

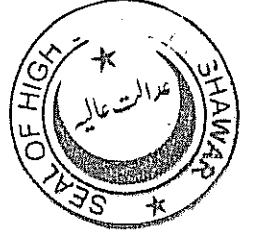
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**IN THE PESHAWAR HIGH COURT, PESHAWAR**

In Ref to

Writ Petition No \_\_\_\_\_/2024



**Asad Qaiser Ex Speaker National Assembly**

Son of Sardar Bahadar

Resident of Marghuz, Tehsil & District Swabi through its Special attorney Remsha Robin

.....Petitioner

**V E R S U S**

**1. Government of Khyber Pakhtunkhwa**

Through Chief Secretary,

Office Address: Civil Secretariat, Khyber Road, Peshawar Cantt

**2. Federation of Pakistan**

Through Secretary Interior

Office Address: R Block, Pak Secretariat, Islamabad

**3. Inspector General of Police**

Government of Khyber Pakhtunkhwa

Office Address: 2H64+PWC, Finance Department, Civil Secretariat, Peshawar

**4. Capital City Police Officer**

Government of Khyber Pakhtunkhwa

Office Address: 2H64+MG2, Sahibzada Abdul Qayyum Rd, Finance Department, Civil Secretariat, Peshawar

**5. Federal Investigation Agency**

Through its Deputy Director

Office Address: Phase V Hayatabad Peshawar

.....Respondents

**WRIT PETITION UNDER ARTICLE 199 OF THE**

**CONSTITUTION OF ISLAMIC REPUBLIC OF**

**PAKISTAN, 1973**

WP162-2024 ASAD QAISER VS GOVT CF PG19

**ATTESTED**  
**EXAMINER**  
Peshawar High Court  
Peshawar

Respectfully Sheweth:

1. That petitioner is citizen of the Islamic Republic of Pakistan. He is the former Speaker of the National Assembly of Pakistan, served from August 2018 to April 2022. He had been a member of the National Assembly of Pakistan, since August 2018 till January 2023. Previously, he had been the member of the Provincial Assembly of Khyber Pakhtunkhwa from 2013 to 2018 and served as the 14th Speaker of the Khyber Pakhtunkhwa Assembly, since May 2013 to August 2018.
2. That after a change of regime, a massive crackdown started against the political party "Pakistan Tehreek-e-Insaf" and various FIRs was registered against the petitioner and other leadership and party workers; however the petitioner has approached the concerned courts and obtained bail in all the cases registered against the petitioner.
3. That the petitioner being of Muslim faith intends to perform Umrah and to submit before the Almighty ALLAH; however the respondents, after the announcement of the date of general elections, again started a massive crackdown, in respect of which various petitions are pending before the Honorable Supreme Court of Pakistan and in Constitutional Courts as well.
4. That the respondents have previously arrested and detained the political leaders and workers from Airport including Former Provincial Minister Shoukat Youzafzai who was going to Saudia Arab to perform Umrah therefore the petitioner invokes the jurisdiction of Peshawar High Court under Article 199 of the Constitution of Islamic Republic of Pakistan on the following grounds inter-alia:-

### GROUNDS:

- a) That Constitution is regarded as the Supreme law whereas provisions related to fundamental rights have evolved the guarantees for the enforcement of fundamental rights subject to integrity and solidarity of Pakistan, In such eventuality loyalty to the State comes first and that being the case Pakistan has always been regarded first and the enemy of Pakistan is to be regarded as if such enemy is the personal enemy of every citizen, thus every citizen under Article 5 of the Constitution is required to be obedient to the Constitution and all the

public office holders are bound to defend the Constitution without any compromise whatsoever. Pakistan which is created on the basis of religion in the preamble, Objective Resolution and in Chapter I of the Constitution has specifically dealt with the mandate and provision of profess, practice and propagate his religion.

- b) That the former Provincial Minister was also detained by the respondents while he was going to Saudia Arab to perform Umrah and during the massive crack down, the petitioner who has obtained bail in all the cases registered against him, has fundamental right under Article 20 of the Constitution, to practice and profess his religion without any hindrance and obstruction.
- c) That the petitioner is neither involved in any criminal activity nor has any criminal record of any anti-state activity and therefore he may be allowed to visit Saudia Arab to perform Umrah without any barrier from the respondents.
- d) That Article 31 of the Constitution has great emphasis to promote Islamic way of life and the state shall enable the Muslims of Pakistan, individually and collectively, to order their lives in accordance with the fundamental principles and basic concept of Islam, and in such way the performance of Umrah by the petitioner is to connect with Allah (Subhanahu Wa Ta'ala- Glory to Him, the Exalted), gain Allah's pleasure, and reap the numerous bounties linked with the act of devotion
- e) That other ground will be raised at the time of arguments at the time of arguments with permission of this Hon'ble Court.

It is therefore very humbly prayed that appropriate writ may be granted as follow:-

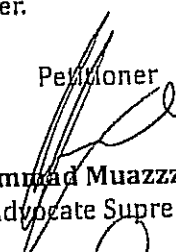
- I. **THAT** the petitioner has the fundamental right of practicing his spiritual and religious obligation to travel abroad for the purposes of Umrah.
- II. **CONSEQUENTLY** the respondents may please be directed not to restrain from stopping or creating any hindrance for the petitioner travelling abroad for the purposes of performing Umrah.

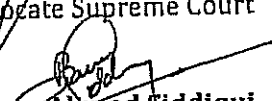
III. ANY other relief which though has not been specifically prayed for but is found appropriate may also be granted to the petitioner.

Dated: 09-01-2024  
Peshawar

through

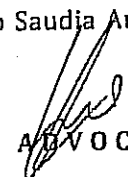
Petitioner

  
Muhammad Muazzam Butt  
Advocate Supreme Court

  
Bassam Ahmad Siddiqui  
Advocate High Court


**INTERIM RELIEF:-**

In the meanwhile the respondent may please be restrained from not taking any adverse action or create hindrance in the process of petitioner visit to Saudia Arab to perform Umrah.

  
ADVOCATE


**CERTIFICATE:**

Certified on instructions of my client that petitioner has not previously moved to this Hon'ble Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 regarding the instant matter. Further stated that being Writ Petition on the score that since there is no adequate and alternate legal remedy is available, thus this case may be fixed before the Worthy Division Bench (D.B) of this Honorable Court.

  
ADVOCATE

**LIST OF BOOKS:**

1. Constitution of Islamic Republic of Pakistan, 1973
2. Any other law books according to need

  
ADVOCATE

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**EXAMINER**  
Peshawar High Court  
Peshawar

**BEFORE THE PESHAWAR HIGH COURT PESHAWAR**

In Ref to

W.P No. \_\_\_\_\_/2024

**Asad Qaiser Ex Speaker National Assembly**

.....Petitioner

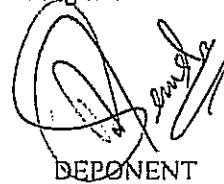
**VERSUS**

**Government of Khyber Pakhtunkhwa & others**

.....Respondents

**AFFIDAVIT**

I Remsha Robin Daughter of Robin Resident of Saddar Road Peshawar (Special Attorney Holder), do hereby solemnly affirm and declare that contents of this Writ petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.




DEPONENT

CNIC NO: 17301-7787011-8

CELL NO: 035-9022523

Identified by



**MUHAMMAD MUAZZAM BUTT**  
Advocate Supreme Court

No. 1156  
Certified that the above was verified on solemn affirmation before me in office, this \_\_\_\_\_ day of \_\_\_\_\_ 2024 by Remsha Robin s/o Robin who was identified by Muhammad Muazzam Butt who is personally known to me:  
Oath taken 9/1/2024  
Peshawar H.C.

**CERTIFIED TO BE TRUE COPY**  
**EXAMINER**  
Peshawar High Court, Peshawar  
Authorized under Article 8, 7 of  
the Qanun-e-Shahadat Act 1984  
**24 FEB 2024**

JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT, PESHAWAR  
JUDICIAL DEPARTMENT  
W.P.No.162-P/2024

Asad Qaiser  
versus  
Government of Khyber Pakhtunkhwa through  
Chief Secretary, Peshawar and others.

Date of hearing: 22.02.2024.

M/S Muhammad Muazzam Butt, Arshad  
Ahmad and Bassam Ahmad Siddiqui,  
Advocates, for the petitioner.

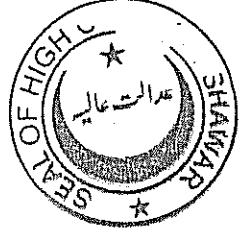
Mr. Rahat Ali Khan Nahaqi, AAG (F) alongwith  
Abdur Rehman, AD (Law) FIA, for the  
Federation.

Mr. Danial Khan Chamkani, AAG, for the  
Provincial Government.

\*\*\*


JUDGMENT

SHAKEEL AHMAD, J.- Through the instant  
petition filed under Article 199 of the  
Constitution of Islamic Republic of Pakistan,  
1973, the petitioner, Asad Qaiser s/o Sardar  
Bahadur, has called in question the order dated  
23<sup>rd</sup> June, 2023, whereby and whereunder, his  
name has been placed on Exit Control List

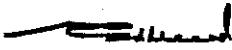


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("ECL") in terms of Section 2 of Exit from Pakistan (Control) Ordinance, 1981 (*hereinafter referred as "the Ordinance of 1981"*) pursuant to the Cabinet decision dated 22.06.2023 on the recommendations of Chief Commissioner ICT / SSP Investigation, Islamabad, merely on the ground that he is charged in different FIRs.

2. Filtering unnecessary details, the facts which are requisite to be stated are that,  petitioner is a known political worker. He is ex-Speaker of the National Assembly of Pakistan. He has now been elected as member of the National Assembly of Pakistan. He intended to perform Umrah to earn merit, however, due to placement of his name in the ECL, he was not allowed to go to Saudi Arabia to perform Umrah. It was pleaded in the petition that due

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to his affiliation with "Pakistan Tehreek-e-  
*Insaf*", his name has been placed in the ECL  
with mala fide intention. It was also pleaded that  
the petitioner has already obtained bail in the  
criminal cases registered against him.  
According to him, the act of the respondents,  
whereby his name was placed on the ECL, is  
illegal, without lawful authority, without  
jurisdiction, ultra vires of the Constitution, void  
*ab-initio* and ineffective upon his rights. Being  
aggrieved with the impugned order, petitioner  
 has knocked at the door of this Court.

3. Pursuant to the order of this Court,  
respondent No. 2 & 5 submitted their separate  
parawise comments, raising therein many legal  
and factual objections.

4. We have given our thoughtful  
consideration to the matter and examined the  
material on record.

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5. Perusal of the comments of the respondent No.2 & 5 reflect that the name of the petitioner was placed on the Exit Control List (ECL), merely due to his involvement in different crime reports, however, it is the assertion of the petitioner that he has already availed the concession of bail in those matters.

When confronted with the assertion of the learned counsel for the petitioner, the learned AAG (F) appearing on behalf of the respondents could not rebut the same. At this stage, we deem it appropriate to reproduce hereinbelow the impugned order dated 23<sup>rd</sup> June, 2023, whereby and whereunder, the name of the petitioner was placed on the ECL:-

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GOVERNMENT OF PAKISTAN  
MINISTRY OF INTERIOR

No. 12/120/2022

Islamabad, the 27th June 2022

MEMORANDUM

Subject: PLACEMENT OF NAMES ON ECL CONTROL LIST

It has been decided by the Federal Government to place the names of following persons on ECL Control List (ECL) under Section 2 of Exit from Pakistan (Control) Ordinance, 1981, vide Cabinet decision No. 337/Rule-19/2022 dated 22.06.2022 on the recommendations of Chief Commissioner ICI / SSP Investigation Islamabad. According to Chief Commissioner ICI / SSP Investigation the various FIRs are registered against the individuals u/h 7A1A of Anti-Terrorism Act, 1997. As a result, there is strong likelihood they may avoid investigation/trials by leaving the country.

S.No.	ID#	Name/Father's name	CNIC/Passport #	Address
1	19679	Ali Ameen Ghondapur S/o Ameen Ullah Khan	12101-4271846-7	Ameen House College Road D.I.Khan
2	19680	Ali Hameed Awan S/o Muhammad Nawaz	41101-5148214-7	H # 481, St # 39, Sector I-8/2, Islamabad
3	19681	Murad Saeed S/o Saeed Ullah	15602-1372170-1	Mohallah Shergil Tahsil & Distt Swat
4	19682	Shibi Faraz S/o Ahmad Faraz	41101-849682-5	
5	19683	Hassan Khan Niaz S/o Hafiz Ullah Khan	33201-5415372-5	
6	19684	Umer Ayub Khan S/o Gohar Ayub Khan	41101-1909875-3	
7	19685	Asad Umer S/o Ghulam Umer	42201-8211470-7	HF 42, St # 716, Sector F-10, Islamabad
8	19686	Hammad Ashar S/o Niaz Muhammad Ashar	35202-2622986-7	
9	19687	Amjad Khan Niaz S/o Sher Afzaan Khan Niaz	41101-6458723-7	
10	19688	Raja Khuram Nawaz S/o Muhammad Nawaz	37405-4374735-9	
11	19689	Jameel Mughal S/o Mehtab Mughal	41101-1821025-5	
12	19690	Amir Mahmood Kayani S/o Athir Mahmood Kayani	37405-8641673-1	
13	19691	Farah Habib S/o Muhammad Anhad	33100-2735136-7	

*Handwritten signature*

14	19692	U. Khalid (R) Muhammad Ashir S/o Muhammad Sadiq	34301-3541445-7	
15	19693	Umer Sultan S/o Sultan Javed	41101-4373728-3	
16	19694	Asad Qader S/o Sanjar Bahadur	16202-5589603-1	
17	19695	Imran Ahmad Khan Niaz S/o Iqbal Ullah Khan Niaz	41101-4966540-1	Bohr Sector Islamabad
18	19696	Muhammad Alam Khan Soyhal S/o Muhammad Tahir Khan	13101-4747377-7	
19	19697	Amir Masood Mughal S/o M Muhammad Akram	41101-1971538-5	
20	19698	Syed Zulfiqar Abbas Bhattar S/o Syed Waheed Ahmad Bhattar	41101-9752485-7	
21	19699	Ahmad Khan Niaz S/o Muhammad Alam Khan	41101-1598822-9	
22	19700	Talib Sabir S/o Muhammad Sadiq	37101-9851207-1	
23	19701	Waseq Gouyari Abbas S/o Abdul Gouyari Abbas	37405-0828049-9	
24	19702	Ghulam Sarwar Khan S/o Muhammad Farid Khan	37405-1568177-7	
25	19703	Saleh Muhammad Kayani	71301-1302858-5	
26	19704	Asad Farooq Khan	37405-3974742-7	

All concerned are requested to take immediate action in the matter.

(Muhammad Asim Akbar)  
Section Officer (IC)

Tel: 2291245

Copy forwarded for information to person concerned.

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Section Officer (IC)

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6. No doubt, the Federal Government in exercise of the powers under Section 2 of the Ordinance of 1981 can prohibit any person from proceeding abroad notwithstanding the fact that such person is in possession of valid travelling documents, but before exercising the power in terms of Section 2 of the Ordinance of 1981, the authority must act fairly, justly and judiciously. It appears from the record that the petitioner intends to go to Saudi Arabia to perform *Umrah* to earn merit. It is by now settled that while prohibiting a person from proceeding abroad, the Ministry of Interior shall not pass an order mechanically, and if it intends to curtail movement of a person for any reason, then the prohibition must be through a cogent order.

7. The overall review, facts and circumstances of the case, leads us to the conclusion that the impugned order is factually

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and legally not sustainable. It seems that the impugned order was issued without applying the judicious mind and ignoring the facts that the petitioner has already been granted concession of bail, on the basis of which his movement was curtailed.

8. Article 15 of the Constitution of Islamic Republic of Pakistan, 1973 allows freedom of movement but subject to reasonable restrictions imposed by law, however, in our view, the curtailment of the movement of the petitioner on the aforesaid pretext is neither reasonable nor legal. Admittedly, petitioner is a citizen of Pakistan and is also an elected member of the National Assembly of Pakistan. Being a citizen of Pakistan, he has a fundamental right guaranteed under Articles 2A, 4, 9 & 15 of the Constitution to travel abroad and abridgement thereto be adjudged on the touchstone of the Constitutional provisions. His



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nomination in different crimes and its authenticity reports are yet to be adjudicated. Such involvement, wherein he has already availed concession of bail as argued by the learned counsel for the petitioner and not denied by the other side, cannot be made ground to place his name on the ECL to deprive him from his fundamental rights to travel abroad, particularly for performance of *Umrah* to earn merit. Thus, act of the authorities, placing his name on the ECL, is sheer violation of fundamental rights, as his trial is yet to be held for his alleged involvement in terrorist activities.

9. Dwelling upon the objection of the learned AAG appearing on behalf of the respondent No.1, 3 & 4 that alternate remedy by way of filing review petition in terms of section 3 of the Ordinance of 1981 is available to the petitioner, therefore, writ petition would

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Peshawar

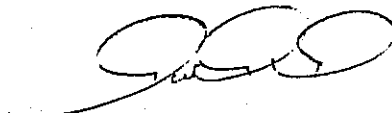
not be maintainable, if the same has been filed without availing such remedy. This argument of the learned AAG, in our view, has no force. It is by now settled that availability of alternate remedy would not constitute an absolute bar upon jurisdiction of High Court to entertain Constitutional petition to exercise Constitutional jurisdiction under Article 199 of the Constitution, if the circumstances so warrant. One of the well-recognized exceptions to that general rule is a case where an order is attacked on the ground that it is wholly without lawful authority, void *ab-initio*, malafide or violative of fundamental rights, like the present one, in such circumstances, the rule of availing remedy of review can be dispensed with. In this context, reliance can be placed on the judgment reported as "Farzand Raza Naqvi and 5 others Vs. Muhammad Din through Legal Heirs and others" (2004 SCMR 400).

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10. In the ultimate analysis, we find merit in the arguments raised by the learned counsel for the petitioner, therefore, this petition is admitted and allowed and the impugned order dated 23<sup>rd</sup> June, 2023 to the extent of petitioner, whereby and whereunder his name was placed on the ECL, is declared as illegal, without lawful authority, without jurisdiction, ultra vires of the Constitution, void *ab-initio* and ineffective upon his rights, therefore, the same is set aside. The Secretary, Ministry of Interior, Government of Pakistan, Islamabad (respondent No.2) is directed to remove the name of the petitioner from the ECL forthwith.

No order as to costs.

  
**JUDGE**

  
**JUDGE**

**Announced**  
**22.02.2024**

(DB) Hon'ble Mr. Justice Shakeel Ahmad  
Hon'ble Mr. Justice Sahibzada Asadullah  
Noor Shah

34625

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 Peshawar High Court, Peshawar  
 Authorized under Article 8, 7 of  
 the Qanun-e-Shahadat Act 1984  
**24 FEB 2024**

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