

IN THE HIGH COURT OF SINDH, AT KARACHI

Constitution Petition No.D-2681 of 2025

BEFORE:

MR. JUSTICE MUHAMMAD FAISAL KAMAL ALAM

MR. JUSTICE MUHAMMAD HASAN (AKBER)

Petitioner: Rayan Technology Private Limited,
through, Mirza Moiz Baig, Advocate

Respondents: Federation of Pakistan and others through,
Ms. Alizeh Bashir, learned Deputy Attorney General.
Respondent No.4/HBL through Mr. Mukesh Kumar
Talreja, Advocate.
Respondent No.5/Meezan Bank Limited through
M/s. Umair Nabi and Furqan Ansari, Advocate.
Respondent No.7/United Bank Limited through
Mr. Faiz Durrani, Advocate.
Mr. Umair Shah, Inspector FIA, CBC, Karachi.

Date of hearing: 28.07.2025

Date of hearing: 31.07.2025

JUDGMENT

MUHAMMAD HASAN (AKBER), J.- Through the instant petition, the petitioner assails the notice dated 05.06.2025 issued by Federal Investigation Authority (FIA) under section 5 of the FIA Act 1974 (the Act) whereby the bank accounts of the petitioner company have been ordered to be blocked.

2. Learned counsel for the petitioner argued that the petitioner entered into a service agreement titled Robotic Process Automation Agreement (Agreement) with Respondent number 4 (HBL) in July 2024 which was to lapse on 30 June 2025, with an automatic renewal for two years under its clause 2.1. The Agreement also provided a dispute resolution mechanism between the parties through arbitration under its clause 13. It was pleaded that when the agreement was about to expire, the Respondent No.4 lodged a complaint dated 05.06.2025 with the FIA against the petitioner company. He further pleaded that on the same day, FIA issued the impugned notice dated 05.06.2025 to the Banks (Respondents No.5 to 7) for blocking the bank accounts of the petitioner company. Per learned counsel, such an act was in illegal exercise of jurisdiction in that it was in the absence of any investigation against the petitioner company as mandatorily required under section 5(5) of the Act; the same was initiated without application of mind; and in the absence of any material whatsoever. Reliance was placed upon the cases of *Muhammad Muslim*¹, *Fazal Mahmood*², *Uzma Adil Khan*³, *Muhammad Sohail Shaikh*⁴ and *Muhammad Bilal Nawaz*⁵.

1. *PLD 1984 Karachi 71 'Muhammad Muslim V. Federal Investigation Agency'*
2. *PLD 1996 Karachi 475 'Fazal Mahmood V. Sardar Khan and 3 others'*
3. *2023 CLD 599 'Uzma Adil Khan & others v. Federal Investigation Authority'*
4. *PLD 2021 Lahore 612 'Muhammad Sohail Shaikh v. the State and 2 others.'*
5. *PLD 2024 Lahore 584 'Muhammad Bilal Nawaz v. Director General FIA Punjab & 5 others'*

3. In response to the above, the learned counsel for Respondent No.4 argued that the petitioner was involved in double invoicing and in misappropriation of a sum of Rs.1.324 Billion; and that FIA has ample powers to block the bank accounts of an accused under Section 5 (*ibid*) even when no investigation was pending. The learned Deputy Attorney General supported the arguments of the Respondent Counsel. The Investigation Officer through learned DAG submitted that Inquiry has been initiated which is under process and neither any investigation nor FIR has been lodged against the Petitioner.

4. Heard the counsels and perused the record. Sub-section (5) of section 5 of Federal Investigation Agency Act (VIII of 1975), reads as follows:

"(5) If, in the opinion of a member of the Agency conducting an investigation, any property which is the subject-matter of the investigation is likely to be removed, transferred or otherwise disposed of before an order of the appropriate authority for its seizure is obtained, such member may, by order in writing, direct the owner of any person who is, for the time being, in possession thereof not to remove, transfer or otherwise dispose of such property in any manner except with the previous permission of that member and such order shall be subject to any order made by the Court having jurisdiction in the matter."

5. With respect to the exercise of powers to seize a property by member of Agency under section 5(5) of the Act, it has been held by a Division Bench of this Court in the case of **Muhammad Muslim**¹ *supra* that before seizure of property by a member of FIA it must be established that sufficient time was not available with concerned member to approach appropriate authority for obtaining order for seizure and it is only in these circumstances that power under S. 5(5) could be exercised by such member. It was observed that:

“Normally there should be an order of the appropriate authority for seizure before any property, which is the subject-matter of investigation by the F.I.A, is seized or detained. However, in exceptional circumstance, any member of the F. I. A. conducting an investigation can direct by an order that any property which is the subject-matter of investigation which is likely to be removed, transferred or otherwise disposed off before an order of the appropriate authority for its seizure is obtained that such property be not removed, transferred or otherwise disposed off except with the previous permission of) that member. We find from the impugned detention memo. dated 2-9-1981 that it has not been mentioned by the Inspector concerned that he was passing the order for restraint on the removal or sale of goods in question, as in his opinion an order of the appropriate authority for the seizure of the goods could not be obtained, as before that the goods were likely to be removed, transferred or otherwise disposed off. It must be established that sufficient time was not available with the concerned member of the F. I. A. to approach the appropriate authority for obtaining an order for the seizure of the goods and in those circumstances only the power under subsection (5) of section 5 of the Act (VIII of 1975) could be exercised. Comments dated 29-11-1981 have been filed in this case on behalf of the

respondent-agency. The comments are signed by Ali Qaswar Bokhari, the concerned Inspector of F. I. A., who had passed the order of detention of the goods. From the comments, respondent's case appears to be that an enquiry was registered against the petitioner on 15-8-1981 for smuggling of synthetic unit sole, on 25-8-1981 books of account and certain goods were seized at the business premises of the petitioner and then on 2-9-1981 the goods in question were seized at the Nazimabad godown of the petitioner. The comments clearly show that there was sufficient time available with the F. I. A. for obtaining an order of seizure from the appropriate authority. However, this was not done and the concerned inspector decided to exercise the powers under subsection (5) of section 5 of the F. I. A. Act, 1975. In our view in these circumstances, the powers could not be exercised by the Inspector under subsection (5) of section 5 and the goods could have been detained only after an order of seizure had been obtained from the appropriate authority. We have also been informed by the learned Standing Counsel as observed earlier, that uptill now no order has been passed by any authority or Court about the seizure and detention of the goods by the Inspector of F. I. A. The order passed by the Inspector of F. I. A. for detention of the goods was, therefore, illegal and without any authority.”

6. On the same subject, a subsequent Judgment by a Single Judge of this Court in the case of *Fazal Mahmood*² *ibid* further dilated upon the provision with the following observations:

“This provision does not confer an absolute power on a member of F.I.A. to restrain, seize or impound any property for indefinite period without obtaining orders from appropriate authority which, in my view, means a competent Court of law.....I am also of the opinion that a member of F.I.A. should not frequently or freely resort to the use of power under section 5(5) of the F.I.A. Act but such powers should be exercised with restraint and caution as its use may sometime result in the infringement of Article 24(1) of the Constitution, 1973, which guarantees that no person shall be compulsorily deprived of his property save in accordance with law.”

7. In the case of *Uzma Adil Khan*³ *supra*, it was held that powers bestowed upon members of FIA under S. 5(5) of Federal Investigating Agency Act, 1974 are not unfettered, rather the same are subject to certain restrictions and limitations and which should be used sparingly and in cases of exceptional nature.

“5. At the same time, an FIA official cannot be absolved from his obligation of mentioning the grounds which persuaded him to draw an opinion in terms of section 5(5) of the Act of 1974. As such it can safely be held that the powers blessed upon members of FIA under section 5(5) of the Act of 1974 are not unfettered, rather are subject to certain restrictions and limitations, required to be used sparingly and in cases of exceptional nature....While deviating from the normal procedure of having recourse to appropriate authority, the member of FIA is to satisfy the mandate of section 5(5) of the Act, 1974 by incorporating in case diaries, the reason of his opinion regarding apprehension of immediate removal of property. After having eloquently scanned the record, it divulged that the respondent/FIA has failed to show that there was any apprehension of disposal of property

by the petitioners before obtaining orders of competent authority and there was any urgency and no sufficient time for obtaining such order was available to them. Even there is no opinion in writing of the Investigating Officer to that effect, thus, the respondents/FIA have acted in sheer violation of section 24A of General Clauses Act, 1897...”

Section 24-A provides:

“24A. Exercise of power under enactments. (1) Where, by or under any enactment, a power to make any order or give any direction is conferred on any authority, office or person such power shall be exercised reasonably, fairly, justly and for the advancement of the purposes of the enactment.

(2) The authority, office or person making any order or issuing any direction under the powers conferred by or under any enactment shall, so far as necessary or appropriate, give reasons for making the order or, as the case may be for issuing the direction and shall provide a copy of the order or as the case may be, the direction to the person affected prejudicially.”

8. The same principles were followed in ***Muhammad Sohail Shaikh***⁴ (*ibid*) wherein it was observed that:

“...The contents of section 5(5) of the Act of 1974, so mentioned above, are explicit in nature and leave no room for discussion that the order under above quoted provision can only be passed by the member of FIA, if he is of the opinion that process of investigation is likely to be thwarted by removing, transferring or disposing of subject matter properly. As a necessary corollary, it can be held that the opinion so formed by the member of Agency is to be expressed in writing along with the reasoning and accordingly it is to be incorporated in the case diary. The omission to fulfil prerequisite of mentioning the opinion and reasoning in writing is violative of section 5(5) of the Act of 1974, thus renders the order of seizure nothing but a nullity in the eye of law. It goes without saying that presumption of redundancy cannot be attached to any word, expression or punctuation used in any legal provision by the Legislature, rather are meant to be given effect. Similarly, an FIA official cannot be absolved from his obligation of mentioning the grounds which persuaded him to draw an opinion in terms of section 5(5). After having eloquently scanned the record, it divulged that the Investigating Officer of the case paid dogmatic heed to the mandate of section 5(5) and bothered not to mention even a single word in his case diary about forming the required opinion...”

9. Lastly in the case ***Muhammad Bilal Nawaz***⁵ a single Bench of Lahore High Court, though not on the premise of section 5 of the Act but on the ground of non-compliance of sections 8 and 9 of the Anti-Money Laundering Act 2010, annulled the action of FIA to debit-block the bank account of the petitioner.

10. In the present case, firstly from perusal of the complaint dated 05.06.2024, no allegation of Rs.1.324 Billion is spelled out therein. Secondly, the last page of the complaint reflects that the complaint was marked to ‘S.I Zohra’ for ‘Verification’ on the same day, that is, 05.06.2025, whereas on the same day, the impugned letter for debit block of the Bank Accounts of the Petitioner was issued. No record has been

filed in Court to establish that based upon which material and opinion or as to when, the said complaint was converted into Inquiry on 05.06.2025. By applying the principles laid down in the above discussed Judgments to the facts of the present case, it appears that while issuing directions to debit-block the Bank Account(s) of the Petitioner on the same day of receipt of the complaint dated 05.06.2025, the power under section 5 of the Act has been used in haste, without any caution or restrain, and without forming an opinion in writing in the case diaries in utter violation of the dictum laid down in *Fazal Mahmood*², *Uzma Adil Khan*³ and *Muhammad Sohail Shaikh*⁴ (*ibid*). Moreover, while taking such action, the Respondent No.1 also did not establish that sufficient time was not available to approach appropriate authority for obtaining order for seizure, which was also held as a mandatory requirement in the case of *Muhammad Muslim*¹ (*supra*). Lastly, even the argument of Section 5(1) of the Act (as agitated by the Respondents) would not absolve the Authority of the mandatory requirements as entailed in the above referred Judgments, nor could the Respondent be allowed to exercise its power under section 5 in an unfettered manner, without reasonable care and caution, without giving reasons for making the order and without application of mind, as mandatorily required under section 24-A of the Act 1897. None of these requirements were fulfilled in the present case.

11. Upshot of the above discussion is that the writ petition is accepted and the impugned notice dated 05.06.2025 issued under section 5 of Federal Investigation Agency Act, 1974 by the Deputy Director F.I.A. Commercial Banks Circle Karachi is declared as void, unlawful and without jurisdiction and the block is ordered to be removed forthwith. This however, will not restrict FIA to proceed with the subject Inquiry and take any action, strictly in accordance with law.

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Karachi
Dated: 31.07.2025.