**Justice delayed is justice denied**

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The judiciary has three roles. It dispenses justice, protects the fundamental rights of the people, and acts as a protector of the constitution. With regards to fundamental rights enshrined in the constitution, it is supposed to exercise caution to ensure that the verdicts given by it do not infringe upon the fundamental rights guaranteed by the constitution. But unfortunately, our judicial history is replete with examples where judges have used their discretion to usurp the fundamental rights of an under-trial individual. The classic example of it was the decision of the Lahore High Court in 2019 to impound the passport of Maryam Nawaz in addition to sureties while accepting her bail in the Chaudhry Sugar Mills case. NAB arrested Maryam Nawaz on 8th August 2019 from Kot Lakhpat jail where she had gone to see her father. She filed a petition for her bail in the Lahore Court. After hearing arguments of the prosecution and defence lawyers, the court accepted the bail under Article 19 of the Constitution and ordered her to furnish two surety bonds, each worth Rs10 million, and deposit an additional Rs70 million besides surrendering her passport to the registrar of LHC.

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The High Court, in its order explaining the reason for asking Maryam to surrender her passport observed, “Since the prosecution has shown the bank statement of the petitioner in according to which Rs.7 crores were withdrawn on 28.11.2011 and the prosecution has apprehension of fleeing away of the petitioner, therefore, to satisfy our judicial conscience we would pass a conditional order.” The courts while dispensing justice or dealing with such cases are supposed to give their orders within the ambit of the relevant laws but sadly enough in Maryam’s case, the order to surrender her passport was given in violation of the Passport Act 1974. The courts can impound any document, not the passport, as it is dealt with under special enactment. Article 8 of the Act says “(1) A passport issued by or on behalf of the Federal Government shall be the property of the Federal Government and may by an order under the head of a secretary to the Government of Pakistan, or an officer authorized by the Federal Government on this behalf be required to be returned and shall also be liable to be cancelled, impounded or confiscated by like order. (2) Subject to subsection (3), before making an order under sub-section (1) in respect of the passport issued to any person, the Federal Government shall give such person notice in writing calling upon him to show cause why the order should not be made: Provided that no such notice need be given in the case of an order impounding a passport if it is necessary in the opinion of the Secretary or such other officer to take immediate action, but an opportunity to show cause against the making of the order shall be afforded to the person to whom the order relates, within two weeks from the making of the order.’](3) If the Federal Government has reason to believe that the person in respect of whose passport it is proposed to make an order under subsection (1) is; or has been engaged in subversive or in activities that are prejudicial to the interest of Pakistan or Pakistan’s relations with any foreign power, it shall not be necessary to give such person the notice provided for in subsection (2) or to afford him an opportunity of being heard”

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As is evident, only the federal government can impound or confiscate an individual’s passport in case he or she is involved in subsurface activities prejudicial to the interest of Pakistan or Pakistan’s relations with any foreign country. The court by ordering impounding of Maryam’s passport went beyond its powers. Two surety bonds of Rs.10 million, an additional deposit of Rs.70 million and the fact that she voluntarily came back to Pakistan in 2018 notwithstanding her conviction absence leaving her ailing mother behind should have been adequate to satisfy the judicial conscience of the court. Freedom of movement is one of the fundamental rights guaranteed by the Constitution both within and outside the country. The document which is required for travel abroad is the passport issued by the Passport Authorities. It is pertinent to mention that no other law including the NAB Ordinance or the Code of Criminal contains a provision for impounding an individual’s passport under trial.

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There are innumerable decisions by the courts allowing the persons involved in criminal cases to travel abroad pending the decisions on them. On February 10, 2022, LHC ruled that people with pending cases can travel abroad. In the detailed judgment, Justice Tariq Sheikh Saleem said “It is true that the case against the petitioner has not been decided so far but cannot be a ground to deprive him of his right to travel abroad,” It is painful to note that NAB did not file any reference or investigation report before a court of competent jurisdiction. Consequently, a three-member bench headed by CJ Ameer Bhatti was constituted which heard the case on 14th September. However, no decision was made except to issue a notice to NAB asking it to submit its response by September 27th. NAB responding to the LHC orders submitted that it no longer needed the passport of Maryam Nawaz. However, the bench did not give any verdict on the issue and fixed the next hearing on 3rd October because the lawyer representing Maryam Nawaz had not turned up and instead was represented by his junior which did not go well with the bench. Finally, on 3rd October it ordered the return of the passport to Maryam. The fact that Maryam was denied her fundamental right of freedom of movement for such a long time against the relevant law, is a bad reflection on our justice system.