**IN THE HIGH COURT OF SINDH, KARACHI**

**C.P. No. D-2072 of 2014**

**Present: Mr.Justice Muhammad Ali Mazhar**
**Mr.Justice Shahnawaz Tariq**

**General (Retd.) Pervez Musharraf.....Petitioner**

**versus**

**Pakistan & others.....Respondents**

**Date of hearings: 7th, 13th, 20th & 29th May, 2014**

Dr.Muhammad Farogh Naseem, Ms.Pooja Kalpana, Munawar Hussain, Obaid-ur-Rehman Khan, Nasir Latif, Irfan Aziz and Arsalan Wahid Advocates for the petitioner.

Mr.Salman Butt, Attorney General for Pakistan, Khawaja Saeed-uz-Zaman, Additional Attorney General & Mr.Ainuddin Khan, Deputy Attorney General.

Moulvi Iqbal Haider, Advocate. (Intervener).

Mr.S.Irfan Ali Additional Director FIA & Ch. Mubarak Ali, Joint Secretary, Ministry of Interior.

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**JUDGMENT**

**Muhammad Ali Mazhar J.** This constitution petition is brought to claim the following relief(s):

(a) declare the memorandum bearing No.12/74/2013-ECL dated 5.4.2013 and the letter No.ECL/12/74/2013-ECL dated 2.4.2014 to be completely without jurisdiction, unconstitutional, illegal, void ab initio and of no legal effect, while quashing the same and clarifying that the petitioner is free to travel within, without or outside Pakistan and any order of the Court is self-executory and is to

be implemented forthwith by the respondents and all functionaries superior or sub-ordinate to them.

(b) Permanently and pending disposal of the main petition suspend the operation of the memorandum bearing No.12/74/2013-ECL dated 5.4.2013 and the letter No.ECL/12/74/2013-ECL dated 2.4.2014 while restraining the respondents, their officers, agents and cronies and all functionaries superior or subordinate to them from hampering, hindering and stopping the petitioner's movement within, without or outside Pakistan in any manner whatsoever, while further mandating them not to take any adverse action against the petitioner.

(c) Award cost and special costs.

(d) Award any other relief deemed fit.

M.A. No. 9682/2014, filed by the petitioner under Order 39 Rule 1 & 2 C.P.C. M.A NO.11212/2014, filed by Intervener under Order 1 Rule 10 C.P.C.

2. The brief facts as narrated in the memo of petition are that while the petitioner was abroad, following criminal cases were registered against him:

a) murder of Mohtarma Benazir Bhutto.
b) murder of Mr.Akbar Bugti.
c) lal Masjid episode.
d) Judges' confinement case.

3. According to the petitioner, he was falsely implicated in all above cases so he came back to Pakistan in March, 2013 with a view to clear his name in the above cases. The petitioner filed Criminal Bail Application Nos.262 and 263 of 2013 in this court for obtaining protective bail. However, vide order dated 29.3.2013, 21 days protective bail was granted with the observation that the petitioner would not leave the country without

permission from the trial courts. Meanwhile, some petitions were filed in the hon'ble Supreme Court with the prayer that criminal proceedings under Article 6 of the Constitution of Pakistan should be brought against the petitioner. To preempt the proceedings, the Respondents issued memorandum bearing No.12/74/2013-ECL dated 5.4.2013 whereby the name of the petitioner was placed on the ECL. On 8.4.2013, the hon'ble Supreme Court while hearing Civil Petition No.2255/2010 & Constitution Petition Nos.14,16 and 18/2013 was pleased to direct the Secretary Interior to make sure that if the name of the petitioner was not already on the ECL, this shall be done forthwith and a compliance report shall be submitted in the court during course of the day.

4. The respondent Nos.1 to 4 filed their comments in which it was inter alia contended that this court lacks territorial jurisdiction to entertain and adjudicate upon the instant petition which is liable to be dismissed with costs. The name of the petitioner was included in the Exit Control List (ECL) on 5.4.2013 by the Federal Government. On 8.4.2013, the hon'ble Supreme Court also issued directions to the Federal Government to place the name of the petitioner on ECL. The Federal Government on the same day informed the Supreme Court that the petitioner's name had been placed on ECL.

5. Mr.Farogh Naseem, learned counsel for the petitioner argued that the foremost legal issue whether the order of the Hon'ble Supreme Court dated 8.4.2013 passed in the Civil Petition No. 2255 of 2010 and others still holds the

field or whether the said order dated 8.4.2013 has lapsed in view of the final order of the hon'ble Supreme Court dated 3.7.13, reported in 2013 SCMR 1683. In this regard, he contended that the order of the Hon'ble Supreme Court dated 8.4.13 was only an interim order and the said directions were not retained in the final order dated 3.7.13 which was passed on the undertaking submitted by the Attorney General on 26.6.13. The text of undertaking is reproduced in the order. In para 2 of the final order, the Hon'ble Supreme Court was pleased to observe that the prayers in the petitions were effectively accepted by the Federal Government in view of the statement as aforesaid.

6. It was further averred that interim or interlocutory orders lapse upon passing of the final order/judgment. The basic test in this regard is that an order which does not finally dispose of the lis/case is only an interlocutory/interim order, whereas any order which finally dispose of the lis/case is a final order. The order of the Apex Court dated 8.4.2013 did not finally dispose of the lis/petition. There is another facet in the expression of the principle that an interim order merges with the final order. The principle of merger implies that there is an absorption of the thing of lesser importance with the thing of greater importance, whereby the thing of lesser importance ceases to exist.

7. He further argued that order of another learned Division Bench of this Court dated 23.12.2013 in Criminal Bail Applications Nos. 262 and 263/2013 rejected the present Petitioner's contention of taking

out his name from the ECL. The order dated 23.12.2013 only disposed of Applications seeking Review of the earlier order dated 29.3.2013 in Criminal Bail Applications 262 and 263/2013. The review sought was against the observation in the order dated 29.3.2013 which was to the effect that the present Petitioner should not leave the country unless so permitted by the Trial Courts, therefore, the real controversy was only to that extent.

8. The impugned memorandum, placing the present petitioner's name on the ECL dated 5.4.2013 is completely illegal, mala fide and without jurisdiction as the same does not disclose any reasons and it is also in violation of Section 24-A of the General Clauses Act because the same has been issued without any prior show cause notice. It is also against Article 10-A of the Constitution. He further argued that right to travel abroad is a fundamental right enshrined under Article 15 of the Constitution which cannot be taken away unless and until the Government could show that the Applicant was going abroad so as to meet the enemies of the country, which could endanger the security of the state. It is also a settled principle of law that mere pendency of a civil or a criminal case cannot justify the placement of a person's name on the ECL. In fact Mr. Akram Sheikh, the learned Prosecutor in the Article 6 case on 31.3.2014 candidly stated before the Trial Court that the present petitioner was not being charged with disloyalty of the State but only for violation of the Constitution.

9. The learned counsel further argued that in all four criminal trials, the present petitioner is on bail. Also in the Article 6 case the surety of the present petitioner i.e. Lt. Gen. (R) Rashid Qureshi has furnished security much more than the required amount of Rs.25 lacs, by furnishing his property papers. In fact in the Article 6 case, the learned Trial Court vide order dated 31.3.14 has clearly held that the present petitioner is not being taken into custody, and there is no restriction on his movement. It was further observed in the said order that the present petitioner can go anywhere for his medical treatment or gainful activities.

10. To quote as precedent, the learned counsel referred to that the High Court of Zimbabwe permitted the international travel of two journalists i.e. Mark Chavunbuka and Ray Choto for medical treatment abroad. The Supreme Court of Philippines permitted ex-President Gloria Macapagal Arroyo and her husband to travel abroad. A Judge in Tripoli, Libya permitted a journalist i.e. Al-Khatabi to travel abroad. A law is being passed in Ukraine to permit a political rival to travel abroad for medical treatment. The Federal High Court in Lagos, Nigeria granted leave to a former governor Chimaroke Nanamani to travel abroad to attend to his medical needs. The Punjab and Haryana High Court at Chandigarh (India) permitted former Chief Minister of Punjab to travel abroad for medical treatment. Similarly, many other persons in Pakistan were permitted to go abroad. The apprehension of the respondents that if the petitioner is allowed to travel abroad, he will not return back is misconceived.

11. It was further contended that under Article 199(1) of the Constitution a writ can be issued by the High Court of a province if within its territorial jurisdiction functions are being performed by an authority in connection with the affairs of the Federation. The respondents Nos, 3 and 4 are the persons, who are present within the territorial jurisdiction of this Court and the said persons/Respondents are denying the present Petitioner opportunity to exit from the country from Karachi. In the Anoud Power case, it was held that the availability of territorial jurisdiction depends upon the nature of the relief which was sought, Reliance was also placed upon Section 20 of CPC. As per Explanation 1 to Section 20 CPC it is clearly provided that temporary residence is deemed to be permanent residence for the purposes of territorial jurisdiction. The court will have jurisdiction if within its limits the cause of action wholly or partly arises. In all the cases of ECL, the Sindh High Court did not find any problem in exercising jurisdiction. The Federation of Pakistan exists on every inch of Pakistan, including Karachi.

12. The learned counsel also referred to Rule 2 of the Exit from Pakistan (Control) Rules, 2010 and argued that none of the grounds as per Rule 2 are mentioned in any of the two impugned order, as such the impugned orders are extraneous to the statute and rules thereunder. In support of his arguments, he relied upon the following precedents:

**1.PLD 1969 Karachi 546 (Roshan Din v. S.M.Badruddin). Interim order exhausts or becomes merged in final order made in case.**

**2.AIR 1987 Madras 173 (C.Kamatchi Ammal v. Kattabomman Transport Corpn. Ltd.) "All interlocutory orders made in the course of a proceeding in the nature of a suit must necessarily lapse with the decision of the suit itself, unless, of course, the suit is one for permanent injunction and the interim injunction is made permanent as a part of the decretal order made by the Court. AIR 1985 Mad.295." Affirmed.**

**3.AIR 1995 Supreme Court (Delhi) 441 (Mrs.Kavita Trehan and another v.Balsara Hygiene Products Ltd.) Upon dismissal of the suit, the interlocutory order stood set aside and that whatever was done to upset the status quo, was required to be undone to the extent possible.**

**4. Civil Appeal Nos.1855-1856/2004. AIR 2004 SC 2093. (Shipping Corporation of India Ltd. v. Machado Brothers and others) (Manupatra-MANU/SC/0276/2004). No interlocutory order will survive after the original proceeding comes to an end.**

**5.AIR 2009 Supreme Court 2249 (Gauhati) (State of Assam v. Barak Upatyaka D.U.Karmachari Sanstha). An interim order which does not finally and conclusively decide an issue cannot be a precedent. Any reasons assigned in support of such non-final interim order containing prima facie findings, are only tentative.**

**6.UW.P.NO.1002/2007.Madras High Court (Ramakrishnan v. Superintendent of Police & others) (Manupatra-MANU/TN/3540/2010). It must be noted that an interim order does not survive after the final disposal of the Writ Petition and only on the strength of the interim order, the Court cannot grant any order. Further the interim order only survives till a final verdict in the main case and that by itself cannot become the final order.**

**7. High Court of Punjab and Haryana at Chandigarh (India). (Rakesh Kumar Garg v. Vipul Ltd.) (Manupatra-MANU/PH/0612/2009). The interim orders are made in the aid of the final orders that the Court may pass. An interlocutory order merges into the final order and does not survive after the final adjudication.**

**8. PLD 1983 Karachi 527 (Ali Muhammad Brohi v. Haji Muhammad Hashim). According to Concise Oxford Dictionary the word "interlocutory" means given in the course of legal action. A proceeding in an action is said to be interlocutory when it is incidental to the principal object of the action.**

**9. 1992 SCMR 613 (Abdul Qayyum and another v. Niaz Muhammad and another). The word "interim" inter alia means one for the time being; one made in the meantime and until something is done; an interval of time between one event, process or period and another; belonging to or taking place during an interim; temporary; something**

**done in the interim; a provisional arrangement adopted in the meanwhile; done, made, occurring etc.**

**10. 2006 CLC Karachi 1621 (Kashif Anwar v. Agha Khan University). Granting of temporary relief did not amount to grant of final relief as in case the suit was dismissed, the interim order would merge in the final order and no right could be claimed by plaintiff on the basis of interim order.**

**11. 1992 PTD 932 (Glaxo Laboratories Limited v. Inspecting Assistant Commissioner of Income Tax and others). In Corpus Juris Secundum, Volume 57, at page 1067 words 'Merge' and 'Merger' have been defined as follows: The verb 'to merge' has been defined as meaning to sink or disappear in something else, to be lost to view or absorbed into something else, to become absorbed or extinguished, to be combined or be swallowed up. 'Merger' is defined generally as the absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased, an absorption or swallowing up so as to involve a loss of identity and individuality."**

**12. 2009 3 AWC (Supp.) 2578SC. Supreme Court of India. (Prem Chandra Agarwal and Anr. V. U.P.Financial Corp. and Ors.) (Manupatra-MANU/SC/0662/2009). Since the final order has been passed by the High Court, obviously all interim orders passed by the High Court in the same Writ Petition, cease to exist automatically. Consequently, any direction given in the interim order dated 24.4.2004 also ceases to exist."**

**13. PLD 1997 Lahore 617 (Wajid Shamas-ul-Hassan v. Federation of Pakistan). The right of a citizen to travel abroad is a fundamental right guaranteed under Articles 2A, 4, 9, 15 and 25 of the Constitution of Islamic Republic of Pakistan, 1973. Section 2 of the Exit from Pakistan (Control) Ordinance, 1981 does not provide any guidelines or reasonable classification for taking the action against a person prohibiting him from travelling abroad.**

**14. PLD 2005 Karachi 252 (Khan Muhammad Mahar v. Federation of Pakistan). Section 2. Constitution of Pakistan (1973). Articles 4, 9, 14, 15 and 199. Constitutional petition. Name of the petitioner though was placed in the exit control list but no reason for such action was disclosed or communicated to him. Action of Authorities in placing the name of the petitioner in the exit control list, in circumstances, was wholly arbitrary, unjust without any valid reason and violative of his fundamental rights. Order placing the name of petitioner in the exist control list was declared to be illegal, without lawful authority and of no legal effect by the High Court.**

**15. PLD 2006 Karachi 530 (Farrukh Niaz v. Federal Government of Pakistan). No reason was assigned by the**

**Authorities, for placing name of the petitioner on Exit Control List, nor notice or intimation was served upon him. High Court in exercise of constitutional jurisdiction, directed the authorities to remove name of petitioner from Exist Control List.**

**16. 2006 YLR 2797 (Mirza Muhammad Iqbal Baig v. Federation of Pakistan & others). Right of a citizen to travel abroad is fundamental right guaranteed by Articles 2A, 4, 9, 15 and 25 of the Constitution. Abridgement of this fundamental right by the State through the Legislation or an executive measure has to be tested on the touchstone of the constitutional provisions. Life, liberty or property of a citizen cannot be taken away or adversely affected except in accordance with law.**

**17. 2008 YLR 1508 (Mian Munir Ahmed v. Federation of Pakistan & others). Name of petitioner was placed in the Exit Control List on the ground that certain criminal and civil cases were pending against him. Validity. Mere pendency of civil/criminal cases against a citizen was no ground to deny him fundamental right of freedom to travel within or outside Pakistan.**

**18. PLD 2010 Karachi 394 (Farooq Saleh Chohan & others v. Government of Pakistan and others). Exit from Pakistan (Control) Ordinance, 1981 being an extraordinary legislation had put fetter on fundamental constitutional right and freedom of a person to travel abroad. Non-providing copy of such restraint order would be violative of Articles 4, 10-A and 15 of the Constitution. High Court set aside impugned restraint order in circumstances.**

**19. PLD 2010 Lahore 230 (Mian Ayaz Anwar v. Federation of Pakistan & others). Not to furnish reason for decision violates principles of fairness, procedural propriety and natural justice besides Section 24-A of General Clauses Act, 1897. The element of "public interest" appears for the first time in sub-section (3) of section 2 which simply states that the Federal Government will not specify the grounds on which the order prohibiting a person from going outside Pakistan has been passed if it is not in the public interest to do so.**

**20. PLD 2011 Karachi 546 (Muhammad Khyzer Yousuf Dada v. Federation of Pakistan). Section 2. Constitution of Pakistan, Article 199. Merely on the ground that there was apprehension that the petitioner could flee from Pakistan was not a ground for depriving him from exercising his fundamental right of travelling freely. Impugned memorandum putting the name of the petitioner on Exit Control List, was set aside.**

**21. 2012 SCMR 186 (Higher Education Commission v. Sajid Anwar and others). In absence of any restriction imposed by law as it had been envisaged under Articles**

**14 and 15 of the Constitution, the Authorities had acted illegally and denied constitutional rights of respondents.**

**22. 2014 SCMR 856 (M/s.United Bank Ltd. v. Federation of Pakistan & others). Placing name of Director of a company on Exit Control List during pendency of recovery suit against company before the Banking Court. No appropriate order had been passed by the Banking Court regarding liability of Director and the matter was still pending so much so that leave to defend application filed by Director had not been disposed of. On perusal of the memorandum, we have reached to the conclusion that the order has been passed in a mechanical manner by the Ministry of Interior without applying its mind and without giving any reason for such decision. This is a bald order and is hit by section 24A of the General Clauses Act, 1897 and cannot be sustained.**

**23. PLD 1968 S.C. 387 (Asghar Hussain v. The Election Commission of Pakistan & others). The Election Commission is "a person" or "authority" which exercises in the Province of East Pakistan functions in connection with the affairs of the Centre, namely, elections to the office of the President, National Assembly and the Provincial Assemblies and for holding a referendum as provided for in the Constitution. In that the Commission is subject to the jurisdiction of the High Court under Article 98 (2)(a)(i) notwithstanding that its main office and Secretariat are located in the Province of West Pakistan.**

**24. PLD 1976 Peshawar 66 (Muhammad Aslam Khan & others v. Federal Land Commission). Article 199. Writ of prohibition. Jurisdiction. Federal Land Commission though located out of jurisdiction of High Court yet desiring to perform some function in area falling within territorial jurisdiction of such High Court. Functions thus desired to be performed held, amenable to jurisdiction of High Court.**

**25. 1985 SCMR 758 (M/s.Al-Iblagh Limited, Lahore v. The Copyright Board, Karachi & others). Article 199. Copyright Board having been set up by Central Government for whole of Pakistan performs functions in relation to affairs of Federation in all provinces. Any order passed by such Board or proceedings taken by it in relation to any person in any of four provinces of country would give High Court of Province, in whose territory order would affect such a person, jurisdiction to hear case.**

**26. 1995 CLC 1027 (Ghulam Haider Badini and others v. Government of Pakistan through Ministry of Information and Broadcasting, Islamabad and another) Article 199 of the Constitution. Pakistan Television Corporation was also performing its functions in Balochistan which is an integral part of its Network. By no stretch of imagination it could be urged that since the Head Quarter of Pakistan**

**Television Corporation was located at Islamabad, therefore, it did not come within the purview of Constitutional jurisdiction of Balochistan High Court.**

**27. 2000 SCMR 1703 (Trading Corporation of Pakistan (Private) Limited v. Pakistan Agro Forestry Corporation. Article 199. Relief was not only claimed against the Corporation but was also claimed against the Government of Pakistan at Islamabad. Both, Courts at Karachi as well as Rawalpindi had the jurisdiction in the matter.**

**28. PLD 2001 Supreme Court 340 (Anoud Power Generation Limited and others v. Federation of Pakistan and others). As far as question of jurisdiction of the High Court under section 20 CPC is concerned it depends upon the nature of the relief which has been claimed. Undoubtedly the respondent-companies have not opened letter of credits nor they were contemplating to install power projects within the territorial jurisdiction of Lahore High Court but they challenged vires of amending Notification No.584(I)/95 dated 1st July, 1995 issued by Federal Government having its offices in Islamabad which falls within the territorial jurisdiction of Lahore High Court.**

**29. PLD 2006 Karachi 479 (M/s.Facto Belarus Tractors Limited Karachi and another v. Federation of Pakistan). All the High Courts in Pakistan were exercising jurisdiction under Article 199 of the Constitution in respect of decisions/orders made by the Federation and authorities/ officers functioning with the affairs of Federation. Sindh, Balochistan and Peshawar High Courts therefore, had the jurisdiction. Objection was repelled in circumstances.**

13. To start with the learned Attorney General for Pakistan quoted the case of **Sindh High Court Bar Association v. Federation of Pakistan** reported in **PLD 2009 S.C. 879** in which the hon'ble Supreme Court held that the constitution cannot be held in abeyance at the will or whims of the Chief of the Army Staff and to be revived after he has achieved his objectives which amounts to subversion of the Constitution and this constitutes the offence of high treason. Learned Attorney General argued that against this judgment a review petition was filed by the petitioner which was also dismissed which shows that

the judgment dated 31.7.2009 is intact. He then referred to memo of constitution petition No.14/2013 filed by Lahore High Court Bar Association in the hon'ble Supreme Court with the prayer that the Federation of Pakistan may be directed to file complaint to prosecute the General (retired) Pervez Musharraf under the High Treason (Punishment), Act, 1973. He further referred to the hon'ble Supreme Court consolidated order dated 8.4.2013 passed in Civil Petition Nos.2255/2010, 14/2013, 16/2013, 17/2013 and 18/2013. While issuing notice, the Secretary Interior was directed to make sure that if the name of General (retired) Pervez Musharraf is not already on the Exit Control List, this shall be done forthwith and a compliance report of this order shall be submitted in Court during the course of the day.

14. He further argued that though this petition was finally disposed of on 3.7.2013 by the hon'ble Supreme Court as reported in **2013 SCMR 1683** but he was of the view that despite final disposal of this petition, the order passed on 8.4.2013 is still in field and it is an independent order through which directions were issued to the Federation to ensure that the petitioner should not move out of Pakistan. However, he admitted that before passing order by the hon'ble Supreme Court, the name of petitioner was put on Exit Control List vide Memorandum dated 5.4.2013. He also referred to the final order dated 3.7.2013 which was disposed of on the undertaking of the learned Attorney General. The learned Attorney General contended that since the name of the petitioner was already on E.C.L. hence, there was no need to mention anything in the final

order and in the petition of Lahore High Court they had prayed for the detention and trial so the relief of detention was granted in the shape of putting the name of petitioner on E.C.L. He also referred to the order passed by the learned Division Bench of this court on 23.12.2013 in Criminal Bail Application Nos.262 and 263 of 2013 and argued that the counsel for the petitioner in both the Criminal Bail Applications filed the review application with the prayer that the name of the petitioner may be removed from E.C.L. Learned Division Bench of this court disposed of the applications with the observation that the name of the petitioner was not put on E.C.L. on the direction of this court. It is included in the E.C.L. on the direction of hon'ble Supreme Court so they cannot pass any order in this regard.

15. The purpose of referring to this order by the learned Attorney General for Pakistan is to make emphasis that once the earlier bench of this court ceased of the similar matter and pass order hence, another bench of the same court cannot take cognizance or divergent view but it is bound by the order of the Division Bench and cannot sit as an appellate court. Learned Attorney General further argued that the memorandum placing the name of the petitioner on E.C.L. was issued at Islamabad. The petitioner also sent application from Islamabad for deleting his name from E.C.L. The response to the request of the petitioner for deleting his name from E.C.L. was also communicated to him at Islamabad and the petitioner is also permanent resident of Islamabad, hence this court at Karachi lacks territorial jurisdiction. On merger theory he argued that

the order passed by hon'ble Supreme Court on 8.4.2013 was an independent order which is still in force. It was further contended that if the parties are at variance to the question of validity and enforceability of the order this court cannot take the task of interpretation of the judgment of hon'ble Supreme Court.

16. He referred to the High Treason (Punishment) Act, 1973 which provides that the High Treason is defined under Article 6 of the Constitution, shall be punishable with death or imprisonment for life and no court shall take cognizance of an offence punishable under this Act except upon a complaint in writing made by a person authorized by the Federal Government in this behalf. He further argued that the offence of high treason is a "political crime" and "political offence". He further referred to the Archbold (English Law) in which much significance has been given to the offences of high treason. He contended that now the Special Court will start recording of evidence and trial is going to commence therefore, there would be no justification to delete the name of the petitioner from E.C.L. The government does not want to give any incentive to the petitioner and they do not want to take this risk and if the petitioner will leave the country he will never come back. He further argued that Hussain Haqqani was allowed to travel on the orders of hon'ble Supreme Court, who never returned back to this country hence, the Government does not want to take any risk in the case of petitioner.

17. Learned Attorney General also referred to Section 5 of Extradition Act, 1972 and he repeatedly argued that

the case of high treason is a political crime. He further referred to sub-section (2)(a) of Section 5 which provides that no fugitive offender shall be surrendered if the offence in respect of which his surrender is sought is of a political character or if it is shown to the satisfaction of the Federal Government or of the Magistrate or Court before whom he may be produced that the requisition for his surrender has, in fact been made with a view to his being tried or punished for an offence of a political character. He then referred to the extradition treaty between the Government of U.A.E. and the Government of Islamic Republic of Pakistan, which provides under Article 4 that extradition shall not be granted under this Treaty, in some cases including if the crime for which the extradition is requested is a political crime or crime of a political nature.

18. The learned Attorney General argued in the political crime, despite having extradition treaty, the Government shall not be able to extradite the petitioner. The name of the petitioner was put on ECL in the public interest due to pendency of high treason case. So far as the question of illness of the petitioner's mother and his own medical treatment is concerned the learned Attorney General argued that the Federal Government offered to fly in mother of the petitioner from U.A.E. but the petitioner did not accept this offer and under the garb of this request he intends to flee from Pakistan to frustrate the judicial process. In support of his arguments, he referred to the following case law:

**1.2005 PLC (C.S) 205 (Jehanzeb Khan v. Government of the Punjab and others). High Court would get the order of Supreme Court complied with if same contained direction of absolute nature without more to be done for its implementation. Where the matter was of interpretation and a**

**process was to be undertaken and parties had variant approaches as to its true import, writ of mandamus could not be issued by High Court.**

**2.PLD 2005 Supreme Court 530 (Mirza Shaukat Baig and others v. Shahid Jamil and others). Article 189 of the Constitution of Islamic Republic of Pakistan which, inter alia, provides that any decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law shall be binding on all other Courts in Pakistan. It is well-entrenched legal proposition that "the ultimate responsibility of interpreting the law of the land is that of the Supreme Court.**

**3.PLD 2004 Supreme Court 583 (Mian Muhammad Shahbaz Sharif v. Federation of Pakistan). Article 15 of the Constitution bestows a right on every citizen of Pakistan to enter or move freely throughout the country and to reside and settle in any part thereof. It is a settled proposition of law that the right to enter in the country cannot be denied but a citizen can be restrained from going out of the country.**

**4.PLD 2007 Supreme Court 642. (Pakistan Muslim League (N) v. Federation of Pakistan). No infringement or curtailment in any fundamental right can be made unless it is in the public interest and in accordance with valid law. No doubt the reasonable restriction can be imposed but it does not mean arbitrarily exercise of power or unfettered or unbridled powers which surely would be outside the scope of "reasonable restriction" and it must be in the public interest.**

**5.2013 CLD 2187 (Sindh) (Abdul Rehman Baloch v. Securities and Exchange Commission of Pakistan) In "Stroud's Judicial Dictionary", Fourth Edition, page-2186, "Public Interest" has been defined as "a matter of public or general interest" does not mean that which is interesting as gratifying curiously of a love of information or amusement, but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights and liabilities are affected ...."**

**6.(2012) 9 Supreme Court Cases 705 (Pushpanjali Sahu v.State of Orissa and another) The social impact of the crime e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order and public interest, cannot be lost sight of and per se require exemplary treatment.**

**7.2011 SCMR 371 (Prime Minister Inspection Team National Highway Authority v. Zaheer Mirza). Collapse of Flyover. Supreme Court ordered that the names of respondents would continue to be on Exit Control List; and Prosecutor General, if considered that names of any other person connected directly or indirectly with the collapse of flyover would recommend to the Secretary Interior for placing his name on Exit Control List.**

**8.PLD 1998 Peshawar 82 (Anwar Saifullah Khan v. The Passport and Immigration Officer Government of Pakistan). Provision of S.2, Exit from Pakistan Control Ordinance, 1981, exempts Government from requirement to hear before order was passed against aggrieved person. Such right, however, was provided to aggrieved person under S.3 of the Ordinance when he had filed review application to Federal Government against order passed under S-2 of the Ordinance.**

**9.PLD 1997 Karachi 513 (Miss Naheed Khan v. Government of Pakistan). Federal Government while placing the name of any person on Exit Control List is obliged to state grounds for the same, but grounds have now been furnished in the counter affidavit which has been filed on behalf of the respondents. As was indicated earlier, restriction can be placed on the movement of a person from Pakistan to a destination outside Pakistan in public interest. No doubt, the grounds for placing the petitioner's name on Exit Control List were not supplied to the petitioner, but nevertheless if there was any technical flaw, in the impugned action, no real prejudice was caused to the petitioner because the petitioner could yet have applied for a review, after she had been informed.**

**10. ARCHBOLD 2001. (Archbold Criminal Pleading, Evidence and Practice. UK). Police and Criminal Evidence Act 1981, s.116, Sched.5**

**15-19 Meaning of "serious arrestable offence"**

**116.—(1) This section has effect for determining whether an offence is a serious arrestable offence for the purposes of this Act.**

**(2) The following arrestable offences are always serious---**

**(a) an offence (whether at common law or under any enactment) specified in Part I of Schedule 5 to this Act; and**

**(b).....**

**(c).....**

**SERIOUS ARRESTABLE OFFENCES**
**Part I**
**(Offences Mentioned in Section 116 (2) (a).**

**15-21**
**1.Treason.**
**2.Murder.**
**3.Manslaughter.**
**4.Rape.**
**5.Kidnapping.**

**11. Case No.CRI/APN/87/82. [1983] LSCA 4. High Court of Lesotho. (Shadrack Ndumo v. The Crown). It cannot be seriously disputed that charges of High Treason, Sedition and**

**contravention of the Internal Security (General) Act 1967 are serious charges. It must be borne in mind that people who commit these political offences are more often than not people of high political morals and ideals who commit them not for personal gains but because of their strong political viewpoints or beliefs. There is therefore great incentive for political offenders to jump bail and avoid standing trials in order to gain freedom to disseminate their view points more effectively.**

**12. CASE NO.CRI/APN/636/96 [1997] LSCA 3. High Court of Lesotho (David Lelingoana Jonathan v. The Director of Public Prosecutions) For my part I consider that High Treason is a very serious offence indeed. Section 297(1) subject to sub-section (2) or (3), sentence of death by hanging may be passed by the High Court upon an accused convicted before or by it of treason or rape." I consider therefore that the inducement to flee is very great in a case such as this. The court will not readily grant bail if the Attorney-General opposes bail.**

**13. Supreme Court of Pakistan. Unreported order in the case of Khurram Shahzad [C.P.No.26 of 2013]. Before parting with the judgment, we may point out that on account of instituting petitions before the learned Islamabad High Court and the Lahore High Court with the same prayers, the matter has already been delayed. We would like to observe that in such like a situation, it would have been appropriate for the learned High Courts to have referred to the judgment which has already been passed by this court in respect of the territorial jurisdiction of different High Courts in the case of Sandalbar Enterprises Pvt. Ltd. v. Central Board of Revenue (PLD 1997 SC 334).**

**14.PLD 1997 S.C. 334 (Sandalbar Enterprises vs. CBR). The view found favour with the learned Judges of the Division Bench in the case in hand seems to be in consonance with Articles 199(1)(a) (i) and (ii) of the Constitution of the Islamic Republic of Pakistan, 1973. We may observe that it has become a common practice to file a writ petition either at Peshawar or Lahore, or Rawalpindi or Multan etc. to challenge the order of assessment passed at Karachi by adding a ground for impugning the notification under which a particular levy is imposed. This practice is to be depreciated. The court is to see, what is the dominant object of filing of the writ petition. In the present case, the dominant object was not to pay the regulatory duty assessed by a Custom Official at Karachi. We are, therefore, not inclined to grant leave.**

**15.AIR 1978 S.C. 47 (Madhu Limaye v. State of Maharashtra). Ordinarily and generally the expression "interlocutory order" has been understood and taken to mean as a converse of the term 'final order' in volume 22 of the third edition of Halsbury's Laws of England at page 742, however, it has been stated in para 1606.**

> **".....a judgment or order may be final for one purpose and interlocutory for another, or final as to part and interlocutory as to part. The meaning of the two words**

**must therefore be considered separately in relation to the particular purpose for which it is required. In para 1607 it is said:**

**"In general a judgment or order which determines the principal matter in question is termed final".**

**16. AIR 1968 S.C. 733 (Mohanlal v. State of Gujrat). The judgment or order may be final for one purpose and interlocutory for another or final as to part and interlocutory as to part. The meaning of the two words "final" and "interlocutory" has, therefore, to be considered separately in relation to the particular purpose for which it is required. However, generally speaking a judgment or order which determines the principal matter in question is termed final.**

19. Moulvi Iqbal Haider filed an application under Order 1 Rule 10 C.P.C for becoming party in this petition. He argued that he was also the petitioner in the honorable Supreme Court so he wants to be heard. The counsel for the petitioner and learned Attorney general raised no objection if right of audience is given to Mr.Iqbal Haider who agreed to argue the case on the available record. The intervener who is also a learned advocate of this court argued that the Order dated 08.04.2013, passed by hon'ble Supreme Court of Pakistan in leading Case CPLA No.2255/2010 was an independent order. The CPLA and others petitions were disposed of on 3.7.2013 on the basis of statement dated 26.6.2013 submitted by learned Attorney General. In the year 1999 General (R) Pervez Musharraf dismissed the Government of Mian Muhammad Nawaz Shareef and he was forced to opt self-exile. Now Mian Muhammad Nawaz Shareef has implicated the petitioner in various Criminal Cases including High-Treason Case. Therefore there is great apprehension that General (R) Pervez Musharraf may also make a deal with the present government and this is may be one of the reasons that the petitioner did not file Review Application in the honorable Supreme Court. In the event of any compromise, the high treason case and

proceedings against the petitioner will be seriously prejudiced.

20. It was further contended that the petition through attorney is not maintainable. To our understanding there is no bar under any law that an aggrieved person cannot file petition through his attorney. This objection is misconceived. He further argued that after considering the pros and cons, if this court reaches to the conclusion that the petition must be allowed, then reasonable time may be allowed to him to file appeal in the honorable supreme court. The opposition of the intervener to the petition is recorded. The same intervener was also the petitioner in Civil Petition No.2255/2010 before the honorable Supreme Court for seeking directions against the government to prosecute the petitioner under Article 6 of the Constitution, hence, we feel it appropriate to implead him in this petition as a proper party. His application **(C.M.A NO.11212/2014)** moved under Order 1 Rule 10 C.P.C is allowed. Office is directed to add his name as respondent No.5 in the title of the petition with the red ink.

21. Heard the arguments. All learned counsel agreed the disposal of this petition at katcha peshi stage and advanced their arguments extensively. The crucial point involved in the present petition is the effect of order passed by hon'ble Supreme Court in Civil Petition No.2255/2010 and four other petitions on 8.4.2013 and the order dated 3.7.2013 through which hon'ble Supreme Court was pleased to dispose of the aforesaid petitions. If we minutely see the order dated 8.4.2013 the hon'ble Supreme Court discussed the crux of reliefs

claimed in the above petitions and also quoted various paragraphs of the judgment passed by the hon'ble larger bench of the Supreme Court in the case of Sindh High Court Bar Association reported in **PLD 2009 S.C. 879.** The order also refers to the resolution passed by the Senate of Pakistan on 23.1.2012 to the effect that General (retired) Pervez Musharraf be arrested immediately on arrival in Pakistan and the Federal Government shall institute a case against him under Article 6 of the Constitution. The order denotes that the counsel for the petitioners Mr.A.K.Dogar and Mr.Hamid Khan submitted before the hon'ble Supreme Court that the respondent General (retired) Pervez Musharraf be taken into custody to ensure that he remained within the country for the purpose of trial under Article 6 of the Constitution. Despite their request the hon'ble bench of the Supreme Court was of the opinion that in the first instance notice of the petition be served on the said respondent for tomorrow and the Inspector General of Police Islamabad and if necessary Inspectors General of Police in the Provinces shall ensure the service on the respondent. It was further directed by the hon'ble Supreme Court to the Secretary Interior to make sure that if the name of the respondent General (retired) Pervez Musharraf is not already on the Exit Control List this shall be done forthwith and compliance report shall be submitted during the course of the day. It was further directed that the Federation and all its functionaries shall ensure that the respondent does not move outside the jurisdiction of Pakistan until this order is varied/modified. The hon'ble Supreme Court vide order dated 3.7.2013 finally disposed of the aforesaid petition, which is reported in

**2013 SCMR 1683.** In this order the hon'ble Supreme Court observed that all the petitioners have prayed that the Federal Government be directed to lodge a complaint under Article 6 of the Constitution against respondent General (retired) Pervez Musharraf and others. The hon'ble Supreme Court referred to the order dated 24.6.2013 whereby the Attorney General was asked to file further statement providing detail of the actions envisioned by the Federal Government. Pursuant to the order dated 24.6.2013 the learned Attorney General filed the statement on 26.6.2013 which is reproduced as under:-

> (1) The Prime Minister has directed the Secretary Interior to forthwith direct the Director-General FIA to constitute a special investigative team of senior officers to commence an inquiry and investigation in relation to the acts of General (R) Parvez Musharraf of 3rd November, 2007 that may amount to high treason under Article 6 of the Constitution and to finalize as expeditiously as possible the statement of case to be put up by the Federal Government before the Special Court to be constituted under the Criminal Law Amendment (Special Courts) Act, 1976.
>
> (2). The Law entrusts the investigation of the offence of high treason to the FIA under entry No.14 of the Schedule of the FIA Act, 1974 read with Section 3(a) and 6 thereof. However, in order to ensure expeditious completion of the inquiry and investigation, the Prime Minster is also considering the constitution of a commission to oversee and monitor the progress of the proceedings.
>
> (3) On the completion of the investigation, the Federal Government shall file the requisite complaint under section 5 of the Criminal Law Amendment (Special Courts) Act, 1976 and take steps to constitute the Special Court in accordance with Section 4 of the said Act for the trial of the offence.

22. After reproducing the statement submitted by the Attorney General, the hon'ble bench of the apex court in paragraph 2 observed that the prayer in these petitions thus effectively appears to have been accepted by the Government and the counsel representing the

petitioners also expressed their satisfaction with the statement. In paragraph 3 the hon'ble apex court observed as under:-

> **"We are consciously, deliberately and as submitted by Mr.Muhammad Ibrahim Satti, learned Senior Advocate Supreme Court for the respondent not touching the question of "abrogation" or "subversion" or "holding in abeyance the constitution" or "any conspiracy in that behalf" or indeed the question of suspending or holding the constitution in abeyance or the issue as to abetment or collaboration in the acts mentioned in Article 6 of the Constitution. This is so because any finding/observation or view expressed by us may potentially result in prejudice to the inquiry/investigation or subsequent trial should that take place as a result of such investigation". (2013 SCMR 1683. Moulvi Iqbal Haider v. Federation of Pakistan).**

23. In paragraph 4 it was further observed that the Federal Government has proceeded in furtherance of its constitutional obligation envisioned in Article 6 of the Constitution and for the present this suffices in terms of the said Article and the reliefs respectively sought by the petitioners in these petitions. The bone of contention between the parties is that the order dated 8.4.2013 was an interim order as nothing has been said by the hon'ble apex court in the final order as regards to ECL, hence, the finding recorded in the above order were interlocutory and interim nature. While the learned Attorney General and Intervener argued that the order dated 8.4.2013 was an independent and separate order.

24. To our understanding of law and the import of order dated 8.4.2013 passed by the hon'ble Supreme Court we are of the view that though the hon'ble Supreme Court as an interim measure directed the Federation to put the name of the petitioner on E.C.L. but it reflects

from the record that the Federation before passing order by the apex court already put the name of the petitioner on E.C.L. vide Memorandum dated 5.4.2013. The hon'ble Supreme Court in view of the order dated 8.4.2013 while going through the background of the case also referred to the excerpt from the judgment passed in the case of Sindh High Court Bar Association v. Federation of Pakistan and while issuing notice to the respondent the directions were given to place his name on E.C.L. The attorney General submitted a statement on 26.6.2013 in which certain assurances were given for prosecuting General (retired) Pervez Musharraf under Article 6 of the Constitution but no such statement was given that the name of General (retired) Pervez Musharraf shall remain continue on E.C.L. At the same time while finally disposing of the case the hon'ble Supreme Court did not pass any order or direction regarding the earlier order dated 8.4.2013 or direction contained in it.

25. Learned counsel for the petitioner and the learned Attorney General both have cited various dictums on the issue and effect of interlocutory order, final order and merger, through which following guidelines and rules of law are deducible:-

1. Interim order exhausts or becomes merged in final order made in case.

2. All interlocutory orders made in the course of a proceeding in the nature of a suit must necessarily lapse with the decision of the suit.

3. No interlocutory order will survive after the original proceeding comes to an end.

4. An interim order does not survive after the final disposal of the Writ Petition and only on the strength of the interim order, the Court cannot grant any order.

5. An interlocutory order merges into the final order and does not survive after the final adjudication.

6. A proceeding in an action is said to be interlocutory when it is incidental to the principal object of the action.

7. The word "interim" inter alia means one for the time being; one made in the meantime and until something is done; an interval of time between one event, process or period and another.

8. The interim order would merge in the final order and no right could be claimed by plaintiff on the basis of interim order.

9. Merger is defined generally as absorption of a thing of lesser importance by a greater whereby lesser ceases to exist but the greater is not increased.

10. In Corpus Juris Secundum. The verb 'to merge' has been defined as meaning to sink or disappear in something else, to be lost to view or absorbed into something else, to become absorbed or extinguished.

11. It is a well-settled principle that once a final order is passed, all earlier interim orders merge into the final order, and the interim orders cease to exist.

12. A judgment or order may be final for one purpose and interlocutory for another, or final as to part and interlocutory as to part. The meaning of the two words must therefore be considered separately in relation to the particular purpose. In general a judgment or order which determines the principal matter in question is termed final.

13. The meaning of the two words "final" and "interlocutory" has, therefore, to be considered separately in relation to the particular purpose for which it is required.

26. The distinction between the interlocutory order and or the final order is based on the premise that no interlocutory order will survive after the original proceedings comes to an end and interim order which does not finally conclusively decided an issue cannot be a precedent. Interim orders are made in the aid of the final order that the court may pass and which merges into final order and does not survive after the final adjudication. According to Corpus Juris Secundum, verb "to merge" has been defined as meaning of sink or

disappear in something else to be lost to view or absorb into final order and the interim order ceased to exist. The learned Attorney General in this regard quoted **AIR 1978 S.C. 47** and **AIR 1968 S.C. 733.** The crux of both the judgments is that a judgment or order may be final for one purpose and interlocutory for another, or final as to part and interlocutory as to part. The meaning of the two words must therefore be considered separately in relation to the particular purpose for which it is required. For making distinction in the present scenario to the effect of interim order or the final order, we have to once again revert back to both the orders. Before passing the order by the hon'ble Supreme Court on 8.4.2013 it is a matter of record that the name of the petitioner was already put on E.C.L. and while passing the above order the notice was also ordered to be issued to him. However, when the final order was passed by the hon'ble Supreme Court the counsel for General (retired) Pervez Musharraf were present and no directions were given in the final order to continue the name of General (retired) Pervez Musharraf on E.C.L. The learned Attorney General argued that since the order dated 8.4.2014 was not varied/modified by the subsequent order of the hon'ble Supreme Court, hence, it is an independent entity and premise but on the contrary it is also a matter of record that the hon'ble Supreme Court did not pass any observation or direction to continue the name of the petitioner on E.C.L. may be for the reasons that before passing direction, the Federation had already put the name of the petitioner on E.C.L. which is also a matter of record.

27. One more important aspect is also reflecting from the final order to strengthen our view point that when the order dated 8.4.2013 was passed the hon'ble Supreme Court referred to the excerpt from the judgment of Sindh High Court Bar Association and also recorded the contention of the learned Advocates appearing for the petitioners that the General (retired) Pervez Musharraf should be taken into custody and he should be tried under Article 6 but in the final order the hon'ble Supreme Court in para 3 did not touch the question of abrogation or subversion or holding in abeyance the Constitution or any conspiracy in that behalf or indeed the question of suspending or holding the Constitution in abeyance or the issue as to abetment or collaboration in the acts mentioned in the Article 6 of the Constitution. It was also held that any finding/observation or view expressed by the hon'ble Supreme Court may potentially result in prejudice to the inquiry/investigation or subsequent trial should take place as a result of such investigation. The findings recorded by the hon'ble bench of Supreme Court makes quite visible that as an interim measure the directions were issued for E.C.L. but subsequently the hon'ble bench did not give any findings on ECL. In the light of above dictums and the guidelines deducible therefrom, we are of the view that the order containing the direction for putting the name of General (retired) Pervez Musharraf on E.C.L. was of an interim nature which was merged in the final order and does not survive after final adjudication. It is well settled principle that once a final order is passed, all earlier interim orders merge into the final order and the interims orders cease to exist. The learned Attorney General also referred to Article 189 of the Constitution and argued that the

order of the hon'ble Supreme Court is binding upon us. We are fully cognizant and conscious to this constitutional provision that any decision of the hon'ble Supreme Court which decides a question of law or enunciate a principle of law shall be binding on all courts of this country and we cannot take any departure from this constitutional provision but here point at issue is altogether different in which distinction needs to be drawn to understand the peculiarity of two orders, one is interlocutory and other is final and with all humility and according to our conscience, acumen and wisdom, we tried to decide the above proposition of law.

28.The next question involved in this case is the order dated 23.12.2013 passed by the learned Division Bench of this court in Criminal Bail Applications Nos.262 and 263 of 2013. Learned Attorney General argued that in the aforesaid bail applications, the counsel for the petitioner moved an application for removal of the petitioner's name from the E.C.L. but the request was declined by the learned Division Bench on the ground that this court never called upon the Federation to put the name of the petitioner on E.C.L. but it was done under the orders of hon'ble Supreme Court vide order dated 8.4.2013. Learned Attorney General argued that once the learned Division Bench of this court has already given his verdict on the similar issue then we being another Division Bench of this court cannot take cognizance of the matter. Let us clarify that the findings recorded by the learned bench was in bail applications, which were limited to the extent of protective bail granted to the petitioner and such findings were not rendered by the learned bench in its constitutional jurisdiction. What

we find out from the order is that the learned Division Bench did not give any independent finding, but it merely relied upon the order passed by the hon'ble Supreme Court on 8.4.2013. We have also noted that the order was passed on 23.12.2013 but in the order the learned bench nowhere reflected the final order which was passed on 3.7.2013 so it would not be wrong to presume that the final order was not brought into the knowledge of the learned division bench of this court. We are of the view that the order passed by the earlier Division Bench in bail applications cannot be treated a bar for us to entertain this constitutional petition under Article 199 of the Constitution. In our humble view, the order had a limited effect in the context of bail applications only or to the extent of review application, which has no binding effect while hearing a Constitutional Petition under Article 199 of the Constitution.

29. Now we would like to take up the issue of E.C.L. Learned counsel for the petitioner argued that the Memorandum of E.C.L. dated 5.4.2013 is completely illegal and mala fide as the same does not disclose any reason, which is in violation of Section 24-A of the General Clauses Act and Article 10-A of the Constitution of Pakistan. At present including the case of high treason four other cases i.e. Mohtarma Benazir Bhutto, Mr.Akbar Bugti, Lal Masjid and Judges confinement matters are also pending in the different courts, but the learned Attorney General while opposing this petition robustly focused his entire opposition to this petition on the basis of high treason case only. He did not argue anything regarding four other cases but submitted that the high

treason case is very high profile case due to which the Government cannot afford any risk allowing the petitioner to move outside Pakistan. It is quite clear that registration of a criminal case or institution of criminal proceedings does not automatically imply that the accused should be disallowed to move outside Pakistan and or to put his name on E.C.L. Had it been the intention of legislature then it would have made the corresponding provisions in the Cr.P.C. or any other special enactments made for the trial of offences. Mere registration of FIR does not permit nor warrant the automatic inclusion of any such accused person on E.C.L. but once bail is granted, it is the province of that court to regulate the custody of that particular accused. Section 2 of the **Exit from Pakistan (Control) Ordinance, 1981** permits the Federal Government to prohibit any person from proceeding from Pakistan to a destination outside Pakistan. Sub-section (2) provides that before making an order under sub-section (1) it shall not be necessary to afford an opportunity of showing cause against the order. While sub-section (3) provides further rider that if an order is made under sub-section (1) and if it appears to the Federal Government that it will not be in the public interest to specify the grounds on which the proposed order is made, it shall not be necessary to specify such grounds. Rule 2 of the **Exit from Pakistan (Control) Rules 2010,** provides the grounds under clause (a) to (g) which may prohibit any person from proceeding from Pakistan if he is involved in such offences. If we look to the Memorandum of E.C.L. not a single ground is mentioned except to convey the decision that it has been decided to place the name of General (retired)

Pervez Musharraf on E.C.L. For the ready reference, Rule 2 of Exit from Pakistan (Control) Rules 2010 is reproduced as under :-

**2. Grounds to prohibit persons from proceeding from Pakistan to a destination outside Pakistan.-(1) The Federal Government may, by an order in writing under sub-section (1) of section 2 of the Exit from Pakistan (Control) Ordinance, 1981 (XLVI of 1981), prohibit any person from proceeding from Pakistan to a destination outside Pakistan notwithstanding the fact that any person is in possession of valid travel documents, if he is involved in:--**

**(a) corruption and misuse of power or authority causing loss to the government's funds or property;**
**(b) economic crimes where large government's funds have been embezzled or institutional frauds committed;**
**(c) acts of terrorism or its conspiracy, heinous crimes and threatening national security;**
**(d) case of key directors of a firm, in default of tax or liabilities of not less than ten million rupees;**
**(e) case of two or more key or main directors of a firm, in default of loan or liabilities exceeding one hundred million rupees;**
**(f) any case and his name forwarded by the registrar of a High Court, Supreme Court of Pakistan or Banking Court only; or**
**(g) drug trafficking.**

**2. Nothing in sub-rule (1) shall apply to-**

**(a) persons involved in private disputes where government interest is not at stake, except cases of fraud against foreign banks and reputable companies with significant foreign investments;**
**(b) persons involved in crime like murder and dacoity etc., unless special grounds are furnished by the relevant home departments;**
**(c) directors who represent foreign investment in business;**
**(d) women or children undergoing Education who are appearing as directors merely due to their family relationship with major share-holders; or**

**3. .....**

30. During the course of arguments learned Attorney General did not point out any of the specific grounds for which the name of the petitioner is included on E.C.L. but he argued that the case of high treason is a political case and a political crime. He did not argue

that the discloser of the reasons for putting the name of the petitioner on E.C.L. was not in the public interest but remain stick to an assertion that it is a political crime which means that there was no bar not to issue the reasons for the E.C.L. order which was in fact in the larger public interest according to his point of view. The learned Attorney General pointed out the cases of **Mian Muhammad Shahbaz Sharif** and **Pakistan Muslim League (N)** in which it was held that it is the right of every citizen of Pakistan to enter in the country but a citizen can be restrain from going outside the country. He also quoted the case of **Naheed Khan** in which it was held that the restriction can be placed on a person in the public interest. It was further held that the Federal Government while placing the name of any person on E.C.L. is obliged to states the grounds for the same but the grounds have now been furnished in the counter affidavit which was considered a technical flaw as no real prejudice was caused to the petitioner in that case. He further referred to the case of **Prime Minister Inspection Team National Highway Authority** in which due to collapse of flyover the hon'ble Supreme Court ordered to continue the name of respondent on E.C.L. In the case of **Anwar Saifullah Khan,** Peshawar High Court held that the petitioner was not given any opportunity before putting his name on E.C.L. but right was provided to an aggrieved person under Section 3 of the Ordinance when he filed review application. Learned Attorney General to show the gravity of the offence of high treason relied upon **Archbold 2001** (UK.Laws) in which the offence of treason was considered a serious arrestable offence. He also cited the cases from **High Court of Lesotho** in

which the accused were refused bail in the case of high treason, which were considered to be most serious offence.

31. Record reveals that the petitioner applied to the respondent No.1 on 31st March 2014 for deletion of his name from E.C.L. but the said request/review was also refused vide communication dated 2.4.2014 in which the authority considered his request in view of pronouncements of superior courts and pending criminal cases in various courts. Even this time, no right of hearing was afforded to the petitioner when he applied for deletion of his name but his request was rejected summarily. In the Memorandum of E.C.L. or refusing the deletion of the name of petitioner from E.C.L. neither any reason was shown as provided under clause (a) to (g) of Rule 2 nor any other reason except the pendency of cases or pronouncements of superior courts. Even no specific order of any court is mentioned. Sub-rule (2) of Rule 2 specifically provides that nothing in sub-rule (1) shall apply to person involved in the crime like murder and dacoity etc. unless special grounds are furnished by the relevant home department. So it is clear that even in the case of murder and dacoity there is no direct provision for inclusion of the name of the persons who are involved in the case of murder and dacoity unless special grounds are furnished by the home department. No case pleaded by the respondents that the name of petitioner was placed on ECL for the reasons that he is involved in corruption cases or caused loss to the government's funds or property or he committed any economic crime where large government's funds have

been embezzled or he is threat to the national security or he is defaulter of tax or liabilities or involved in a case in which his name has been forwarded by the registrar of a High Court, Supreme Court of Pakistan or Banking Court. The learned counsel for the petitioner pointed out the order dated 31.3.2013, passed by the learned Special Court, Islamabad in complaint No.1 of 2013 which is a high treason case against the petitioner. Since this order has much significance, therefore, it would be proper to reproduce its excerpts:-

> **"3.....The accused in attendance and his appearance being voluntary, therefore, he is not taken into custody."**
>
> **"4. In addition to the security concerns and taking into consideration the statement of the Prosecutor made on 18.02.2014 to the effect that after reading of the formal charges the presence of the accused would not be required until the stage of examination of the accused under Section 342 of the Criminal Procedure Code, coupled with the fact that he is still hospitalized, we intend not to take him into custody or impose any other restriction rather exempt him from his appearance before the court until otherwise directed. In the meantime, the case shall proceed and the accused shall be represented through his counsel."**
>
> **"8. It is true that mere pendency of a criminal case ipso facto does not restrict an accused from traveling abroad as has been held in Mian Tahir Jehangir vs. Federation of Pakistan through Secretary, Ministry of Interior, Islamabad and another 2008 YLR 1857, suffice it to state that it is the Federal Government and not this Court which has placed the name of the accused on the Exit Control List. In our view where the Federal Government places the name of a person on Exit Control List it also has the power to review such decision as mandated by Section 3 of the Exit from Pakistan (Control) Ordinance, 1981. This Court has not passed an order to place the name of the accused on Exit Control List, therefore, the Federal Government cannot refuse to review its decision merely because of the pendency of this case."**
>
> **"9. It is trite that a High Court while exercising its constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan 1973 can direct the authorities to remove the name of a person from the Exit Control List, however, this exercise cannot be undertaken by this Court being a statutory Court**

**exercising powers of a criminal Court and not being vested with the authority to invoke and exercise the provisions of Article 199 of the Constitution of Islamic Republic of Pakistan 1973. Farrukh Niaz vs. Federal Government of Pakistan PLD 2006 Karachi 530 can be read with considerable advantage. We may further clarify that this Court has not sent the accused to AFIC for medical treatment. The accused is hospitalized with his own choice and is still under treatment. The Special Court constituted under Section 4 of the Criminal Law Amendment (Special Court) Act 1976 is not a constitutional court but a statutory court exercising powers as a criminal court, therefore, can only exercise statutory powers. It is further made clear that unless an accused is in custody, a criminal court cannot restrict his movement. He can work for gain anywhere and get medical treatment at a medical facility of his own choice. Nevertheless, the accused is required to appear before the Court as and when required and can seek exemption from appearance on justifiable grounds.**

32. The above order of the learned Special Court made it clear that mere pendency of high treason case the name of the petitioner cannot be placed on E.C.L. even the Special Court observed that this case may not be a ground for the Government not to review its decision. The personal appearance of the petitioner is also exempted from trial court till such time he is required to appear for his statement under Section 342 Cr.P.C. Nothing was controverted by the learned Attorney General regarding this order except to argue that the petitioner is involved in high treason case which is a serious offence and he did not argue anything on other four pending cases. Learned counsel for the petitioner argued that the petitioner is former Chief of the Army Staff who also remained president of Pakistan, hence it is out of question that he will leave the country, his family and assets in Pakistan forever or permanently. If he had any such intention, he would not have come to Pakistan voluntarily to face the trial. He referred to the cases of **Khan Muhammad Mahar, Farrukh Niaz, Mirza Muhammad Iqbal Baig, Mian Munir Ahmed, Farooq**

**Saleh Chohan, Mian Ayaz Anwar, Muhammad Khyzer Yousuf Dada, Higher Education Commission** and **M/s.United Bank Ltd.** (supra). Right of citizen to travel abroad is a fundamental right and abridgement thereto be tested on the touchstone of the constitutional provisions. It is the right guaranteed under Article 2-A, 4, 9, 15 and 25 of the Constitution. No reason was communicated to the petitioner as to why his name was placed on E.C.L. A plethora of the judgments are available in which such type of actions were considered arbitrarily, unjust, without any valid reason and violative of fundamental rights. It is also well settled that mere pendency of civil or criminal cases against a citizen is no ground to deny him fundamental right of travel within or outside Pakistan. Life, liberty or property of a citizen cannot be taken away or adversely affected except in accordance with the law. It is also well settled that after granting bail by the competent court the custody is regulated by such court of law. Merely on apprehension that the petitioner will not return back to Pakistan is no ground for depriving him from exercising his fundamental right. No plea was taken that the reasons were not assigned in the public interest rather we are of the view that in the cases of high treason the public interest at large is involved to know the reasons for prosecuting the accused of high treason.

33. The case law quoted by learned Attorney General in relation to the point of E.C.L. are distinguishable. He quoted the case of **Naheed Khan,** which was decided on 29.5.1997 while General Clauses (Amendment) Act 1997, was gazetted on 2.6.1997 through which Section 24-A was inserted and now in our constitution, recently

Article 10-A has also been added as a fundamental right which envisages due process of law and fair trial. Under Section 24-A of General Clauses Act it is necessary that a power to make any order shall be exercised reasonably, fairly, justly and for the advancement of the purpose of the enactment. The authority making any order so far as necessary shall give reasons for making the order or as the case may be, shall provide a copy of the order to the person affected prejudicially. The hon'ble Supreme Court recently in the case of **M/s.U.B.L.** reported in **2014 SCMR 856** observed that no appropriate order has been passed regarding the liability of Director and the matter still pending so much so leave to defend application was not disposed of hence, it was held that order including the name of Director on E.C.L. was passed in a mechanical manner by the Ministry of Interior without applying its mind and without giving any reason for such decision which was considered to be a bald order and hit by Section 24-A General Clauses Act and cannot be sustained. In this case also the learned Special Court clearly stated in its order that unless an accused is in custody, a criminal court cannot restrict his movement. It is further stated in the order that he can work for gain anywhere and get medical treatment at a medical facility on his own choice. It was further observed that nevertheless, the accused is required to appear before the court as and when required and can seek exemption from appearance on justifiable grounds.

34. The petitioner has also attached the medical certificate of his mother issued by W.Wilson Specialized Hospital L.L., Sharjah, U.A.E. which reads as under:-

"I have been attending medically to Mrs. Zohra Musharraf, holder of Pakistani Passport # IP0000005, for over two years who is the mother of Gen. Pervez Musharraf. She is a 95 years old lady suffering from multiple chronic illnesses, ischaemic heart disease, chronic obstructive airway disease and generalise arteriosclerosis with progressive deterioration of her mental power (progressive dementia).

Lately her condition shows deterioration and she came to the hospital on 26th March 2014, complaining of heavy breathing and breathlessness. I have prescribed suitable medicine to her but my overall assessment of her health is that her condition is fast deteriorating requiring constant care and medical attention"

35.The petitioner has also filed his medical certificate including the certificate issued on May, 4, 2014, which reads as under:-

"The private medical board formed to examine Rtd. General Pervez Musharraf examined him and reviewed his medical history.....

After reviewing all the imaging studies which included CT scan, MRI scan and lumbar x-rays, and failure of all type of conservative and medical management, the board is recommending surgical management to relieve his daily suffering. The surgical management recommended includes;

1. Posterior minimally invasive pedicle screw fixation and arthrodesis of L5-S1 (Sextant Medtronic system recommended).
2. Spine navigation system for instrumentation to improve the precision in surgery and reduce the complications inherent in spine instrumentation.
3. Motor evoked potential (MEP) monitoring system to reduce the risk of neural damage.

Unfortunately to keep the surgery precise and to perform it with minimal complications, above mentioned technology and expertise is not available in Pakistan. The Board is recommending him to either have this surgery performed in Dubai, North America or Europe".

36. The above medical certificate was attached with the rejoinder of the petitioner. However, in response to this medical certificate only it was stated that the contents are incorrect and the grounds are fake and the petitioner wants to escape his trial but the authenticity of the medical board opinion or certificate was not challenged.

Learned Attorney General argued that Mr.Hussain Haqqani was allowed to leave the country on the orders of hon'ble Supreme Court but he did not return back. He pointed out Extradition Treaty between Government of Pakistan and U.A.E. and referred to Article 4 in which the extradition may not be granted if the crime for which the extradition is requested is a political crime or a political nature. The courts of this country are not helpless even in past there are various examples in which the apex court of his country passed orders to ensure custody of accused persons so that they may be tried such as the case of Sharukh Jatoi and Tauqir Sadiq etc. Though the learned Attorney General quoted the case of Hussain Haqqani but he did not point out any efforts made by the Federation to ensure his presence in this country. Let us remind to the learned Attorney General that according to the prosecution story the petitioner is also involved in four other criminal cases in which extradition would not be denied in any treaty with any foreign country. If in any case, the accused is absconded, the law is not helpless but a procedure to deal such situation is already provided under the Criminal Procedure Code and other relevant laws. The respondent No.5 has shown apprehension that in the regime of General (retired) Pervez Musharraf the present worthy Prime Minister entered into a compromise deal so he apprehends that history will repeat and now the petitioner will escape through a compromise deal. The apprehension shown by the respondent No.5 is nothing to do with this case and if any such deal is made the law will take its own course but at this stage we cannot pass any preemptive judgment in this regard.

37. Now we would like to take the issue of territorial jurisdiction. Learned Attorney General argued that this court lacks territorial jurisdiction. At present the petitioner is residing at Karachi though temporarily but it is also a fact that if he wants exit from Karachi, he would not be allowed to move due to his name on ECL. The respondent Nos.3 and 4 are the Director and Additional Director FIA (Immigration) posted at Karachi. It is also a matter of record that it is not the first time or the first case which this court or we are entertaining on the question of E.C.L. but this court in number of cases not only entertained the petitions but also passed orders for removal of the name from ECL. In this case also, the orders were passed by the Ministry of Interior at Islamabad like other cases but since it is a matter of liberty of a person and infringement of his fundamental right, no austere or rigid view can be taken as to the territorial jurisdiction of this court. Clause (a) of Sub-Article (1) of Article 199 of the Constitution lucidly envisages that on the application of any aggrieved party, the High Court may direct a person performing within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do. The High Court can also declare that any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect. If a stringent or inflexible view is taken on the question of E.C.L. that only the High Court at Islamabad is

competent to take cognizance, then it would mean that no other High Court in the country can take up any issue against the Federation on the plea that Federation is located at Islamabad. It is not the case that order passed under the Exit from Pakistan (Control) Ordinance, 1981 does not apply in the Province of Sindh or this is not the case that if the petitioner wants exit from the territorial jurisdiction of this court, he would not be stopped.

38. In the case reported in **2009 CLD 1498 (LPG Association of Pakistan v. Federation of Pakistan).** It was held that the Federal Government or any body politic or a corporation or a statutory authority having exclusive residence or location at Islamabad with no office at any other place in any of the Provinces, shall still be deemed to function all over the country. If such Government, body or authority passes any order or initiates an action at Islamabad but it affects the "aggrieved party" at the place other than the Federal Capital, such party shall have a cause of action to agitate about his grievance within the territorial jurisdiction of the High Court in which said order/action has affected him. In the case of **Muhammad Aslam Khan** the Federal Land Commission was located out of jurisdiction but desiring to perform some function within territorial jurisdiction of that High Court, so it was found amenable to the writ jurisdiction. In the case of **Al-Iblagh Limited, Lahore** it was held that the copyright board performing functions in relation to the affairs of Federation in all Provinces, so that any order passed in relation to any person in any four provinces would give High Court of that Province jurisdiction to hear the case. In the case of

**Ghulam Haider Badini & others** objection was taken that PTV Headquarters is located at Islamabad but the learned High Court of Balouchistan found the writ petition maintainable on the ground that the PTV has its network in Balochistan. In the case of **Trading Corporation of Pakistan,** the relief was claimed against the corporation as well as against the Federation so it was found that the courts at Karachi and Rawalpindi (Lahore High Court) both have concurrent jurisdiction. In the case of **Fecto Belarus Tractors** it was held that all the High Courts in Pakistan are exercising jurisdiction under Article 199 of the Constitution in respect of decisions/orders made by the Federation.

39. The learned Attorney General quoted the case of **Sandalbar Enterprises (Pvt.) Ltd.** which was referred to by the hon'ble Supreme Court in the case of **Khurram Shahzad,** (unreported case). In the case of **Sandalbar Enterprises,** hon'ble Supreme Court had observed that against the assessment order passed at Karachi, petitions are filed at Peshawar or Lahore or Rawalpindi or Multan by adding a ground for impugning a notification under which particular levy is imposed and this practice was depreciated. It was held that the court has to see what is the dominant object of filing the writ petition and in the **Sandalbar** case the dominant object was not to pay regular duty assessed at Karachi so leave was refused. Even in the case of **Sandalbar** guiding principle was to see the dominant object. In the case in hand, the dominant object is not to challenge any levy or the assessment order passed against the petitioner but the dominant object is to get free from the clutches of ECL and naturally if the petitioner wants to exist from

the territorial jurisdiction of this court he will not be allowed until his name is removed from ECL. Due to petitioner's abode at Karachi, the partial cause of action is also accrued at Karachi where the respondent No. 3 & 4 are performing their duties while Federation of Pakistan is performing its functions all over Pakistan, hence the High Courts at Karachi and Islamabad both have concurrent jurisdiction in this matter. The objection of the learned Attorney General to the territorial jurisdiction of this court is misconceived.

40. As a result of above discussion, this petition is admitted to regular hearing and disposed of in the following terms:-

(a) The Memorandum No.12/74/2013-ECL, dated 5th April 2013, placing the name of General (retired) Pervez Musharraf on Exist Control List is struck down.

(b) Since the direction contained in this judgment is self-executory, therefore, the operation of this judgment is suspended only for fifteen days, during which the respondents, if so desire, may file appeal in the honorable Supreme Court.

(c) Pending applications are also disposed of accordingly.

**Judge**

**Judge**

**Karachi:**
**Dated.12.6.2014**.