherent jurisdiction conferred upon this Court u/s 561-A Cr.P.C, this petition is **allowed**. The impugned order dated 29.05.2025 passed by the learned Additional Sessions Judge (West), Islamabad, and the impugned order dated 21.04.2025 passed by the learned Judicial Magistrate, Section 30, Islamabad (West) to the extent of dismissing the application of the petitioner under Section 249-A Cr.P.C, are hereby **set aside**. The application

filed by the petitioner under Section 249-A Cr.P.C. is **allowed**, the proceedings in FIR No.41/24 pending before the learned Trial Court are quashed, and the petitioner, *Ijaz Ur Rehman S/O Nayyer Jan*, is acquitted of the charge.

(MUHAMMAD ASIF)
JUDGE

Approved for reporting

JUDGE

SHOAIB
15.10.2025