

THE HON'BLE SMT. LALITHA KANNEGANTI

WRIT PETITION No. 25777 OF 2022

ORDER:

This Writ Petition is filed seeking the following relief:

“ to issue an appropriate writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the Respondent No.2 in keeping the Look Out Notice issued against the petitioner in force even after grant of bail to the petitioner by the II AJCJ-cum-XIX Addl. Metropolitan Magistrate, Cyberabad at Malkajgiri in C.C.No. 513 of 2021 in Crime No. 86 of 2021 of Kushaiguda Police station after the apprehension of the petitioner by the airport authorities and produced before the Honourable Magistrate by the 3rd respondent police as illegal, arbitrary, against law and is in violation of the fundamental rights guaranteed under Articles 14, 19(1)(g) and 21 of the Constitution of India and consequently direct the Respondent No. 2 to recall the Look Out Notice issued against the petitioner in Crime No. 86 of 2021 of Kushaiguda Police Station and intimate to the authorities to those whom the same was earlier communicated within a stipulated time limit petition and pass such other further or other reliefs as may be deemed fit and proper.”

2. Ms. D. Neeharika Reddy, learned counsel for petitioner submits that petitioner is having a passport issued by the Government of India and also a green-card holder, permanent resident of USA. It is submitted that petitioner's marriage was performed in the year 2011. Out of the wedlock, they were blessed with two girls, aged about 7 and 5. It is further submitted that immediately after the marriage, petitioner and his wife went to USA and started residing there.

Both the children are born in USA and are citizens. In the month of November, 2019, petitioner's wife without informing him brought the children to India and continued to stay in India. Initially, petitioner has no clue about the fact that his wife left to India. He made searches for the children and he learnt that on 30th November 2019, along with the children, she reached Hyderabad. Then, petitioner in 2020, came to India to persuade his wife and take her back to USA. But the wife at the instigation of her mother refused to accompany petitioner and also to part with the children unless he transfers all the properties in her name and she also prevented him from visiting the children. It is submitted that to mount pressure on the petitioner, his wife has given a report to the police. Basing on the same, police have registered Crime No. 86 of 2021. It is submitted that after completing investigation, the respondent police have filed charge sheet and the same was numbered as C.C.No. 513 of 2021 on the file of the II Additional Junior Civil Judge-cum-XIX Additional Metropolitan Magistrate, Cyberabad. Learned counsel submits that when petitioner landed in Airport in the morning of 19.02.2022 and was undergoing immigration check, he was apprehended by the Immigration Officer based on the Look out notice. Later, he was handed over to the 3rd

respondent. Subsequently, he was arrested and produced before the II Additional Junior Civil Judge-cum-XIX Additional Metropolitan Magistrate, Cyberabad. Bail was granted to petitioner on executing a personal bond for Rs.10,000/- with two sureties and he is now being represented by a counsel. Learned counsel submits that once bail is granted by the Court, there is no purpose of keeping the said Look out notice pending. It is submitted that in the bail order, Court has also not imposed condition directing petitioner not to leave the country. He submits that it is nothing but violating the fundamental rights of the petitioner and by virtue of this Look out circular, petitioner is not in a position to move out of the country and as petitioner is working in USA, he is also deprived of his livelihood.

3. When this Writ Petition came up before this Court on 17.06.2022, this Court passed a detailed order which reads as under:

“ Learned counsel for the petitioner submits that basing on the complaint given by the wife of the petitioner, a case in Cr.No.86 of 2021 on the file of Kushaiguda Police Station, Rachakonda Commissionerate was registered for the offence under Section 498-A IPC and under Sections 3 and 4 of

Dowry Prohibition Act. She submits that the marriage of petitioner was performed in the year 2011 and after marriage, they went to USA and in the month of November, 2019, the wife of petitioner came to India by taking the children without even informing the petitioner and after that she gave a complaint. She submits that the petitioner is doing his job in USA and continued to reside therein. Learned counsel submits that after conducting the investigation, the respondent-police have filed a charge sheet and the same is numbered as C.C.No.513 of 2021 on the file of the II Additional Junior Civil Judge-cum-XIX Additional Metropolitan Magistrate, Cyberabad at Malkajgiri, against the petitioner and others. She submits that the petitioner is not aware of these proceedings and the respondent-police, by showing the petitioner as absconding, have filed the charge sheet. When the petitioner came to India on 19-02-2022, he was apprehended by the Immigration Officers, then the petitioner was produced before the learned Magistrate and on the same day, learned Magistrate has granted bail to the petitioner. Learned counsel submits that in spite of the bail order obtained by the petitioner, the respondent-police have continued the Look Out Notice and the same is still subsisting. She further submits that without any basis, the respondent-

police are continuing the Look Out Notice and they ought to have closed the same.

Learned Assistant Government Pleader for Home appearing for the respondent-police does not dispute the fact that the petitioner was granted bail by the Court below. However, on instructions, he submits that after the crime was registered, the petitioner's whereabouts are not known and he was shown as absconding and the charge sheet is filed by the police and NBWs were also issued against him, but however, the Court below has granted bail to the petitioner. He also does not dispute the fact that in the year 2021, the respondent-police have issued Look Out Notice and the same has to be renewed after a year, but they have not renewed the said Look Out Notice.

This Court in several cases observed that once a Look Out Notice is issued on the ground that the accused is absconding or NBWs are issued, even after grant of bail to the accused, the respondent police are continuing the Look Out Notice without renewing it and on some occasions, they are renewing it without any basis. Once a Look Out Notice is issued, the police have to necessarily mention the reasons for continuing such Look Out Notice. When the accused has

appeared before the Court and obtained bail, in such cases, if the respondent-police feel that there is likelihood of the accused leaving the country and it would be difficult for the prosecution to secure his presence during the course of trial, their remedy is to file an appropriate Application before the Court and seek orders. But they cannot keep the Look Out Notice pending forever.

In several cases, this Court has directed the respondent-police to look into this issue and issue specific directions to the concerned for issuing, renewing and continuing the Look Out Notice. But it appears that no action has been taken by the respondent-police. This action of the respondents is causing lot of hardship and injustice to the person against whom Look Out Notice is issued.

In this case, admittedly, bail was granted by the Court below and the respondent-police have not renewed the Look Out Notice. Hence, the respondent-police are directed to withdraw the Look Out Notice and communicate the same to the Immigration Authorities within a period of two weeks from the date of receipt of a copy of this order. Apart from this, the Director General of Police, Hyderabad, shall file a report before this Court on the following points;

- (i) With regard to the procedure that is followed for issuing Look Out Notice, continuation of Look Out Notice and renewing the same and what is the procedure that has to be followed once bail is granted to the accused;
- (ii) When there is no necessity to continue Look Out Notice, why the police are not informing the immigration authorities;

The Director General of Police shall look into these aspects and give appropriate directions to the concerned and file action report before this Court before 10-7-2022.

Poston 10-07-2022.

The Registrar (Judicial), High Court for the State of Telangana, Hyderabad, is directed to communicate this order to the Director General Police, Hyderabad.”

4. Pursuant to the orders passed by this Court, a report is submitted by the Director General of Police along with Circular and stated that they have been issuing consolidated guidelines and procedure for issuance, continuation and deletion of Lookout Notice from time to time and a Circular has been issued on 01.07.2022. The report filed by the Director General of Police reads thus:

“ 1. It is submitted that the Petitioner filed the above Writ Petition and the Hon'ble High Court vide its order dated

17th June, 2022 directed to withdraw the Look Out Notice and Communicate the same to the Immigration Authorities within a period of two weeks from the date of receipt of copy of this order. Accordingly, the Dy. Commissioner of Police (Crime), Rachakonda vide Letter No.1137/D4-LOC/Gel/CCRB /RKD/ 2022 dated 21.06.2022 has requested The Dy. Director, Bureau of Immigrations, New Delhi to delete the LOC on the subject, Sri Yerramilli Sripathi Srinivas Rao vide Passport No. Z1830801, which is enclosed as ANNEXURE-I.

2. It is to submit that the Hon'ble High court further directed the undersigned to file a report :

(i) With regard to the procedure that is followed for issuing Look Out Notice, continuation of Look Out Notice and renewing the same and what is the procedure that has to be followed once bail is granted to the accused;

(ii) When there is no necessity to continue Look Out Notice, Why the police are not informing the immigration authorities;

3. In response to Points No. (i) and (il), it is to kindly submit that this office has been issuing consolidated guidelines on procedure for issuance / continuation / Deletion of LOC from time to time and the latest has been issued vide C.No 3089/C3/IP/CID/2022 dated 01/07/2022. The same is enclosed as Annexure-II and may be perused as response to point 2 (i) of this report.

4. Further, it is to submit that with regard to the procedure that has to be followed once bail is granted to the accused, it is to inform that the Originating Agency (OA) has to make an assessment of the situation whether the subject will make himself / herself available for investigation / attending the court or not. In the assessment of situation, if the outcome is that the subject is likely to evade investigation / trial by leaving the country, the LOC will be continued, otherwise the same will be deleted by informing the same to the Dy. Director, Bureau of Immigrations, New Delhi.

5. It is to further submit that the LOC opened by the Originating Agency (OA) concerned shall remain in force until and unless a deletion request is received by BOI from the Originator itself and the Originating Agency (OA) must keep reviewing the LOC opened at its behest on quarterly and annual basis and submit the proposals to delete the LOC, if any, immediately after review. The Instructions issued by MHA, Govt. of India vide Corrigendum dated 10th August, 2021 is enclosed as ANNEXURE-III.

6. It is to submit that all the Unit Officers are strictly directed to scrupulously follow the guidelines on the procedure for opening / reviewing the LOC and review all the

LOC opened at its behest on quarterly and annual basis and take appropriate action for deletion of LOCs immediately, if the same is not required in its assessment.

7. In the instant case, the Petitioner was only granted bail and as his presence for hearing the case is required, the LOC was continued against him and subsequently after the orders of the Hon'ble High Court, the request for deletion of LOC was forwarded to BOI on 21.06.2022.

Hence this report.”

5. The Circular instructions dated 01.07.2022 reads as under:

Office of the
Director General of Police,
Telangana, Hyderabad.
Date: 01.07.2022.

C. No. 3089 / C-3/IP/CID/2019-22

:: CIRCULAR MEMORANDUM ::

Sub: TS Police - Consolidated Guidelines for issuance of Look Out Circular (LOC) in respect of Indian Citizens and Foreigners - Issued - Regarding.

Ref:1. Letter No.25016/10/2017-Imm(Pt.), dt.22.02.2021 of Director, Immigration, GOI, MHA, Foreigners Division (Immigration Section), New Delhi.

2. Letter No.25016/10/2017-Imm(Pt.), dt. 10.08.2021 of Director, Immigration, GOI, MHA, Foreigners Division (Immigration Section), New Delhi.

& & &

The Consolidated Guidelines for issuance of Look Out Circular (LOC) in respect of Indian Citizens and Foreigners are being issued from time to time as and when they are being communicated from MHA. The same are being reiterated as under for strict compliance:

(A) The request for opening an LOC would be made by the Originating Agency (OA) to the Deputy Director, Bureau of Immigration (BOI), East Block-VIII, R.K.Puram, New Delhi - 110066 (Telefax: 011-26192883, email: boihq@nic) in the enclosed proforma.

(B) The request for opening of LOC must invariably be issued with the approval of an Originating Agency that shall be an officer not below the rank of :-

- (i) Deputy Secretary to the Government of India; or
- (i) Joint Secretary in the State Government; or
- (iii) District Magistrate of the District concerned; or
- (iv) Superintendent of Police (S.P) of the District concerned; or

- (v) S.P. in CBI or an officer of equivalent level working in CBI;
or
- (vi) Zonal Director in Narcotics Control Bureau (NCB) or an officer of equivalent level (including Assistant Director(Ops.) in Headquarters of NCB); or
- (vii) Deputy Commissioner or an officer of equivalent level in the Directorate of Revenue Intelligence or Central Board of Direct Taxes or Central Board of Indirect Taxes and customs; or
- (viii) Assistant Director of Intelligence Bureau/ Bureau of Immigration (Bol); or
- (ix) Deputy Secretary of Research and Analysis Wing (R&AW);
or
- (x) An officer not below the level of Superintendent of Police in National Investigation Agency; or
- (xi) Assistant Director of Enforcement Directorate ;or
- (xi) Protector of Emigrants in the office of the Protectorate of Emigrants or an officer not below the rank of Deputy Secretary to the Government of India; or
- (xii) Designated officer of Interpol; or
- (xiv) An officer of Serious fraud Investigation Office (SFIO), Ministry of Corporate Affairs not below the rank of Additional Director (in the rank of Director in the Government of India); or

(XV) Chairman/ Managing Directors/ Chief Executive of all Public Sector Banks.

(C) LOCs can also be issued as per directions of any Criminal Court in India. In all such cases, request for opening of LOC shall be initiated by the local police or by any other Law Enforcement Agencies concerned so that all parameters for opening LOCs are available.

(D) The name and designation of the officer signing the Proforma for requesting issuance of an LOC must invariably be mentioned without which the request for issuance of LOC would not be entertained.

(E) The contact details of the Originator must be provided in column VI of the enclosed Proforma. The contact telephone/ mobile number of the respective control room should also be mentioned to ensure proper communication for effective follow up action. Originator shall also provide the following additional information in column VI of the enclosed Proforma to ensure proper communication for effective follow up action:-

- (i) Two Gov/NIC email IDs.
- (ii) Landline number of two officials
- (iii) Mobile numbers of at least two officials, one of whom shall be the originator.

(F) Care must be taken by the originating Agency to ensure that complete identifying particulars of the person, in respect of whom the LOC is to be opened, are indicated in the Proforma mentioned above. It should be noted that an LOC cannot be opened unless a minimum of three identifying parameters viz. name & parentage, passport number or Date of birth are available. However, LOC can also be issued if name and passport particulars of the person concerned are available. It is the responsibility of the originator to constantly review the LOC requests and proactively provide additional parameters to minimize harassment to genuine passengers. Details of Government identity cards like PAN Card, Driving License, Aadhar Card, Voter Card etc. may also be included in the request for opening LOC.

(G) The legal liability of the action taken by the immigration authorities in pursuance of the LOC rests with the originating agency.

(H) Recourse to LOC is to be taken in cognizable offenses under IPC or other penal laws. The details in column IV in the enclosed Proforma regarding 'reason for opening LOC' must invariably be provided without which the subject of an LOC will not be arrested/ detained.

(I) In cases where there is no cognizable offence under IPC and other penal laws, the LOC subject cannot be detained/arrested or prevented from leaving the country. The Originating Agency can only request that they be informed about the arrival/ departure of the subject in such cases.

(J) The LOC opened shall remain in force until and unless a deletion request is received by BoI from the Originator itself. No LOC shall be deleted automatically. Originating Agency must keep reviewing the LOCs opened at its behest in quarterly and annual basis and submit the proposals to delete the LOC, if any, immediately after such a review. The BOI should contact the LOC Originators through normal channels as well as through the online portal. In all cases where the person against whom LOC has been opened is no longer wanted by the Originating Agency or by Competent Court, the LOC deletion request must be conveyed to BoI immediately so that liberty of the individual is not jeopardized.

(K) On many occasions, persons against whom LOCs are issued. obtain Orders regarding LOC deletion/ quashing/ suspension from Courts and approach Immigration Check Posts (ICPs) for LOC deletion and seek their departure. Since ICPs have no means of verifying genuineness of the Court Order, in

all such cases, orders for deletion/ quashing/ suspension etc. of LOC, must be communicated to the BoI through the same Originator who requested for opening of LOC. Hon'ble Courts may be requested by the Law Enforcement Agency concerned to endorse convey orders regarding LOC suspension/ deletion/ quashing etc. to the same law enforcement agency through which LOC was opened.

(L) In exceptional cases, LOCs can be issued even in such cases, as may not be covered by the guidelines above, whereby departure of a person from India may be declined at the request of any of the authorities mentioned in clause (B) above, if it appears to such authority based on inputs received that the departure of such person is detrimental to the sovereignty or security or integrity of India or that the same is detrimental to the bilateral relations with any country or to the strategic and/or economic interests of India or if such person is allowed to leave, he may potentially indulge in an act of terrorism or offences against the State and/or that such departure ought not be permitted in the larger public interest at any given point in time.

(M) The following procedure will be adopted in case statutory bodies like the NCW, the NHRC and the National Commission

for Protection of Children's Rights request for preventing any Indian/ foreigner from leaving India. Such requests along with full necessary facts shall be brought to the notice of law enforcement agencies like the police. The Superintendent of Police (S.P.) concerned will then make the request for issuance of an LOC upon an assessment of the situation, and Strictly in terms if the procedure outlined for the purpose. The immigration/ emigration authorities will strictly go by the communication received from the officers authorized to open LOCs detailed in clause (B) above.

(N) For effective and better interception of LOC subjects, following guidelines shall be followed by the originator:-

(i) Specific action to be taken by the Immigration authorities on deletion must be indicated in the filled LOC proforma.

(ii) In case of any change in parameters / actions/ investigating officer/ Originator contact details or if any court order is passed in the case, the same should be brought to the notice of the BOI immediately by the originating agency concerned for making necessary changes in the LOC.

(iii) For LOCs originated on court orders, the concerned PS/ IO should send the identifying parameters of the subject to the

BOI as court orders contain only name and parentage of the subject.

(iv) In case an LOC is challenged and stayed by the concerned court or a court issues any directive with regard to the LOC, the originator must inform the BoI urgently and accordingly seek amendment/ deletion of the LOC.

v. Whenever the subject of LOC is arrested or the purpose of the LOC is over, a deletion request shall be sent by the Originator immediately to the BoI.

vi. The Originator must respond promptly whenever the subject/ likely match is detected at the ICP. The confirmation regarding the identity of the subject and action to be taken must be informed immediately to the ICP.

vii. The BOI would form a team to coordinate matters regarding the LOC. This team would contact the LOC issuing agencies to get the status of LOC updated.

viii. Each LOC Originating Agency will appoint a Nodal officer for coordination/updation of LOC status with BoI. The said team of BoI would remain in constant touch with this Nodal Officer.

Further, the LOC opened shall remain in force until and unless a deletion request is received by BoI from the

Originator itself. No LOC shall be deleted automatically. Originating Agency must keep reviewing the LOCs opened at its behest in quarterly and annual basis and submit the proposals to delete the LOC, if any, immediately after such a review.

Therefore, all Unit officers of Telangana State are requested to appoint a Nodal officer and ensure that the above mentioned guidelines are followed scrupulously by all originating agencies and take necessary action accordingly.

Sd/-

Director General of Police,
Telangana, Hyderabad.

6. Further with regard to the procedure that has to be followed, once bail is granted to the accused, it is stated that the Originating Agency (OA) has to make an assessment of the situation whether the subject will make himself / herself available for investigation / attending the Court or not. In the assessment of situation, if the outcome is that the subject is likely to evade investigation / trial by leaving the country, the LOC will be continued, otherwise the same will be deleted by informing the same to the Deputy Director, Bureau of Immigration (BOI), New Delhi. Further the LOC opened by the Originating Agency (OA) concerned shall remain in force until and unless a deletion request is received by BOI from the

Originator itself and the Originating Agency (OA) must keep reviewing the LOC opened at its behest on quarterly and annual basis and submit proposals to delete LOC if any immediately after review. The instructions issued by MHA, Government of India *vide* Corrigendum dated 10.08.2021 is also enclosed by them. It is stated in the report that all the Unit Officers are strictly directed to scrupulously follow the guidelines on the procedure for opening / reviewing the LOC and review all the LOC opened at its behest on quarterly and annual basis and take appropriate action for deletion of LOCs. immediately if the same is not required in its assessment. It is stated that the petitioner was only granted bail and as his presence for hearing the case is required, the LOC was continued against him and subsequently, after the orders of the Court, the request for deletion of LOC was forwarded to BOI on 21.06.2022. The respondents along with report has also placed before this Court the Circular Memo dated 01.07.2022.

7. This Court has gone through the Circular that was issued by the respondents pursuant to the order passed by this Court. By and large, in criminal matters, particularly under Section 498-A IPC., where a complaint is given by wife and husband is residing abroad, without making even an effort to

reach the person by way of e-mail or whatever communication, and without even coming to a conclusion that the said person is trying to avoid the investigation, police are straight away issuing the Look Out Circular, by that time, accused would not even be knowing that a case is registered against him by the respondents. In respect of accused persons who are outside the country, the police shall make an endeavour to communicate about the pending case to the said person. Recourse to LOC shall not be resorted to by the respondents in non-cognizable offences under IPC. or in any other laws if accused is not evading arrest or has not failed to appear before the Court. Necessarily issuing the Look Out Circular will affect the person's right to movement and the respondents shall be very careful while opening the LOC and resort to it in compelling and extraordinary circumstances. Secondly, in the report that is filed by the Director General of Police, it is stated that LOC will be continued basing on their satisfaction whether the person is going to cooperate with the investigation or not. When once an accused is granted bail by the Court or a notice under Section 41-A Cr.P.C. is issued by the police, if the police have apprehensions about his non-cooperation with the investigation or trial, it is always open to the police to make an appropriate

Application before the Court concerned for imposing a condition that the person be directed not to leave the country. Once the bail is granted, the respondent police cannot continue the LOC without further recourse to the Court. In every case, the police are opening the LOCs. and keeping it pending forever and causing irreparable loss and hardship to the accused who in some cases has no intention to evade the investigation. The other difficulty that has been expressed in several cases is that the respondents are not leaving a toll-free or a specific number with BOI. They are generally giving the number of the concerned Station House Officers and sometimes, if they do not pick up the calls, the person is made to wait for hours together in the Airport. The respondent police shall take appropriate steps to evolve procedure or they shall see that some mechanism is in place such as centralised 24 x 7 service to attend the calls in respect of LOC from Bureau of Investigation so that if the immigration has to contact the concerned they will be able to reach out and the inconvenience caused to the concerned may be minimised. Wherever LOCs. are opened, the respondent police shall review the same once in three months and in cases where bail is granted, they shall immediately close the LOC. The officer concerned who fails to inform the BOI is responsible and

if he fails to address the letter to BOI, appropriate action shall be initiated against him for the said lapses. The Courts have to always balance the interest of the accused as well as the societal interest.

8. Fundamental right of the citizen in the democratic setup plays a pivotal role. The Hon'ble Apex Court in *Maneka Gandhi v. Union of India*¹ interpreted the scope of Article 21 in the widest possible manner. The fundamental rights of a citizen can only be curtailed by a procedure known to law. The police while issuing the look out circular has to be very cautious. The circular directions issued by the Director General of Police shall be scrupulously followed. The Director General of Police apart from issuing the circular shall also see that it is implemented and fix the accountability.

9. The Writ Petition is accordingly, disposed of. No order as to costs.

10. The Miscellaneous Applications, if any shall stand automatically closed.

LALITHA KANNEGANTI, J

09th January 2023

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¹ AIR 1978 SC 597

