

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui, CJ
Mr. Justice Jawad Akbar Sarwana

C.P. No. D-5061 of 2022

Syed Ahmed Iqbal Ashraf
Versus
Federation of Pakistan & others

Date of Hearing: 26.09.2024

Petitioner: Through Mr. Mohsin Qadir Shehwani
Advocate.

Respondents: Through Mr. Khaleeq Ahmed, Deputy
Attorney General.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- The petitioner has invoked the jurisdiction of this Court challenging the inclusion of his name in the Exit Control List as being illegal, unconstitutional and unlawful.

2. We have heard learned counsel for petitioner as well as learned Deputy Attorney General and perused material available on record.

3. Learned Deputy Attorney General, at the very outset, for the purposes of this petition, has drawn our attention to the provisions of the law applicable to the petitioner's case i.e. Exit from Pakistan (Control) Ordinance, 1981 and the rules framed thereunder.

4. A Memorandum of 30.03.2022 provides for placing of the name of the petitioner, amongst others, on the Exit Control List. At Serial No.1 of this Memorandum petitioner's name is available. Purportedly the FIA on account of a case registered on the basis of report of a default/scam of 54 Billion made by HASCOL Petroleum Ltd. (HPL) through its directors/management in collusion with the directors on behalf of its stakeholder M/s Vitol Dubai Ltd., Fossil Energy (Pvt.) Ltd., Marshal Gas (Pvt.) Ltd.,

officers/officials of National Bank of Pakistan and other commercial banks was/is investigating the matter. The FIR shows to have been registered on 21.01.2022 and the trial in pursuance thereof is still in progress by the Special Judge (Offences in Banks) Sindh at Karachi. Since the case is being tried before the trial Court we are not inclined to comment as to the veracity of the case against the petitioner as any observation here might influence the trial.

5. What is important to note is that Section 2 of 1981 Ordinance enables/empowers the Federal Government to restrict, restrain and prohibit any person or class of persons from proceeding from Pakistan to a destination outside Pakistan, notwithstanding the fact that such person is in possession of valid travel documents. Section 3 of the *ibid* Ordinance also provides that a review, whereby a person aggrieved of such order of the Federal Government may within 15 days of the making of the order make a representation to the Federal Government for review of the order, setting out in the representation the grounds on which he seeks the review. From record it appears that the Review jurisdiction was not exercised by the petitioner as this petition is premised on the infringement of constitutional guarantees.

6. The Federal Government in pursuance of Section 5 of the 1981 Ordinance was pleased to frame rules which too are not challenged along with any provision of 1981 Ordinance. It is Federal Government's case that the Federal Government may pass an order in writing under subsection (1) of Section 2 of the 1981 Ordinance prohibiting any person from proceeding abroad if he is found involved in economic crime where large government's funds have been embezzled or institutional frauds committed. It is claimed that the petitioner's case falls within the aforesaid bracket of the provisions of 1981 Ordinance and the rules framed thereunder. Surprisingly none of the law/rules including but not

limited to any provisions of the 1981 Ordinance and the rules framed thereunder have been challenged hence the restriction is not unlawful as being based on 1981's Ordinance and rules, which are not challenged.

7. We now may see if such restriction is un-constitutional. It is claimed that such restriction on the freedom of movement is violative of Article 15 of Constitution of Islamic Republic of Pakistan, 1973, which provides 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 set in any part thereof. This freedom of movement is however not absolute rather subject to a reasonable restriction imposed by law. The law as referred above is not a challenge before us hence under no stretch of imagination such restriction can be termed as 'without reasonable restriction', unless challenged and observed otherwise.

8. The case law relied upon by learned counsel for the petitioner are not relevant under the facts and circumstances of the case as in the instant case admittedly the petitioner is facing trial in a case involving embezzlement of a large government's fraud and/or institutional fraud and nothing has been placed on record and/or pointed out by learned counsel appearing for the petitioner as to what has prevented them to approach to the trial Court with the plea that has been raised in the instant petition, particularly when it is the case of the petitioner that he is an old person and earlier has also proceeded abroad once for medical treatment. It is also pertinent to note here that the subject FIR was lodged on 21.01.2022 whereas the final challan was submitted on 19.07.2022 in which case the petitioner has not only been granted bail by the trial Court but his accounts had also been de-freezed in terms of order dated 14.06.2022.

9. It has also come on record that undoubtedly the trial in the case, referred above, is in progress since the registration of FIR against the petitioner and as agreed by the two counsels before us the trial is not likely to conclude in near future. We therefore are of the view that we cannot comment, as the trial is on, as to the merits of the accusation in the FIR against the petitioner and similarly since law, which restricted the movement, has not been under challenge, we cannot comment as to whether such restriction on movement is violative of Article 15 of the Constitution of Islamic Republic of Pakistan, 1973.

10. However, considering the grounds that the petitioner is an old person and earlier has proceeded abroad once for medical treatment we are of the view that the petitioner may apply to the trial Court for his exit on the ground as could be raised by the petitioner, which shall be considered independently by the trial Court in accordance with law.

11. In view of the petition is disposed of in the above terms along with pending application.

Dated:

Chief Justice

Judge