

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Abdul Mobeen Lakho

CONST. PETITION NO.D-8032 OF 2019

CMA NO.25675 OF 2020

CMA NO.27738 OF 2020

Petitioner:	1) Sadaf Sharjeel wife of Sharjeel Inam Memon 2) Zeenat Inam Memon wife of Inam ul Haq Memon through Mr. Raj Ali Wahid Kunwar Advocate.
Respondents/State:	NAB through Mr. Riaz Alam, Special Prosecutor, NAB alongwith I.O. Mohammad Adeel Khan
Dates of hearing:	02.06.2021.
Date of announcement:	18.06.2021.

ORDER

Mohammad Karim Khan Agha, J.- Petitioners Sadaf Sharjeel wife of Sharjeel Inam Memon and Zeenat Inam Memon wife of Inam ul Haq Memon and mother of Sarjeel Inam Memon have filed applications for review of the order dated 19.08.2020 passed by this Hon'ble Court whereby this court had granted them pre arrest bail in National Accountability Bureau (NAB) Reference 15/2019 subject to certain conditions including the placement of both their names on the Exit Control List (ECL) by the Secretary Ministry of Interior which has been done. The petitioners have sought review of the aforesaid order to the extent that both of their names be removed from the ECL.

2. Learned counsel for the petitioners has contended that the petitioners need to travel regularly in and out of the country for numerous reasons including business, medical and for some of their children, grand children who are studying abroad and as such they need their permanent removal from the ECL to enable them to do so without unnecessary delay and/or hindrance; that the trial court has already exempted them from personal appearance and that twice already they have availed one time

exemptions from the ECL and have ways returned on time and as such this court may be pleased to review its earlier order whereby it ordered/directed the Ministry of Interior to place their names on the ECL and vary that order only to the extent that their names be removed from the ECL.

3. On the other hand the special prosecutor NAB has opposed such applications. Firstly he has stressed that no review against the order is maintainable and the proper legal course is for the petitioners to approach the Supreme Court for such change/modification/variation in the order which placed their names on the ECL. Even if the review was maintainable the scope of review is very narrow and would not encompass the above applications. That the applications were time barred. On merits he contended that the petitioners represented a flight risk and would abscond and by reviewing this order it would open up the flood gates for reviewing other bail orders and as such their applications for review of the order placing their names on the ECL be dismissed.

4. We have heard the parties and considered the record and the relevant law.

5. With regard to NAB's preliminary legal objection that this court in essence cannot review its earlier order and that the order should be appealed to the Supreme Court if the petitioners require any change in the order. We find this argument to be without substance. A court can always review its earlier order and on many cases does so. For example, in reducing the amount of surety if it is too high for someone who has been granted post arrest bail. This court in the case of **Roshan Ali Lakhani V State** vide order dated 19.05.2021 reviewed its order dated 12.04.2021 and another Divisional Bench of this court sitting at Larkana reviewed its order in the infamous dog bite case. With regard to limitation it is well settled by now that the superior judiciary always prefers to decide cases on merits rather than technicalities and S.151 CPC which the review petition is R/W gives this court wide inherent and discretionary powers to pass such orders as are necessary to meet the ends of justice.

6. We find that in deciding this review we will not be opening the flood gates for review of orders which may in any event be the legal right of the concerned parties under the law. Each case of review will be

decided based on its own particular facts and circumstances and merits with no two reviews being the same.

7. The petitioners are both accused in NAB Reference 15/2019 as benamidars of Sharjeel Inam Memon in an assets beyond known sources of income case under S.9 of the National Accountability Ordinance 1999 (NAO). As such they are not the main accused.

8. NAB's main contention is that the petitioners will abscond if their names are removed from the ECL. We however find no support for this contention from the record. When the reference was filed against the petitioners before the accountability court both the petitioners were outside of Pakistan however they applied for protective bail so that they could return to Pakistan to face the case against them which they duly did and thereafter applied for pre arrest bail which was subsequently granted/confirmed vide the order which they seek review of. If the petitioners had wanted to abscond they would never have returned to Pakistan to face the charges against them in the first place. In addition twice this court has granted separate one off exemptions to the petitioners to leave the country for a fixed duration for a fixed purpose and on both occasions the petitioners returned to Pakistan on time and did not abscond or abuse the concession granted to them. Again if they had wanted to abscond they could have done so on either occasion however by returning on time they showed their bona fides.

9. Even otherwise all the properties which they allegedly hold as benamidars are located in Pakistan and thus if they chose to abscond the law would follow its course and if the main accused was convicted their properties in Pakistan would be liable to be forfeit as in the recent case of Nawaz Sharif who absconded and as such the NAB would not lose out in respect of this aspect of the case. The fact that the petitioners have properties in Pakistan shows that they have deep roots in the country and would not be likely to abscond and allow their properties to be forfeited as indicated above.

10. It is also pertinent to note that the NAB did not issue any arrest warrants for the petitioners and on their return to Pakistan did not request that their names should be placed on the ECL and as such it appears that at that point in time NAB did not consider the petitioners a flight risk

rather it was this court through the order which the petitioners seek to have reviewed which placed the petitioners on the ECL.

11. Both the petitioners own property in this country and more importantly petitioner Sadaf Sharjeel has two school going children in this country one of whom is a girl of only 11 years of age and as such she is unlikely to not return to Pakistan and instead abandon her young children. Furthermore neither of the petitioners nor petitioner Sadaf Sharjeel's children are dual nationals which would make absconsion easier.

12. Notably it is the trial court which regulates its own proceedings which has allowed exemption from appearance for the petitioners in the following terms vide its order dated 12.11.2020;

"I have given due consideration to the matter. Admittedly both the applicants/accused are ladies. Of them, Mst. Sadaf Sharjeel is said to be mother of school-going children who has also to look after other domestic affairs while Mst. Zeenat Inam is of 70 years age. This has not been disputed by the S.P. NAB. Further, one other member of their family i.e. Sharjeel Inam is also accused in this Reference who has been attending the Court from the same home. **In the circumstances, this application is allowed and appearance of both the applicants/accused Mst. Sadaf Sharjeel and Mst. Zeenat Inam is dispensed-with subject to appearance of Mr. Raj Ali Wahid Kunwar Advocate to proceed-with the case in their absence. The applicants/accused shall however appear on the day of framing the charge, recording their statements under Section 342 Cr.P.C. and announcement of judgment or at any earlier stage, if required by the Court.**" (bold added)

13. It is also significant that since the filing of the reference more than one year ago the charge has still not been framed **and the delay in this process has been largely caused by the NAB** as evidenced by the progress report which we called from the learned trial judge and is dated 20.05.21 which reads as under;

"In compliance to the directive contained in the Order dated 19.5.2021 passed by the Hon'ble High Court of Sindh, Karachi in C.P. No.D-8032/2019 (re-Sadaf Sharjeel & Another vs. NAB & Another), it is submitted that Reference No.15/2019 was received by this Court on 02.06.2020 by way of transfer from Accountability Court-III Karachi against in all 12(twelve) accused. Out of them 10(ten) accused were on bail and 2(two) namely Saifullah Luhar and Kamran Gul were absconding and the case was already fixed for statement of I.O. with regard to proclamation u/Section 87 Cr.PC issued against the said absconding accused.

Thereafter statement of the I.O. on proclamation u/Section 87 Cr.P.C against the absconding accused was recorded by this Court and then proceedings u/Section 88 Cr.P.C have been initiated against them which are under process as the NAB has been repeatedly seeking time for completion of proceedings u/Section 88 Cr.P.C. The case is now fixed on 22.5.2021.

Sd/-20.5.2021
JUDGE
Accountability Court No.1
Sindh Karachi"

14. Learned counsel for the petitioner has informed us that the petitioners if their name is removed from the ECL will return to appear before the trial court in person whenever so ordered by the trial court.

15. In considering matters under the ECL this court has to weigh very carefully the chances of the accused absconding if their names are removed from the ECL with the infringement of the fundamental rights of the accused if their names are retained on the ECL in terms of various Articles of the Constitution. For example, Article 12 which concerns freedom of movement, Article 18 which concerns freedom of trade and business and Article 9 which concerns deprivation of life and liberty.

16. In the case of **Rafique V Federation of Pakistan** (1018 MLD 597) it was held as under;

"It is now settled law by the Hon'ble Supreme Court that an accused right to travel abroad as guaranteed under Article 15 of the Constitution cannot be lightly trifled with even if he is an accused in a criminal case. In this respect, reliance is placed on the cases of **Wajid Shams-ul-Hassan v. Federation of Pakistan** (PLD1997 Lahore P.617) **Federal Government v. Ms. Ayan Ali** (2017 SCMR 1179) and more recently unreported Supreme Court case of **Dr. Asim Hussain v. Federation of Pakistan** dated 29.08.2018."

17. There is a plethora of case law in support of this proposition some of which are as follows;

Order dated 05.11.2020 in C.P. No.5083 of 2019 re: **Aijaz Hussain Jakhra v. Federation of Pakistan**, **Arsalan Iqbal v. Government of Pakistan** (2015 YLR 1460 Sindh), **Muhammad Shahbaz Sharif v. Federation of Pakistan** (2019 P Cr. L J 1123), **Javed Iqbal v. Federation of Pakistan** (2019 YLR 1247 Sindh), **Ms. Ayyan Ali v Federation of Pakistan** (2017 P.Cr. L J (Note) 228 Sindh), **Mustafa Jamal Kazi v Federation of Pakistan** (CP No.3790 of 2018), **Wajid Shams-ul-Hussain v Federation of Pakistan** (PLD 1997 Lahore 617), **Yousuf Ansari v Federation of Pakistan** (PLD 2016 Sindh

388), **The Federal Government v. Ayyan Ali and another** (2017 SCMR 1179), **Muhammad Khyzer Yousuf Dada v. Federation of Pakistan** (PLD 2011 Karachi 546) and **Sohail Latif v Federation of Pakistan** (PLD 2008 Lahore 341).

18. In this case the charge has not been framed despite a delay of over one year due to no fault of the petitioners, there are 12 accused and 56 PW's each of which will be subject to 12 separate cross examinations by each counsel for the accused which would in effect mean that if we kept the names of the petitioners on the ECL until conclusion of the trial the petitioners would realistically have to remain in Pakistan for at least 3 years more as it is quite apparent that the trial is extremely unlikely to be completed within the next 3 years which in our view would be violative of the above mentioned fundamental rights of the petitioners especially as the petitioners have demonstrated when in the past they have been allowed to travel abroad they have always returned on time.

19. Thus, based on our above discussion and the particular facts and circumstances of this case we hereby review/vary/modify order dated 19.08.2020 only to the extent that reference to the ECL with regard to petitioners Sadaf Sharjeel wife of Sharjeel Inam Memon and Zeenat Inam Memon wife of Inam ul Haq Memon shall be deleted and that every other part of the aforesaid order shall remain in tact.

20. As such the secretary Ministry of Interior Government of Pakistan is **directed** to immediately remove the names of petitioners Sadaf Sharjeel wife of Sharjeel Inam Memon and Zeenat Inam Memon wife of Inam ul Haq Memon from the ECL. However, petitioners Sadaf Sharjeel and Zeenat Inam Memon shall return to Pakistan (if abroad) as and when required to appear in person by the trial court.

21. A copy of this order shall be sent by fax to the Secretary Ministry of Interior for compliance and Judge Accountability Court No.1 for information.

22. The above miscellaneous applications are disposed of in the above terms.

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