

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD
C.P. No.D-3466 of 2022.

DATE ORDER WITH SIGNATURE OF JUDGE(S)

For orders on office objection
For hearing of main case.

Present:
Mr. Justice Anjad Ali Sahito
Mr. Justice Khadim Hussain Soomro.

31.10.2024.

Mr. Irfan Ali Khaskheli Advocate for the petitioner.
Mr. Wali Muhammad Jamari, A. A.G.

ORDER

KHADIM HUSSAIN SOOMRO, J:- By way of instant petition, the petitioner has impugned order/ notification dated 17.02.2022 issued by Home Secretary, Government of Sindh, whereby his name was placed in Fourth Schedule of ATA 1997 for the period of three years and prayed that the said order may be declared as null and void.

2. On 23.11.2022 notices were ordered to be issued to the respondents and in response thereto, respondents No.1, 3, 7 to 9 were filed their parawise comments, which are available on the Court file.

3. From the perusal of para-wise comments filed by the respondents, wherein it has been stated that due to controversial character of the petitioner, the CTD Karachi recommended inclusion of his name in 4th schedule as he needs vigilance. On such recommendation, the Secretary, Home Department, Government of Sindh, Karachi issued such notification and enlisted his name in 4th schedule.

4. Learned A.A.G present in Court submits that in pursuance of aforesaid order, the petitioner being under observation under section 11 EE [4th schedule] is required to intimate his movement and activities to the concerned Police Station, but he is trying to avoid vigilance and filed this petition to pressurize local police.

5. Heard and record perused.

6. The record indicates that the respondents have failed to provide any evidence linking the petitioner to the proscribed organization. There is no documentation to demonstrate that the petitioner has ever engaged in unlawful activities or that he has been convicted and sentenced by a Court of competent jurisdiction. Furthermore, while filing the parawise comments, the respondents

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No. 1,3, 7 to 9 stated that due to controversial character of the petitioner, the CTD Karachi recommended inclusion of his name in 4th schedule as he needs vigilance, otherwise there is no evidence to connect the petitioner that he belong to banned organization or he is involved in terrorism activities. The respondents have a legal obligation to gather substantial evidence to establish that the petitioners are activists, associates, or financiers of a proscribed organization before including their names on a watch list. In the absence of any concrete material, the inclusion of the petitioners' names on the watch list cannot be considered lawful. It is pertinent to reproduce Section 11-EE of the Anti-Terrorism Act, 1997 as follows:-

[11EE. Proscription of Person.] 1[(1) The Federal Government may, by order published in the official Gazette, list a person as a proscribed person in the fourth Schedule on an ex-parte basis, if there are reasonable grounds to believe that such person is--- (a) concerned in terrorism; (b) an activist, office bearer or an associate of an organization kept under observation under section 11D or proscribed under section 11B; and (c) in any way concerned or suspected to be concerned with such organization or affiliated with any group or organization suspected to be involved in terrorism or sectarianism or acting on behalf of or at the direction of any person or organization proscribed under this Act. Explanation. The opinion concerning reasonable grounds to believe may be formed on the basis of information received from any credible source, whether domestic or foreign including governmental and regulatory authorities, law enforcement agencies, financial intelligence units, banks and on-banking companies and international institutions.] 1[(1A) The grounds shall be communicated to the proscribed person within three days of the passing of the order of proscription.]

7. Under subsection (i) of Section 11-EE, the phrase "if there are reasonable grounds to believe" is of considerable importance. While the Act does not provide a definition for this expression, Section 26 of the Pakistan Penal Code (P.P.C.) defines "reason to believe" as follows

26. "Reason to believe". A person is said to have "reason to believe" a thing if he has sufficient cause to believe that thing but not otherwise.

8. In essence, a person must have reasonable grounds to believe if circumstances would lead a reasonable person to infer the nature of the matter at hand. These circumstances do not need to provide absolute certainty but should create a basis for belief through probable reasoning. The concepts of "knowledge" and "reason to believe" must be inferred from the specific circumstances of the case. No specific circumstances have been pointed out by the learned A.A.G demonstrate the involvement of the petitioner in Anti State activities or connection with the proscribed organization.

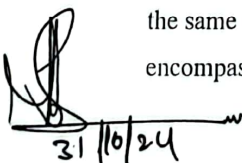
9. The right to life guaranteed by the Constitution encompasses more than merely the right to exist or breathe; it fundamentally includes the right to live with


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dignity and to enjoy all the necessary conditions that enable a fulfilling life. This broader interpretation recognizes that life must be protected not just in a physical sense but also in a way that allows individuals to access essential services, such as healthcare, education, and social welfare. Consequently, any restrictions on this right must be carefully scrutinized to ensure they do not infringe upon the fundamental dignity and quality of life to which every individual is entitled. This perspective aligns with international human rights standards, emphasizing that the right to life is inextricably linked to the overall well-being of individuals within a just and equitable society. The Constitution of the Islamic Republic of Pakistan guarantees that every citizen shall be treated in accordance with the law, prohibiting any action that adversely affects an individual's life, liberty, body, reputation, or property unless conducted in compliance with legal provisions. Article 4 of the Constitution, which underscores this principle, states: (1) Every citizen and all persons within Pakistan have the inalienable right to the protection of law and to be treated in accordance with it; (2) Specifically, (a) no action detrimental to an individual's life, liberty, body, reputation, or property shall be taken except as prescribed by law; (b) no person shall be prevented or hindered from engaging in activities not prohibited by law; and (c) no individual shall be compelled to act contrary to the requirements of the law.

10. Article 9 of the Constitution of the Islamic Republic of Pakistan enshrines the fundamental right to liberty, affirming that no individual shall be deprived of their liberty except in accordance with the law. This provision emphasizes that any restrictions on liberty must be legally justified and procedurally proper, safeguarding individuals against arbitrary detention. It mandates that any deprivation of liberty must be grounded in clear, public legislation and ensures that individuals are informed of charges, have access to legal representation, and are entitled to a fair trial. The judiciary plays a crucial role in reviewing the legality of state actions infringing on liberty, reinforcing the prohibition of arbitrary detention. Furthermore, Article 9 holds the state accountable, aligns with international human rights standards, and provides legal recourse for individuals whose rights have been violated, reflecting Pakistan's commitment to upholding democratic principles and individual freedoms.

11. Article 25 of the Constitution of the Islamic Republic of Pakistan guarantees that every citizen shall be treated equally and shall have equal protection of the law, thereby establishing a fundamental principle of equality before the law. This provision explicitly prohibits discrimination on the grounds of religion, race, caste, sex, residence, or place of birth, ensuring that all individuals are entitled to the same legal rights and protections without any arbitrary distinctions. The article encompasses two key components: the right to equality in treatment, which



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mandates that similar cases must be treated alike, and the right to equal protection, which requires that the law be applied uniformly to all individuals. Consequently, this constitutional guarantee obligates the state to provide equal opportunities and access to justice for all citizens, reinforcing the notion that no person should be subjected to discrimination or unequal treatment under the law. Furthermore, Article 25 underscores the judiciary's role in safeguarding these rights, as individuals can seek legal redress against any violations of their right to equality. In essence, Article 25 serves as a cornerstone for promoting social justice and upholding the rule of law in Pakistan, reflecting the nation's commitment to fostering an inclusive and equitable society.

12. In view of above, the instant Constitutional Petition is allowed and the respondents are directed to delete the name of petitioner from the notification / Order dated 17.02.2022 issued by Home Secretary, Government of Sindh, Karachi whereby his name was placed in Fourth Schedule of ATA 1997 for the period of three years.

COMPARED BY NADEEM.

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PREPARED BY ASIA



Sd/-KHADIM HUSSAIN SOOMRO .
JUDGE. 31. 10. 24

Sd/-AMJAD ALI SAHITO .
JUDGE.

CERTIFIED TO BE TRUE COPY

(Signature)
(Ghaffar Saboor)
I/C Assistant Registrar
High Court of Sindh,
Circuit Court, Hyderabad.