

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Iqbal Kalhoro J.
Mr. Justice Adnan ul Karim Memon, J.

C.P. No.D-4784 of 2022

Ahmed Junaid Memon ----- Petitioner

Versus

Federation of Pakistan and others----- Respondents

Mr. Jaffer Raza, advocate for petitioner.
Mr. Yasir Ahmed Shah, Assistant Attorney General.
Mr. Nasir Mehmood Mughal, DPG NAB.

10.01.2023

ORDER

MUHAMMAD IQBAL KALHORO J: Petitioner standing a trial in reference No.21/2018 pending before learned Judge, Accountability Court Sindh at Sukkur has challenged a notification dated 12.03.2018 whereby his name alongwith name of co-accused has been placed on ECL u/s 2 of Exit from Pakistan (Control) Ordinance, 1981, on the ground, mainly that name of co-accused Shahzad Ali placed on ECL vide said notification has been removed by this Court vide order dated 04.02.2022 in C.P.No.D-280/2022 and that the petitioner's case is on better footing. For against the petitioner only one reference is pending whereas against co-accused apart from the said reference so many other enquiries and investigations have been pending with NAB.

2. His counsel has reiterated the above facts and grounds in his arguments, opposed by learned Deputy Prosecutor NAB on the ground mostly, that petitioner is the main accused and that in the order granting bail to petitioner by this Court dated 24.05.2016 in C.P.No.D-1698/2016 and others, restriction on his travel has been imposed by this Court.

3. We have heard the parties and perused material available on record. It appears that name of petitioner and of co-accused was placed on ECL by the relevant Ministry on recommendation of NAB at the time when inquiry/investigation was pending against the petitioner and other co-accused. After due inquiry and investigation a reference has been filed and the allegations against the petitioner, Ex-Chief Engineer Sukkur Barrage Left Bank Region Sukkur, is that he in connivance with other irrigation officers in a Pilot project for lining of Rohri canal from RD-616 to RD 647 willfully failed to exercise his lawful authority and rendered undue favour to co-accused Shahzad Ali/the contractor resulting into embezzlement in govt. funds. The very co-accused who is beneficiary of alleged illegal exercise of

authority by the petitioner has already been granted relief by this Court in shape of removal of his name from ECL. Principal of consistency demands that same treatment shall be meted out to the petitioner, as it is yet to be determined whether petitioner had acted illegally or not in granting alleged benefit to the co-accused firstly. And secondly it is now settled that mere pendency of a criminal case shall not ipso facto disentitle a person from availing his travel rights, and further his right of movement and liberty guaranteed under the constitution would not stand curtailed. On the same touchstone, the impugned restriction on the petitioner does not seem to be maintainable. More so, when impugned action was taken against the petitioner, the enquiry/investigation was pending against him which since has culminated into reference, the movement of the petitioner within and outside of the country be better left to be regulated by the trial Court where the reference has been filed and where his presence is required.

4. Apart from above, we are of the view that in the light of directions contained in the order dated 24.05.2016 passed by this Court while granting bail to the petitioner to the effect that petitioner will not leave the country without permission either of this Court or Accountability Court in case a reference is filed by NAB, there was no need to issue impugned notification and place name of the petitioner on ECL.

5. For the foregoing discussion as well as considering the case of the petitioner on the rule of consistency, we allow this petition as prayed however, with no order as to costs. The direction in the order dated 24.05.2016 should nonetheless remain intact.

JUDGE

JUDGE

A.K