

ORDER SHEET
HIGH COURT OF SINDH AT KARACHI

C.P. No.D-280 of 2022

Date

Order with signature of Judges

1. For orders on objections.
2. For hearing of main case.

04.02.2022.

M/s. Sardar Muhammad Latif Khosa, Shumail Sikandar and Suzain Jehan, advocates for petitioner.

M/s. R.D. Kalhor and Abdul Waheed, Special Prosecutors, NAB along with I.O. Mustansar Hussain, NAB Rawalpindi.

Mr. Irshad Ali, Assistant Attorney General.

Muhammad Karim Khan Agha, J. The petitioner has applied for removal of his name from the ECL. Vide order dated 08.06.2021 the petitioner's request for removal of his name from the ECL was declined by this court. However, at the end of the said order it was clearly mentioned that:-

"Consequently we dismiss these petitions leaving petitioners yet at liberty to file fresh one for the same relief when they are able to show the material establishing their cooperation in the inquiry / investigation"

2. Learned counsel for the petitioner has contended that the petitioner is now fully cooperating with the NAB and he has produced material in support of his contentions. He also states that there is only one Reference which is pending against him before the Accountability Court Sukkur and one investigation pending against him in respect of the so-called fake accounts case in Rawalpindi and that he has been abroad one time permission's on 10 separate occasions and has never abused such concession and as such his name may be permanently removed from ECL.

3. On the other hand, Special Prosecutors NAB assisted by AD/Associate I.O. have vehemently opposed the removal of the name of petitioner from the ECL. Their main contention is that he is not cooperating with the investigation and they have strong apprehension that he will abscond and will not return to

Pakistan to face either the Reference or inquiry which is pending against him.

4. We have heard learned counsel for the parties and perused the record.

5. The petitioner has now been on the ECL for over almost 05 years. At this point in time there is one Reference bearing No.21 of 2018 dated 23.10.2018 proceeding against him before the Accountability Court at Sukkur. In that Reference till date only 09 out of 36 PWs have been examined and there are 05 other accused in that Reference all of which would have their own right to cross examine each of the remaining 27 PWs. It appears that this Reference would not be concluded in the near future. The record has revealed that no delay in finalizing this Reference has been caused on the part of the petitioner or his counsel. There is one other investigation which is pending since 2019 in NAB Rawalpindi against the petitioner in respect of so-called fake accounts case. Once again it appears that this investigation has been proceeding for quite some time and has not even culminated into the filing of a reference against the petitioner so far. **We have reviewed the material placed before us and we are now of the view that the petitioner has been cooperating in the investigation.** Needless to say that after the Reference was filed in Sukkur investigation process has concluded. It has also been brought to our attention that the petitioner has strong links in Pakistan where he has numerous businesses as well as abroad which he needs to attend to. As such this Court has allowed the petitioner one off permission to leave Pakistan on 10 separate occasions and on each occasion he has returned within the stipulated time and has not abused or misused the concession of one time exemption granted to him. The fact that the petitioner has returned over 10 times shows the petitioner's good faith in returning to Pakistan to contest the cases pending against him. As such we find the Prosecutor NAB's arguments of his absconding to be not sustainable as if the petitioner had wanted to abscond he would have absconded already having been given one off permissions to leave Pakistan on 10 separate occasions.

Furthermore the petitioner is not a dual national and it would be difficult for him to obtain permanent residence abroad.

6. Learned counsel for the petitioner has produced before us a plethora of case laws particularly on the point that the petitioner cannot be kept on ECL indefinitely. Both, this Court and the Hon'ble Supreme Court has settled that based on particular facts and circumstances of each case suspects/accused even facing investigation or trial cannot perpetually be kept on the ECL as freedom of movement is guaranteed by Article 15 of the Constitution of Pakistan which cannot be unreasonably curtailed which Article is a fundamental right.

7. Under these circumstances and for the reasons discussed above we hereby order the Secretary, Ministry of Interior, Government of Pakistan to remove the name of the petitioner from the ECL.

8. However, the petitioner shall ensure that when he is out of Pakistan a counsel puts his appearance in on his behalf in the Reference pending in Sukkur so that no delay is caused in completing the Reference filed before the Accountability Court Sukkur and that as and when NAB genuinely requires his further cooperation in any investigation he makes himself available and offers his full cooperation. The petitioner shall furnish surety in the sum of Rs.50,00,000/- (Rupees Fifty Lacs) and PR bonds in the like amount to the satisfaction of the Nazir of this Court to ensure that he shall return to Pakistan and face the cases pending against him and does not remain abroad. A copy of this order shall be sent through facsimile to the Secretary, Ministry of Interior, Government of Pakistan who is directed to remove the name of petitioner from ECL forthwith.

9. This petition stands disposed of in the above terms.