

IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No.D-2741 of 2025

[Mushtaq Ahmed v. Federation of Pakistan and others]

Before;

Mr. Justice Zulfiqar Ali Sangi;

Mr. Justice Nisar Ahmed Bhanbhro.

Petitioner : *Mushtaq Ahmed through M/s. Amanullah and Ahsanullah Khan, Advocates.*

Respondents 1 to 4 : *through Mr. Muhammad Akbar Khan, Assistant Attorney General.*

Date of Hearing : *31.07.2025.*

Date of Order : *31.07.2025*

J U D G M E N T

Nisar Ahmed Bhanbhro, J. Through instant petition, the petitioner has claimed the following reliefs:

- a) Direct the Respondents to confirm whether any adverse record, travel ban, or blacklist entry exists against the petitioner.*
- b) Direct the Respondents to remove the Petitioner's name from Exit Control List, Passport Control List, Provisional National Identification List, Blacklist, and cancel his red warrant, if any.*
- c) Direct the Respondents to ensure removal of any remaining restrictions, and facilitate the unimpeded travel of the Petitioner in accordance with law.*

2. Succinctly stated, the facts of the Petitioner's case as averred in the Petition are that the National Accountability Bureau (NAB) filed Reference No 08 of 2021 Re "The State Versus Asif Ali Zardari and others" before Accountability Court – III Islamabad (Trial Court), wherein Petitioner was nominated as one of the accused. Petitioner at the time of filing reference was residing abroad due to personal exigencies. He was shown as accused in the list of absconders. Learned Trial Court adopted due course of law to procure attendance of Petitioner, but nothing remained in the knowledge of Petitioner. During the course of said proceedings, Petitioner's name was placed on the Exit Control List (ECL), while red warrants were also issued against him. Petitioner voluntarily returned to Pakistan to face the trial and has since surrendered before Learned Trial Court. He has been regularly attending the proceedings and remains compliant with all court directions. Learned Trial Court, upon reassessment of the material, issued directions vide order dated 14.03.2024 to unblock Petitioner's CNIC, remove his name from ECL,

de-freeze his bank accounts & cancel the red warrants previously issued. Those directions were reaffirmed by National Accountability Bureau's communication dated 27.08.2024. Subsequently, the Ministry of Interior through a formal Memorandum dated 18.10.2024, directed the Respondents No.2 to 4 to remove Petitioner's name from ECL as confirmed by FIA, but his name was not yet removed from Interpol List and Passport Control List (PCL). Hence this petition.

3. On notices, Respondent No 2 (Director General FIA) and Respondent No 4 (Director FIA) filed joint reply, wherein it was stated that the name of the Petitioner as per latest report of FIA Integrated Broader Management System (IBMS) at Jinnah International Airport Karachi dated 19.07.2025 was already removed by the concerned authority from ECL on 18.10.2024 but his name was included in PCL and Interpol List, and action in that regard was required on the part of Respondent No 3.

4. The Director General Immigration & Passports / Respondent No 3 filed separate reply, wherein it is stated, that the name of the petitioner was placed on PCL on 28.11.2022 on account of his due to illegal entry in Turkey followed by deportation, as conveyed by the Deputy Consul General/HOC, CG of Pakistan, Istanbul vide its letter No. Con-3-6/2020 (September-2022) dated 05.10.2022. Petitioner's name was placed on PCL as per provisions contained in Rule 21(1), 22(2)(b) & (c), 22(4) and Rule 23(2) of the Passports Rules 2021(PR 2021). The involvement of the petitioner in such undesirable activities was a source of defamation for the country, and a contributory element to factors which create employment hurdles for overseas Pakistani diaspora. It is further contended that the name of the petitioner will be considered for removal from "PCL" by the Review Committee upon completion of the stipulated period i.e. five years as per rules.

5. Mr Ahsanullah Khan Learned counsel for the petitioner argued that the name of the Petitioner was placed on ECL, PCL and Interpol List pursuant to the directions of Learned Trial Court in reference No 08 of 2021. Petitioner surrendered before Learned Trial Court and filed an application for removal of his name from travel ban which was granted vide order dated 14.03.2024 and directed the Respondents to remove his name from ECL and cancelled the red warrants. He contended that pursuant to the directions of Learned Trial Court, the Respondent No.1 vide office memorandum dated 18.10.2024 removed his name from ECL, however, the Respondents No. 2, 3 & 4 have long been single-handedly targeting the Petitioner by maintaining his name in adverse lists without any legal authority. He further contended that the Petitioner was not deported from Turkey but when he came to know about filing of reference, placing of his name in ECL and inactivation of passport, he approached Consulate General of Turkey, showing his willingness to return to Pakistan and face trials of the cases instituted against him, on his

request he was issued Emergency Travel Documents (ETD) by the Competent Authority. He further argued that despite of clear and binding instructions from the Respondent No.1 and judicial orders from Learned Trial Court, the Petitioner continues to face unjustified restrictions in travelling abroad. This continued interference with his liberty is unwarranted, without lawful justification, and in contravention of the Constitution of Pakistan and are tantamount to violation of fundamental rights of the Petitioner as to the freedom of movement. He prayed for allowing this Petition.

6. Mr Muhammad Akber Khan Learned Assistant General for Pakistan controverting the submissions of Learned Counsel for the Petitioner contended that the name of the Petitioner was included in the ECL and Interpol List on the directions of Trial Court, but his name was entered in PCL due to his illegal travel history to Turkey which earned bad name for the Country. The Petitioner was involved in criminal activities and facing trial under the charges of corruption and corrupt practices and if his name is removed from PCL, he may abscond away. He contended that the Petition was not maintainable as an alternate and adequate remedy by way of appeal before Review Committee was available under the law for the relief claimed in the instant Petition. He prayed for the dismissal of instant petition.

7. Heard arguments, perused the material available on record

8. The Contention of the Respondents' Counsel that the Petition under article 199 of the Constitution was not maintainable in presence of the alternate remedy available under PR 2021 to file a review petition before Review Committee. Perusal of Rule 22 envisaged that the Ministry of Interior can place the name of any person in the PCL by exercising powers conferred under Rule 22 of Passports Rules 2021 under category A and Category B for a period of five years for refusal of the passports. Category A for the persons involved in anti-state activities and category B for the persons involved in other activities. In both the categories the names of those persons are placed who have been refused passport facilities. Rule 22 reads 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 (3) There shall be the following Review Committees for category „A“ and „B“ respectively, comprising:

(a) Review Committee for Category „A“: 1. Additional Secretary of the Division concerned 2. Director General Chairman Member 3. Representative of Security Agency 4. The dealing Deputy Secretary of the Division concerned Member 5. The dealing Section Officer of the Division concerned Member cum Secretary

(b) Review Committee for Category „B“: 1. Director General 2. Chairman Representative of Directorate of Intelligence Bureau 3. The dealing Deputy Secretary of the Division concerned Member, (Member) 4. Representatives of Security Agencies Member 5. Assistant Director or Deputy Director of Directorate General Member cum Secretary.

(4) In case a person falls under rule 21, and a passport already exists in his name in the database of Directorate General, such passport shall be inactivated to avoid issuance of subsequent passport and placed on the Integrated Border Management System (IBMS) for refusal of immigration services. Immigration officer shall impound passport of such individual and forward it to the Directorate General till delisting from the IBMS category. (5) A foreigner may be placed on foreigners control list (FCL) for restricting visa issuance and extension, on the request of Security Agencies or on the orders of the Division concerned.

9. Bare reading of the provisions of Rule 22 makes it clear that names of the persons can be placed under PCL under category A and B for a period of five years. A Review Committee to review the decisions for placing the names of persons under category A and B has been formulated under the law having composition of various agencies / representatives under the Chair of Additional Secretary for Category A and Director General, Immigration & Passports for Category B. The Review Committee is empowered to consider cases for the omission of name of any person from such list before the normal period of five years. This Rule clearly provides a remedy of appeal and review to the aggrieved, in such an eventuality, it is always appropriate that aggrieved person should first prefer an appeal or review if available under the law instead of invoking the Constitutional jurisdiction of this Court. The Writ jurisdiction of this Court is an extraordinary remedy and cannot be invoked as panacea for all grievances, particularly where an equally efficacious, alternative, and adequate statutory remedy exists. The doctrine of exception of remedies operates as jurisdictional bar precluding litigant from resorting to Constitutional remedies under Article-199 of the Constitution without first availing themselves of a statutory mechanism expressly provided by law. The underlying rationale of this doctrine is to prevent litigants from circumventing established statutory frameworks thereby ensuring that the extraordinary writ jurisdiction of the High Court is not diluted into an ordinary appellate forum.

10. The theory of an alternative remedy under Article-199 of the Constitution hinges upon two core considerations substantive sufficiency and comparative efficacy. A remedy cannot deem adequate if it fails to provide relief matching the nature and extent of the grievance. The doctrine of exception in constitutional intervention remains permissible in two scenarios, firstly; for the structural absence or substantive nullity of alternative remedies and secondly; the extraordinary circumstances where normally adequate remedies prove insufficient due to case specific factors. The exception doctrine operates as a narrowly tailored, requiring compelling justification to prevent abuse while ensuring access to justice when statutory channel fundamentally fail. Where the statutory procedure of obtaining relief proves unduly cumbersome, or where the attendant delay and expense would either render the alternative remedy inefficacious or defeat its very purpose then exercise of extraordinary jurisdiction under Article-199 of the Constitution can be invoked.

11. Careful examination of Rule 22 brings a prompt query in the mind that Additional Secretary Ministry of Interior in the case of Category A and Director General of Passports and Immigration in the case of Category B are empowered to place the names of persons under PCL. For the purposes of periodical review of the names of the persons placed in PCL and in case of an appeal preferred by an aggrieved person, the Review Committee headed by the same persons have been formulated. This formulation of the

Review and Appeal forums offends the well settled notion of law that “No one can become the judge of own cause”, but under the provisions of Rule 22 Additional Secretary and Director General Immigration and Passports have been appointed as the judges of their own cause. For this sole reason the remedy of review and appeal provided under Rule 22 of PR 2021 cannot be deemed to be an adequate and efficacious, therefore, the actions taken by the respective authorities are always amenable to judicial review under the writ jurisdiction of this Court conferred under article 199 of the Constitution.

12. In the case in hand, the name of the Petitioner is borne on the PCL on account of his alleged entry in Turkey, he was already in possession of the passport which was rendered inactive pursuant to the placement of his name under ECL, therefore, an action under Rule 21 of PR, 2021 was initiated. Rule 22(4) provided for placing the name of a person on PCL when he is accused of violating the provisions of Rule 2. The name of the person is included under the IBMS. The provisions of Rule 22 provide a remedy of appeal before Review Committee, when the name has been placed in PCL under category A and B but did not provide any remedy of appeal or review when the name is placed on PCL under sub-Rule 4 of Rule 22. Record further transpired that the Petitioner has approached the Respondents time and again by filing applications (available at page 29) for removal of travel restrictions but without fruits. Since the name of the Petitioner has been placed under PCL by the Competent Authority in terms of Rule 22(4) and the said authority comes within the definition of a person discharging its functions in connection with the affairs of Federation therefore actions on the part of the authority were amenable to judicial review of this Court in term of the powers conferred under article 199 of the Constitution, even otherwise the issue in the instant petition involved the question of fundamental rights of the Petitioner guaranteed under articles 4, 9, 10 – A and 15 of the Constitution and powers of this Court to seek enforcement of fundamental rights have been made abridged. The contention of Learned AAG, for Pakistan stands repelled and writ Petition under article 199 of the Constitution seeking judicial review is held to be maintainable against the action of authority taken under Rule 22 of PR 2021.

13. This principle has been inevitably affirmed by the Hon'ble Supreme Court in case of Dr. Sher Afgan Niazi v. Ali S Habib reported as 2011 SCMR 1813 wherein Honorable Apex Court has laid principles to invoke writ jurisdiction of this Court, it was held as under:

“9. The learned High Court will have to consider in each case the following tests to be applied to determine the adequacy of the relief:--

(i) If the relief available through the alternative remedy in its nature or extent is not what is necessary to give the requisite relief, the alternative remedy is not an "other adequate remedy" within the meaning of Article 199.

(ii) *If the relief available through the alternative remedy, in its nature and extent, is what is necessary to give the requisite relief, the 'adequacy' of the alternative remedy must further be judged, with reference to a comparison of the speed, expense or convenience of obtaining that relief through the alternative remedy, with the speed, expense or convenience of obtaining it under Article 199. But in making this comparison those factors must not be taken into account which would themselves alter if the remedy under Article 199 were used as a substitute for the other remedy.*

(iii) *In practice the following steps may be taken:-*

(a) *Formulate the grievance in the given case, as a generalized category;*

(b) *Formulate the relief that is necessary to redress that category of grievance;*

(c) *See if the law has prescribed any remedy that can redress that category of grievance in that way and to the required extent;*

(d) *If such a remedy is prescribed the law contemplates that resort must be had to that remedy;*

(e) *If it appears that the machinery established for the purposes of that remedy is not functioning properly, the correct step to take will be a step that is calculated to ensure, as far as lies in the power of the Court, that that machinery begins to function as it should. It would not be correct to take over the function of that machinery. If the function of another organ is taken over, that other organ will atrophy, and the organ that takes over, will break clown under the strain;*

(f) *If there is no other remedy that can redress that category of grievance in that way and to the required extent, or if there is such a remedy but conditions are attached to it which for a particular category of cases would neutralise or defeat it so as to deprive it of its substance, the Court should give the requisite relief under Article 199;*

(g) *If there is such other remedy, but there is something so special in the circumstances of a given case that the other remedy which generally adequate, to the relief required for that category of grievance, is not adequate to the relief that is essential in the very special category to which that case belongs, the Court should give the required relief under Article 199.*

If the procedure for obtaining the relief by some other proceedings is too cumbersome or the relief cannot be obtained without delay and expense, or the delay would make the grant of the relief meaningless this court would not hesitate to issue a writ if the party applying for it is found entitled to it, simply because the party could have chosen another course to obtain the relief which is due." (Ibrahim T.M. Ltd. v. Federation of

Pakistan PLD 1989 Lah. 47, Allah Ditta v. Muhammad Saeed Vattoo PLD 1961 Lah. 479, Shamas Din and Bros. v. Income-tax and Sales Tax Officer PLD 1959 Lah. 955, Khaliq Najam Co. v. Sales-Tax Officer PLD 1959 Lahore 915).”

14. Adverting to the issue under challenge, the scanning of the record revealed that Petitioner was nominated as accused in Reference No 08 of 2021, and shown in the list of absconders. The Petitioner was reported residing abroad therefore the proclamation issued under section 87 and 88 of CrPC was issued. When Petitioner failed to surrender, Learned Trial Court vide order dated 09.09.2021 directed the authorities concerned to block CNIC, freeze bank accounts, place name on ECL, and issue red warrants for arrest of the Petitioner. Record further revealed that Petitioner surrendered before Learned Trial Court on 27.03.2023 and has been in attendance since then while on bail and without any complaint of misuse of concession. Petitioner filed an application for removal of his name from ban lists, Learned Trial Court after hearing the parties allowed the application vide order dated 14.03.2024. Operative part of the order reads as under:

“Perusal of the record goes to evince that when the instant reference was investigated and filed in the Court, the Petitioner was abroad and he was served upon his given residence in Pakistan. The exact address of the accused has also not been reflected in the sate of I.O Ahmed Saeed Wazir, Deputy Director NAB, which he got recorded on 09.09.2021. Therefore, it cannot be said that the proclamation of the accused was executed in accordance with law. The accused has already surrendered before the Court with the assurance that he would appear before the Court on each and every date of hearing and in such eventuality especially where the non-bailable warrants of the arrest of the accused have already been cancelled by the predecessor Court, there seems no necessity to leave the Petitioner under jeopardized condition unnecessarily. Virtually the order passed on 09.09.2021 has become infructuous after the passage of order dated 27.03.2023 cancelling the non-bailable warrants of arrest of the accused/Petitioner.

For what has been discussed above the application in hand stands accepted and disposed of accordingly. Resultantly, the NAB is directed to get the CNIC of the Petitioner unblocked, get his name removed from ECL, get his account be de-frozen, get his red warrant of arrest cancelled accordingly.”

15. Perusal of the reply filed by the FIA reflected that order of the Learned Trial Court to the extent of unblocking of CNIC, de-freezing of bank accounts, and removal of name from ECL was implemented but his name still existed in the PCL and Interpol list.

Since the name of the Petitioner was placed on Interpol List in compliance to the proclamation issued under section 87 & 88 CrPC, and upon arrival and surrender of Petitioner before Learned Trial Court, the red warrants issued for his arrest became automatically infructuous because the purpose of issuance of Red Warrants / Red Notices was to effect the arrest of the Petitioner through the assistance of the International Police (Interpol), and Petitioner has already surrendered before Learned Trial Court, therefore the presence of name of the Petitioner on the Interpol List is not required any more and Ministry of Interior should have done the needful for the removal of his name from Interpol List on his surrender before Learned Trial Court.

16. Now, PCL remains the question for adjudication of this Court. Per contention of the Respondent No 3 on receipt of the report from Consulate General of Pakistan in Istanbul, Turkey dated 05.10.2022 that the Petitioner was issued ETD for travelling back to Pakistan, the name of the Petitioner was placed on PCL on accusation of his illegal entry in Turkey in the month of September 2022.

17. The careful perusal of the rule 22 of PR 2021 evinced that two different categories have been set forth for inclusion of the name of a person under PCL. Category A for the persons accused of anti-state activities and Category B for the persons other than those involved in anti-state activities. The Petitioner is not accused of involvement in anti-state activities; his name has not been placed under category A or B because a passport already stands issued in his name. his passport has been inactivated as his name was born on ECL. Under sub rule 4 of Rule 22 the name of a person is placed on PCL for violation of Rule 21 (1) of PR 2021. For the sake of reference rule 21 PR 2021 is reproduced below

21. Refusal of passport. *A citizen of Pakistan may be refused issuance of passport for the time being on any of the following grounds, namely:*

- (a) on the orders of courts or tribunals;*
- (b) a minor being taken out of Pakistan against the wishes of the legal guardian;*
- (c) a person, who is placed on Provisional National Identification List (PNIL) and is likely to flee the country to evade prosecution in a criminal or other offence;*
- (d) a deserter or delinquent of Government service recommended by respective department;*
- (e) a person whose name exists on exit control list (ECL);*
- (f) a person wanted by the International Criminal Police Organization*
- (g) a person who is likely to engage abroad in activities prejudicial to the sovereignty, security or integrity of Pakistan;*
- (h) a person whose presence abroad is detrimental to the friendly relations of Pakistan with any other country;*

(i) a person whose presence abroad, in the opinion of the Federal Government, is not in the public interest;

(j) a person involved in offences punishable under sections 4 and 6 of the Act;

(k) a person who obtained one or more CNICs or passports fraudulently on fake identities;

(l) a person previously deported from abroad on account of undesirable activities or illegal entry or criminal charges;

(m) upon receipt of report from the concerned authority(ies), i.e. FIA, ANF, Customs, IB, Coast Guards or Border Agencies, a person suspected of being habitual smuggler or purveyors of contraband goods or involved in human trafficking; and

(n) upon receipt of report from FIA or Border Agencies, persons suspected to be smugglers of foreign exchange.

Explanation: For the purpose of sub-clauses (g), (h) and (i) the action shall be based on reasonable likelihood or suspicion.

18. In the case of the Petitioner, his name was placed under ECL, red notices were issued against him and he was accused of the illegal entry in Turkey, thus his case was covered under clause (a) (e) (f) (j) and (l) of sub rule (1) of Rule 21. As discussed above Petitioner was absconding in reference No 08 of 2019 and coercive actions were directed to be taken by Learned Trial Court by way of blocking his CNIC, placing his name in ECL and arrest through Interpol. On the surrender of Petitioner before Trial Court, the earlier orders issued were vacated. Now remains the question of illegal entry of Petitioner in Turkey. The Provisions of clause (j) and (l) of Rule 21(1) of PR 2021 lay down that a person may be refused issuance of passport, if he is found involved in offences punishable under section 4 and 6 of the Passports Act 1974 or a person previously deported from a foreign country on account of undesirable activities or illegal entry or criminal charges.

19. If a foreign national is found residing in the Country without valid residential permission accorded by the Government, he is deported back to the place of origin by the orders of the competent authority. In our country illegal immigrants or the persons residing in the Country without valid travel documents are dealt under the provisions of The Pakistan Foreigners Act 1946, wherein, the Federal Government is empowered to issue orders for deportation of a person. In Turkey, a deportation order is an administrative order issued by the Governorship requiring a foreign national to leave the Country under the provisions of ***Law on Foreigners and International Protection Law (Law No 6458)***, for the reasons set out in article 54 of the Law, which included overstay, involvement in criminal activity, travel on false documents etc. When confronted as to

whether any deportation orders against the Petitioner were issued by the Government of Turkey, Learned Assistant Attorney General failed to place on record any order deporting Petitioner, he however contended that Petitioner was issued ETD by the Consulate General of Pakistan in Istanbul for travelling back to Pakistan. The ETD is issued by the Competent Authority for the reasons laid down under rule 18 of the PR 2021. It is a document prepared by the Embassy or Consulate General as the case may be, for one time entry in the country. Rule 18 of PR 2021 reads as under:

18. Emergency travel documents. *(1) Emergency travel document (ETD) shall only be issued to bonafide citizens of Pakistan and on verification of CNIC or NICOP or such other document bearing CNIC number or passport and where such identity document is not available, on confirmation of national status from security agency.*

(2) ETD shall be valid only for single return journey to Pakistan.

(3) ETD shall be issued by Passport Officer in Pakistan missions abroad in the following cases, namely:— (a) a person who is not in possession of a valid passport and requires to return back to Pakistan in emergency or is deported by a foreign government; (b) a passport holder whose passport has been confiscated, impounded, cancelled or inactivated; (c) a person who has been refused passport under these rules; or (d) a person whose name is borne on passport control list.

20. Provisions of above Rule further demonstrate that ETD is issued for the reasons of Deportation by the Foreign Country, or passport is impounded, cancelled or inactivated or a person who is refused passport under PR 2021. Had Petitioner been accused of illegal entry in Turkey, on his return to Pakistan, he would have faced prosecution for the charge of an offence punishable under section 4 and 6 of the Passport Act 1974 for contraventions of the provisions of section 3. Section 3 and 4 of the Passport Act 1974 read as under:

3. Prohibition of departure from Pakistan without passport, etc.-*No citizen of Pakistan shall: (a) depart from Pakistan by any means whatever unless he is in possession of a passport, nor otherwise than from such port or place, by such route and in accordance with such conditions, as may be prescribed; or (b) visit a foreign country unless his passport is valid for such country.*

4. Punishment for contravention of section 3, etc.-(1) *A citizen of Pakistan who is of the age of twelve years or more shall be punishable with imprisonment for a term which may extend to one year, or with fine or with both, if he:*

(a) contravenes or attempts to contravene or abets the contravention of any of the provisions of section 3;

or (b) enters or attempts to enter Pakistan by any means whatever without being in possession of a passport or otherwise than at such port or place, or by such route, as may be prescribed.

(2) A person departing from or entering, or attempting to depart from or enter, Pakistan in whose custody or charge a person who has not attained the age of twelve years departs from or enters, or attempts to depart from or enter Pakistan in contravention of section 3 or clause (b) of sub-section (1) shall, in addition to any penalty to which he may be otherwise liable, be liable to be provided for in that sub-section. (3) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898) an offence punishable under sub-section (1) or sub-section (2) shall not be bailable.

21. Section 3 of the Passport Act prohibit the exit of any Pakistani national to foreign country unless his passport is valid for such country. Admittedly on arrival in Pakistan, no any prosecution for contravention of the provisions of section 3 of the Passport Act 1974 was initiated against the Petitioner, which suggested that departure of Petitioner from Pakistan was not an illegal entry. There were no deportation orders from the Government of Turkey. In the list annexed with the reply of Respondent No 3, the name of the Petitioner appears at Serial No 931, wherein it is stated in the column for the reason for deport that ***Illegal Entry into Turkey / Self / Voluntarily Return***, whereas for the other persons who faced deportation the reason is that ***Illegal Entry into Turkey / Arrested by Turkish Police***. The fact that the petitioner was not accused of illegal departure from Pakistan and as he was not sent to face prosecution under charges of illegal departure from Pakistan before the Competent Court of Law and further that his return from Turkey was voluntarily, lends support to the contention of the Petitioner that he obtained ETD as his name was placed in ECL and his passport was rendered inactive. The Petitioner after his return surrendered before Learned Trial Court, he was enlarged on bail and there is no allegation against him of misuse of bail. Learned Trial Court vide orders dated 14.03.2024 lifted the travel restrictions of the Petitioner and directed to remove his name from ECL and Interpol List.

22. No material has been placed on record by the Respondents to elicit that the Federal Government has given approval regarding placing of name of the petitioner on PCL as envisaged under Rule 22 (1) of the PR, 2021. The placing of petitioner's name on PCL is violative of his fundamental rights to due process, liberty, life, and freedom of movement which are guaranteed by the Constitution of Islamic Republic of Pakistan, 1973. ARTICLE 4 underlines the Right of individuals to be dealt with in accordance with law, with an emphasis that no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law; no person shall be

prevented from or be hindered in doing that which is not prohibited by law; and no person shall be compelled to do that which the law does not require him to do. ARTICLE 9 emphasized that “No person shall be deprived of life or liberty save in accordance with law, under ARTICLE 10-A. Right to Fair Trial and due process of law has been safeguarded for the determination of civil rights and obligations or in any criminal charge, and ARTICLE 15 recognized the. Right to Freedom of Movement, with an assurance that “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.” Organs of the State are under an obligation to respect the fundamental rights of the citizens. Every citizen is not only supposed to be dealt in accordance with law, but also, he has got an inalienable right of fair trial enshrined under article 10 – A of the Constitution. Article 15 of the Constitution guaranteed the freedom of movement. The fundamental rights of the Petitioner as to his life, liberty and movement were involved in the matter and such rights were protected under the constitution.

23. In the case of Government of Pakistan and another versus Dada Amir Haider Khan reported as PLD 1987 SC 504, Honorable Supreme Court of Pakistan has enunciated the above principle as follows:

“Moreover, a citizen's right to travel abroad is an important aspect of the citizen's liberty and is closely related to the rights of free speech and association. As nations in the world become politically and commercially more dependent upon one and another and foreign policy decisions have come to have greater impact upon the lives of the citizens, the right to travel has become correspondingly more important. Through travel, by private citizens as well as by journalists and governmental officials, information necessary to the making of informed decisions can be obtained. And, under our constitutional system ultimate responsibility for the making of informed decisions rests in the hands of the people. Thus, the reason given, even before the Court, was not a proper reason on which the passport could have been refused to the respondent.”

24. The contention of the Respondents that the name of the Petitioner was borne on PCL on the basis of information received from Consulate General of Pakistan in Istanbul, when confronted, whether any order placing the name of the Petitioner on PCL was passed by the Government in terms of Rule 22, Learned Assistant Attorney failed to place on record any such order passed by the Competent Authority, however insisted that no formal orders were required to be passed by the authority consequent to the report dated 05.10.2022 issued by Consulate General of Pakistan Istanbul, as the report in itself

was sufficient to place future travel ban on the Petitioner. This argument of the Learned AAG is without foundation and substance as law requires doing the thing in the manner provided under the law. Rule 22 empowered the Federal Government to place the name of any person on PCL; the name of a person will not surface automatically on the list by if he is accused of the contravention of any provision of law. In the case of the Petitioner, it appears that the authority has exercised its discretion and powers in arbitrary manner creating unnecessary hurdles in the movement of the Petitioner, such actions on the part of executive authority are always depreciated by the Honorable Apex Court.

25. In the case of Amanullah Khan and others versus The Federal Government of Pakistan through Secretary, Ministry of Finance, Islamabad and others reported as PLD 1990 SC 1092 Honorable Supreme Court of Pakistan laid down the principle of structured discretion in the following manner:

"Wherever wide-worded powers conferring discretion exist, there remains always the need to structure the discretion and it has been pointed out in the Administrative Law Tax by Kenneth Culp Davis (page 94) that the structuring of discretion only means regularizing it, organizing it, producing order in it so that decision will achieve the high quality of justice. The seven instruments that are most useful in the structuring of discretionary power are open plans, open policy statements, open rules, open findings, open reasons, open precedents and fair informal procedure. Somehow, in our context, the wide worded conferment of discretionary powers or reservation of discretion, without framing rules to regulate its exercise, has been taken to be an enhancement of the power and it gives that impression in the first instance but where the authorities fail to rationalize it and regulate it and regulate it by Rules, or Policy statements or precedents, the Courts have to intervene more often, than is necessary, apart from the exercise of such power appearing arbitrary and capricious at times."

26. In another case of Federation of Pakistan and another versus E-Movers (Pvt) Ltd and another, reported as 2022 SCMR 1021, it is held by the Honorable Supreme Court of Pakistan that:

24. The Constitution of the Islamic Republic of Pakistan ('Constitution') is the fountainhead of the rule of law in Pakistan. 'To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen.'³¹ The rule of law constitutes the bedrock of governance. When the law stipulates that something has to be done in a particular manner that is how it should be done. And any person who exercises authority must do so in accordance with law. The right to be treated in

accordance with law was invigorated and bolstered when the Constitution was amended to provide an additional Fundamental Right by adding Article 10A to the Constitution stipulating that, 'For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.'³² The due process requirement must be met in the determination of rights and obligations. The Constitution does not define due process. Therefore, it would not be appropriate to limit its scope by defining it. But this does not mean that the due process requirement is a meaningless concept. Rather due process incorporates universally accepted standards of justice and is not dependent upon any law or laws. It is an all encompassing expression which may not be curtailed with reference to particular laws. Due process is to be understood holistically by keeping in mind the entire Constitution, which excludes arbitrary power, authoritarianism and autocratic rule.

27. Adverting to the contention of Learned AAG for Pakistan that Petitioner was involved in criminal case, if travel restrictions are lifted he may abscond away. This apprehension of the Respondents is without force, previous record of the Petitioner evidenced that he voluntarily surrendered before Consulate General of Pakistan in Turkey for issuance of ETD to travel back to country for facing prosecution in the criminal case. Even otherwise, under the law and rules framed thereunder mere registration of criminal cases cannot curb the freedom of a citizen in any manner.

28. This view finds support from the judgment of Honorable Supreme Court of Pakistan in the case of Federal Government through Secretary Interior, Government of Pakistan Versus Ms. Ayyan Ali reported as 2017 S C M R 1179 wherein Honorable Supreme Court of Pakistan affirmed the orders passed by the Learned Division Bench of this Court and held as under:

13. Reverting to the third Notification/Memorandum it is crucial to note that like the earlier two Notifications/Memorandums, the third Notification/Memorandum was issued purportedly for the reasons which do not conform to the criteria as laid down in the relevant rules and the exit control policy. It was not only in the case of Wajid Shamsul Hassan v. Federation of Pakistan through Secretary Ministry of Interior, Islamabad (PLD 1997 Lahore 617), where it was held that the liberty of a citizen cannot be curtailed by mere registering a criminal case, and that mere registration of FIR would not be a ground for depriving a citizen of the exercise of his constitutional right and further that registration of a criminal case has no nexus with and is extraneous to the object of the Exit from Pakistan (Control) Ordinance 1981, but even in the case of

respondent No.1, in relation to the second Notification/Memorandum, this Court, while dismissing the petitioner's petition for leave, through judgment dated 13.4.2016, has held as follows:-

"5. Respondent No.1, no doubt, has been charged in a case mentioned above which is still pending adjudication in the competent Court of law. But mere pendency of a criminal case cannot furnish a justification for prohibiting her movement. It has never been the case of the petitioners that the respondent is involved in any of the cases listed in Rule 2 of the Exit from Pakistan (Control) Rules, 2010 in general or Rule 2(1)(b) in particular, inasmuch as she has not been charged to have embezzled a large government's fraud or committed institutional fraud."

However, as noted above the third Notification/Memorandum was issued on the ground clearly not falling within the parameters as prescribed by the relevant law, rules, and the above unequivocal pronouncement of this Court.

29. In view of the discussion made herein above, the actions taken by the Respondents placing the name of petitioner on adverse ban list from the face appear to be arbitrary, without lawful authority, perverse to law and null and void. Case for indulgence of this Court to exercise powers of judicial review conferred under article 199 of the Constitution is made out, consequently instant writ petition is allowed. Action of the Respondents placing of name of the petitioner on PCL and Interpol List is declared to be unjustified, illegal, without lawful authority and of no legal effect, thus set aside. Respondent No. 1 to 4 are directed to remove name of the petitioner from PCL, Interpol List and activate his passport or issue him a fresh passport as the case may be within a period of Ten days of date of this order.

The Petition stands disposed of along with pending applications if any with no order as to the cost.

JUDGE

JUDGE

Ayaz Gul