

IN THE HIGH COURT OF TELANGANA AT HYDERABAD**W.P. No. 9012 of 2023****Between:**

N.Prithvi Teja

... Petitioner

And

Bureau of Immigration and others

... Respondents

JUDGMENT PRONOUNCED ON: 26.02.2024**THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 9012 of 2023****% 26.03.2024****Between:**

N.Prithvi Teja

... Petitioner

And

Bureau of Immigration and others

... Respondents

< Gist:

> Head Note:

!Counsel for the Petitioner: Mrs Jyothisri Vankina,
M/s Vankina, Allu & Partners
^counsel for Respondents 1 to 4: Dy.Solicitor General of India
^counsel for Respondent No. 5 : Juris Prime Law Services

? Cases Referred:

1. AIR 1978 SC 597
2. 2019(2) SC online SC 2048
3. 2013 SCC Online Mad 4092
4. 2021 SCC online Tri. 143
5. 2018 SCC online Mad 2229
6. 2022 SCC online Del 961
7. 2022 SCC 1176 online P& H
8. 2022 SCC Online P&H 3408
9. AIR 2022P&H 131
10. 2013(15) SCC 570
11. AIR 1967 SC 1836
12. 2022 SCC ONLINE Cal.3536

HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 9012 of 2023

ORDER:

Heard Mrs.Jyothisri Vankina, the learned Counsel appearing on behalf of the Petitioner, Mr Gadi Praveen Kumar, learned Deputy Solicitor General of India appearing on behalf of Respondents 1 to 4 and learned standing counsel for respondents 5 and 6.

2. The Petitioner approached the Court seeking prayer as under :

“to issue a writ, order, or direction, more particularly, one in the nature of writ of Mandamus, declaring the actions of the respondents No.1 and 2 in preventing the petitioner herein from traveling outside country citing Look Out Circular without providing any details as illegal, arbitrary and violative of principles of natural justice and Articles 14 and 21 of the Constitution of India and to consequently recall the Look Out Circulars issued in my name upon the instructions of Originators respondent Nos.5 and 6.

PERUSED THE RECORD :

3. The relevant portion of the final report dt. 29.06.2022 filed by the Deputy Superintendent of Police, CBI, Ranchi, forwarded to the Special Judicial Magistrate, CBI Cases, Ranchi, Jarkhand is extracted hereunder :

“During further investigation, the allegation regarding false claim of expenditure of Rs. 98 crore on repair and maintenance could not be substantiated. Further, during further investigation, no evidence could be gathered against FIR named accused person Sh. N. Prithvi Teja, Director of M/s Ranchi Expressways Ltd.; M/s Kota & Co and officials of the consortium of Banks led by Canara Bank for making them criminal liable in the case.

This supplementary charge sheet is filed against (1) M/s Ranchi Expressways Ltd. and (2) M/s Madhucon Project Ltd. u/s 120-B r/w 420 IPC, and against (3) Sh. K. Babu Rao, Managing Partner, M/s Sree Nagendra Constructions, Khammam; (4) Sh. B. Sudhakara Rao, Managing Partner, M/s Ragini Infrastructures, Vijayawada; (5) Sh. P. Suresh, Partner, M/s Usha Projects, Hyderabad and (6) Sh. Ramashray Singh, Proprietor, M/s Shree B.R. Visions, Chandauli (U.P.) u/s 120-B r/w 409, 420 and 477A of IPC for taking cognizance and for issuing necessary process against the accused persons to face the trial.

It is further prayed that permission may kindly be granted for returning the un-relied documents seized in this case.

4. The case of the Petitioner as per the averments made by the petitioner in the affidavit filed by the petitioner in support of the present Writ Petition in brief, is as under :

- a) The petitioner was prevented from travelling by the immigration officials at Kolkata Airport stating that there was a Look Out Circular (LOC) against the petitioner. However, the petitioner was not provided with any details regarding the same.
- b) Thereafter, the petitioner found that there were some bank related issues originating from companies run by the petitioner's father and since the petitioner is shown as a director in the same, the LOC had been issued. However, the petitioner is not an active participant in the Company affairs.
- c) Aggrieved by the said LOC, the petitioner has filed a RTI Application dated 25.02.2023 with Central Public Information Officer, Regional Passport Office, Hyderabad seeking information and all documents on Look Out Circular' if any issued against the petitioner Passport bearing No. Z4602920,

within 48 Hours. However, the petitioner did not receive any reply for the same. Therefore, the petitioner has preferred an Appeal on the said RTI with the Appellate Authority.

d) Thereafter, the Deputy Passport Officer, Hyderabad & CPIO has issued a reply dated 08.03.2023 to the petitioner's R.T.I. and informed that no L.O.C. record was found in their office against the petitioner's Passport Number and the Appellate Authority upon verifying the record, confirmed vide order dated 17.03.2023 that the said authority agrees with the order issued by the Public Information Officer, Hyderabad.

e) Subsequently, the petitioner has planned to travel to Bangkok from Hyderabad and the petitioner was once again stopped by the Immigration Authorities at the Hyderabad Airport on 21.03.2023 stating that there is LOC issued against the petitioner. The Respondent Nos. 1 and 2 did not provide a copy of the said LOC or the details to the petitioner. Also, the petitioner is not a guarantor nor a direct beneficiary of any loans to any of the companies run by his father.

f) Moreover, the petitioner had to travel to USA between 10.04.2023 and 30.04.2023 for his family commitments. However, the actions of Respondent Nos. 1 and 2 caused

severe inconvenience and the petitioner is restrained to travel abroad without any valid ground and without providing any details regarding the alleged L.O.C and thus, the actions of Respondent Nos. 1 and 2 are arbitrary and illegal and without any basis under any law. Hence this Writ Petition.

5) The counter affidavit filed by the 5th Respondent para 6, 17-19, para 6.3, para 7, para 8, para 12(j),

6. I submit that the Central Government, in order to prevent the defaulters from fleeing the country, pursuant to the judgment of the Hon'ble High Court of Delhi in Sumer Singh Salkam v. Assistant Director and others.. W.P.(CRL) No. 1315/2008 vide Circular No.6/3/2018-BO.II dated 22.11.2018 of Government of India, Ministry of Finance, Department of financial services modified office memorandum of ministry of Home Affairs dated 27.10.2010 regarding guidelines for issuance of Look Out Circulars (LoC) authorizing Nationalized Banks to request immigration authorities to issue LOC against persons who are acting against the economic interest of the country. A copy of the said circular dated 22.11.2018 and Circular of the Government of India, Ministry of Home Affairs dated 22.02.2021 consolidated guidelines for issuance of LoCs are collectively filed as Ex.R.2.

7. It is submitted that pursuant to said circulars and failure of the petitioner to honor the liabilities, apprehending his fleeing from the country in order to escape from prosecution and repayment of outstanding amount, the Answering Respondent Bank sent request to the Bureau of Immigration (BOI) for opening of LoC against the Petitioner and other Directors/Guarantors of the company and accordingly LoCs were opened on

10.03.2021. Against the petitioner vide LoC. No. 2142191 was made. The said LoC is still in force.

8. I submit that with pending cases against the petitioner, his presence in the country is necessary to bring the pending investigations to the logical end. It is apprehended that the petitioner would try and flee the country to escape from prosecution/trial for the said offences evading payment of outstanding dues.

12(j) The Central Bureau of Investigation (CBI) has registered a criminal case vide FIR No. RC2(A)/2019-R on 12.03.2019 as per the orders of the Hon'ble High Court of Jharkhand in WP (PIL) No. 3503 of 2014 and 2470 of 2015, charging the company, its directors, and other entities with criminal conspiracy, cheating, forgery, falsification of accounts, and criminal misconduct under various sections of the Indian Penal Code (IPC) and the Prevention of Corruption Act, 1988. The individuals and entities named in the case include Sri K. Srinivasa Rao, Sri Seethaiah, Sri N. Prithvi Teja (Petitioner herein), M/s Ranchi Expressways Ltd, M/s Madhucon Projects Ltd, M/s Madhucon Infra Ltd, M/s Madhucon Toll Highways Ltd, M/s Kota & company, and other unknown officials of the consortium of banks led by Canara Bank. In the said case, charge sheet is being filed by the CBI before Learned Special Judicial Magistrate, CBI Cases, Ranchi, Jharkhand.

6.17-19 In reply to para 17 to 19, I submit that in view of the pending cases LOC is issued and if the same is lifted there is more apprehension that during the pendency of the investigation the petitioner may fly away the country.

6.3 In reply to Para 3, I submit that the petitioner is making unfounded claims without any bona fides or supporting evidence that he was indirectly involved in his father's business without his knowledge. These claims are incorrect, false, and denied, and the

petitioner is required to strict proof for such allegations. However, Mr. N Prithvi Teja, who is the petitioner in this present case, was previously a director of the company Ranchi Expressways Limited. The petitioner company's account was declared fraudulent by the majority of consortium lenders. As a result, a case was registered by CBI (Central Bureau of Investigation) and ACB (Anti-Corruption Bureau) in Ranchi, based on the orders of the Hon'ble High Court of Jharkhand in WP (PIL) No. 3503 of 2014 and 2470 of 2015 vide FIR No. RC2(A)/2019-R and PE2(A)2018-R. I submit that SFIO which investigated as per the directions of Hon'ble HC of Jharkhand (dated 14.11.2017) had found some serious observations as detailed in the above paras during which the petitioner was the director of the company from 23.03.2011 to 31.07.2017. In furtherance of the same the petitioner's name was also included in FIR No. RC2(A)2019-R dated 12.03.2019. Hence, LOC was issued by SBI.

6. The main submissions put-forth by the learned counsel appearing on behalf of the Petitioner is as follows :

- i. The issuance of LOC by the 5th respondent against the Petitioner on 10.03.2021 and reviewed at the quarter ending March, 2023 shows the remarks account declared as fraud. CBI investigation is under

progress and respondent No.5 bank recommended continuation against the petitioner as per Format for review of Look Out Circular (LOC) dated 21.03.2023.

- ii. LOC was renewed on invalid grounds as the CBI investigation in FIR No. RC (2A)/2019-R dated 12-03-2019 (which was registered as an outcome of PE 2(A) 2018-R based on the order dated 25-07-2018 of Hon'ble High Court of Jharkhand, Ranchi) was completed and final report was filed on 21-6-2022. In the said final report it is clearly mentioned that in FIR Accused at Sl. No. 3 (Writ Petitioner herein) is not charge sheeted. The final report in respect of the Petitioner states as under :

"Further, during investigation, no evidence could be gathered against FIR named accused person Shri. N. Prithvi Teja, Director of M/s Ranchi Expressways Ltd, M/s Kota & Co and officials of the consortium of Banks led by Canara Bank for making them criminally liable in the case."

Hence, the LOC renewal is invalid and illegal and the Respondent No.5 does not have any ground to continue the L.O.C. as on 21-03-2023.

- iii. The subsequent LOC renewals dated 28-06-2023 and 16-09-2023 submitted by R5 vide memo dated 19-09-2023 clearly shows the indifference of R5 in understanding the contentions made by the Petitioner in the Court orally and in writing in IA. No. 3 of 2023.
- iv. The Petitioner is deprived of his fundamental right to travel abroad for family and business commitments,

for no valid reason from March, 2023 due to the 5th and 6th Respondents herein.

- v. Respondent No. 6 did not inform the Bureau of Immigration the ground for issuance of LOC, the 6th Respondent did not appear in the Court till date despite filing Vakalat on 18-04-2023 and did not file any counter so far. As the fundamental right of Petitioner can't be curbed for the indifferent attitude of originators of LOC, and that the matter may not be kept waiting for the nonchalance of R6 and be decided with the material at hand.
- vi. The Petitioner relies upon the judgment 'Mohinder Singh Gill and Another vs. The Chief Election Commissioner, New Delhi and Others' (1978) 1 Supreme Court Cases 405 in which the Apex court clearly stated the duty of Statutory functionaries and that they cannot add any grounds subsequently. Respondent No.5 cannot plead any new ground in the affidavit which is not there at the time of issuance of LOC and when the same was renewed.
- vii. The allegations of Respondent No. 5 raised in the Counter at para 11 do not hold any water as filing Writ Petition No. 5975 of 2021 before the Hon'ble High Court of Telangana, to protect his rights is not illegal or does not curtail him from going abroad.
- viii. The F.I.R. that is mentioned in the counter affidavit dt. 12.03.2019 vide FIR No.RC2(A)2019-R already culminated in non-charge sheeting of the Petitioner

for lack of evidence and that the Respondent No.5, either ignorantly or deliberately is trying to portray as if it is a live matter when the Final report is submitted more than a year ago ie., on 21-06-2022.

- ix. The Petitioner is not declared as willful defaulter by any authority as on date and Respondent Nos. 5 and 6 without any valid reason have misused their power to restrain the Petitioner from travelling abroad.
- x. The 5th Respondent did not withdraw the LOC in the quarterly review of 30.06.2022 and instead blindly renewed it vide renewal letters dt. 21.03.2023, 28.06.2023 and 16.09.2023

7. The learned Counsel appearing on behalf of the Respondent No. 5, mainly puts-forth the following contentions :

- a) The Writ petitioner having knowledge about the pending cases registered by the CBI, Ranchi, namely i) FIR No. RC 2(A)/2019-R and ii) PE2(A)2018-R, intentionally did not mention the same. Due to the failure of the petitioner to honor the liabilities and repayment of the outstanding payments the 5th Respondent Bank sent request to the Bureau of Immigration (BOI) for opening of LOC against the Petitioner and other Directors/Guarantors of the company and

accordingly LOCs were opened on 10.03.2021 against the petitioner vide LOC. No. 2142191.

b) The petitioner herein is well aware of the reasons for issuance of LOC against him and maliciously didn't implead the 5th respondent as party to obtain an interim order. The petitioner has suppressed several facts about the business of the company, Ranchi Expressways Ltd, where the petitioner was a director at the relevant point when several irregularities and fraudulent transactions had been committed by the company and the Ranchi Expressways was granted various credit facilities in project finance, for which an amount of Rs. 1035.37 Cr was defaulted to consortium lenders (SBI exposure is Rs 56.13 Cr).

c) The 5th respondent has taken measures and issued show cause notice dated 16.10.2020 initiating the process for declaring willful defaulters. However, Ranchi Expressways has filed a W.P.No.5975 of 2021, before this court and through vide order dated 12.03.2021 this court has granted interim order, directing not to proceed further and the same is still pending.

d) The petitioner was the Director of the company Ranchi Expressways Limited during the occurrence of the irregularities and subsequently the petitioner's company account was declared as fraud by majority of consortium lenders. As a result, a case was registered by CBI (Central Bureau of Investigation) and ACB (Anti-Corruption Bureau) in Ranchi, based on the orders of the High Court of Jharkhand in WP (PIL) No. 3503 of 2014 and 2470 of 2015 vide FIR No. RC2(A)/2019-R and PE2(A)2018-R.

e) The SFIO which investigated as per the directions of High Court of Jharkhand (dated 14.11.2017) had found some serious observations with respect to the company's frauds during which the petitioner was the Director of the company from 23.03.2011 to 31.07.2017. In furtherance of the same the **petitioner's name was also included in FIR No. RC2(A)2019-R dated 12.03.2019. Hence, LOC was issued by SBI.**

f) **As per the Office Memorandum dt. 22.02.2021 review was made and therefore, there are no procedural and even technical lapses in making requests for issuance of LOC.**

g) In view of the pending cases LOC is issued and if the same is lifted there is more apprehension that during the pendency of the investigation the petitioner may fly away from the country.

The learned counsel appearing on behalf of the Respondent Bank No.5 on the basis of the aforesaid submissions contends that the writ petition should be dismissed.

8. The Learned Deputy Solicitor General of India appearing on behalf of Respondents No.1 to 4 would submit that the Respondent No.4 is only custodian and it is maintaining the lookout circulars issued by the Originator and in the present case the Originators are Respondent Nos.5 & 6.

DISCUSSION AND CONCLUSION

9. This Court vide its orders dated 05.10.2023 in I.A.No.7 of 2023 in W.P.No.9012 of 2023 permitted the Petitioner to travel abroad.

10. Office Memorandum dated 22.02.2021 issued by Ministry of Home Affairs dealing with consolidated guidelines for issuance of Look Out Circular in respect of Indian Citizens and Foreigners and the relevant paras A, B, C, D, H, I, J, and L, of the said circular are extracted hereunder:

"6. The existing guidelines with regard to issuance of Look Out Circulars (LOC) in respect of Indian citizens and foreigners have been reviewed by this Ministry. After due deliberations in consultation with various stakeholders and in supersession of all the existing guidelines issued vide this Ministry's letters/O.M. referred to in para 1 above, **it has been decided with the approval of the competent authority that the following consolidated guidelines shall be followed henceforth by all concerned for the purpose of issuance of Look Out Circulars (LOC) in respect of Indian citizens and foreigners:-**

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) 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 (ii) Joint Secretary in the State Government; or (iii) District Magistrate of the District concerned; or (iv) Superintendent of Police (SP) of the District concerned; or (v) SP 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 (BoI); or (ix) Deputy Secretary of Research and Analysis Wing (R&A W); or (x) An officer not below the level of Superintendent of Police in National Investigation Agency; or (xi) Assistant Director of Enforcement Directorate; or (xii) 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 (xiii) 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.

H. Recourse to LOC is to be taken in cognizable offences 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 on 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.

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.

11. A bare perusal of Sub-para J of Office Memorandum dated 22.02.2021 (referred to and extracted above) mandates that a LOC shall remain in force until and unless a deletion request is received by the Bureau of Immigration from the Originator and that no LOC shall be deleted automatically. Although this clause cast an obligation on the originating agency to review the LOC on a quarterly/annual basis and submit proposals for deletion of the same, the same however is not followed seriously by the authorities concerned. In the present case the LOC was issued against the Petitioner on 10.03.2021 as stated by the 5th Respondent in his counter affidavit and the same has not been withdrawn in the quarterly review of 30.06.2022 and further it had been renewed without any reasons vide letters dt. 21.03.2023, 28.06.2023 and 16.09.2023 though the final report forwarded vide

No.1647/3/2(A)/2019-R, i.e., letter dt. 29.06.2022 addressed by the Central Bureau of Investigation, Anti-corruption Branch, Jarkhand, to the learned Special Judicial Magistrate CBI Cases Ranchi, Jarkhand, had a clear finding recorded in petitioner's favour, wherein, it is clearly observed in the said final report filed U/s. 173 Criminal Procedure Code that no evidence could be gathered against the Petitioner herein for making him criminally liable in the case and the said final report pertains to FIR No. RC-02(A)/2019-R which is referred to at para 6.3 of the counter affidavit filed by Respondent No.5 as having included the Petitioner's name in the said FIR.

12. A bare perusal of Sub-para L of the circular dt.22.02.2021 (referred to and extracted above) clearly indicates that LOCs could be issued in exceptional cases where the departure of the person concerned will be detrimental to the sovereignty, security and integrity of India or is detrimental to the bilateral relations with any country or to the strategic and/or economic interests of India or that person may potentially indulge

in an act of terrorism or offence against the State, if such person is allowed to leave or where travel ought not be permitted in the larger public interest at any given point of time. This Court is of the firm opinion that lookout circular can be issued on the specific grounds stated in Sub-para L of the OM dt.22.02.2021 (referred to and extracted above).

13. The look out circular issued against the petitioner in the present case is contrary to sub-para J and L of the Office Memorandum dated 22.02.2021 and therefore, this Court opines that the 5th Respondent herein cannot have any continuing reasons to interfere with the Petitioner's personal liberty and Petitioner's right to travel outside the country.

14. A bare perusal of the counter affidavit filed by the 5th Respondent indicates at para 6.17-19 that if the LOC is lifted against the Petitioner there is more apprehension that during the pendency of the investigation the Petitioner may fly away from the country. It is further very clearly stated at Para 7 of the

counter affidavit filed by the 5th Respondent that the failure of the Petitioner to honor the liabilities, apprehending his fleeing from the country in order to escape from prosecution and repayment of outstanding amount, the answering 5th Respondent Bank sent request to the Bureau of Immigration for opening of LOC against the Petitioner and accordingly the same was opened against the Petitioner on 10.03.2021 and the same is in force. It is further stated at para 8 of the counter affidavit filed by the 5th Respondent that the reason for issuing Lookout Circular against the Petitioner is that the Petitioner's presence in the country is necessary with regard to the pending cases against the Petitioner and to bring pending investigations to the logical end and it is apprehended that the Petitioner would try and flee the country to escape from prosecution/trial for the said offences evading payment of outstanding dues. The Court opines that the Respondent Bank issued lookout circulars against the Petitioner herein as a recovery mechanism for outstanding monetary dues, only with a view that

repaying the dues is best ensured if the Petitioner remains within reach i.e., in the territory of India. On the basis of apprehension that the Petitioner would flee the country and not return to repay their outstanding loans cannot become the uniform rationale for issuing lookout circulars against the Petitioner and to continue them for years together.

15. Few judgments of the Apex Court and other Courts pertaining to right to liberty and lookout circulars and the observations made there under are extracted hereunder:

A. The Apex Court in judgment reported in 2013 (15) SCC page 570 in Sumit Mehta v State of NCT of Delhi at para 13 observed as under :

“The law presumes an accused to be innocent till his guilt is proved. As a presumable innocent person, he is entitled to all the fundamental rights including the right to liberty guaranteed under Article 21 of the Constitution of India.”

B. The Apex Court in “MENAKA GANDHI VS. UNION OF INDIA AND ANOTHER” reported in AIR 1978 SC 597, and in “SATISH CHANDRA VERMA v. UNION OF INDIA (UOI) AND OTHERS” reported in 2019 (2) SCC Online

SC 2048 very clearly observed that the right to travel abroad is a part of a personal liberty.

C. The Apex Court way back in 1967, in Judgment reported in AIR 1967 SC 1836, in "Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer held that the right to travel abroad falls within the scope of personal liberty enshrined under Article 21 of the Constitution of India and that no person can be deprived of his right to travel except according to the procedure established by law.

D. The Apex Court in Vishambhar Saran v Bureau of Immigration held that mere quantum of alleged default of a loan by a citizen cannot be the basis for the extreme measure of restricting the personal liberty of a borrower/guarantor to travel inside or outside India and accordingly set aside the LOCs issued against the petitioners therein inter alia, on the ground that no objective parameter were found for the issuance of LOCs against the petitioners. Nothing detrimental to

the economic interest of India or exceptional was established in the said case, it was held.

E. It is observed at paras 62 to 66 in the Judgment dated 31.01.2023 in W.P.A.No.6670 of 2022 in the said case of "Vishambhar Saran v. Bureau of Immigration" as under:

"62. Considering the materials on record, the averments in affidavit-in- opposition and documents annexed thereto, this Court comes to the conclusion that the conditions which must pre-exist as per the existing policy of the government for opening LOC, are absent in this case.

63. A bald assertion that the petitioner's departure would be detrimental to the economic interest of the country and the LOC must be issued in larger public interest, cannot be due satisfaction of the existing pre- conditions required to be fulfilled before the originator can make such a request. The existence of such pre-conditions and the manner in which the action of the petitioner fell within the exceptions or had affected the country's economic interest had to be demonstrated from the records. The apprehension should be well-founded, backed by reasons and also supported by evidence. The decision of Karnataka High Court in Dr. Bavaguthu Raghuram Shetty (supra) also does not apply in

the facts of this case. With due respect, this Court does not agree with the conclusions arrived at in the said judgment, especially with regard to the comparison between the quantum of the loan and the annual budget of a state. Whether the outstanding loan with interest, would be more than the budgetary allocation of a particular state or not, in my opinion, is not one of the parameters to be considered.

64. The bank acted in arbitrary exercise of the power vested in making a request for opening LOC which was an attempt to curtail personal liberty and fundamental right of movement of a citizen guaranteed by the Constitution of India.

65. The request of BOB for issuance of LOC dated 29 November, 2021 and all steps taken thereafter, if any, are set aside and quashed. The bank is at liberty to request the immigration authorities to intimate the entry and exit of the petitioner to and from the country.

66. Accordingly, the writ petition is allowed.

F. In the judgment dated 05.04.2022 in Noor Paul v Union of India and others reported in 2022 SCC on P&H 3408 referring to an LoC issued to a guarantor it is observed as under:

“(a) The action of the respondent No.2 Bank in seeking issuance of a LoC to prevent the petitioner from leaving the country on the ground that she was a guarantor to respondent No.5’s loan and there was more than Rs.100 crores owed to respondent No.2 is arbitrary, illegal and violative of Article 21 of the Constitution of India and accordingly the same is set aside.

G. In the judgment dated 07.11.2022 in W.P.A.No.9007 of 2022, in Suchita Dinodya v Union of India reported in 2022 SCC Online Cal.3536 the High Court of Calcutta held as under:

“The petitioner is not subjected to any criminal case, nor is the sovereignty or security or integrity of India to suffer ex facie if the petitioner leaves India. The mere quantum of the loan recoverable is Rs.73 crores, by itself cannot be sufficient to tag the claim to be ‘for larger public interest’ and/or deemed to affect’ the economic interest of the country as a whole’. The LOC issued in respect of the petitioner is not justified at all and the W.P.A.No.9007 of 2022 is allowed thereby setting aside the LoC issued in respect of the petitioner.”

H. In the judgment dated 02.06.2022 in Poonam Paul v Union of India and others reported in 2022 SCC Online

P& H 1176 the High Court of Punjab and Haryana at Chandigarh, dealt with a case of issuance of circular and observed as under:

“Merely looking at the quantum of loss caused to a banker, it cannot be presumed that there was a fraud committed by the borrower/guarantor more so when no criminal case alleging fraud has even been filed against the borrower/guarantor suspicion cannot take the place of proof and further clearly observed “the action of the respondent No.2 Bank in seeking issuance of an Loc to prevent the petitioner from leaving the country on the ground that she was a guarantor to respondent No.5’s loan and there was more than Rs.100 crores owed to respondent No.2 is arbitrary illegal and violative of Article 21 of the Constitution of India.

I. In the case of Brij Bhushan Kathuria v Union of India and others W.P.(C)3374/2021, reported in Manu/DE/0737/2021, the Delhi High Court while setting aside the LOC issued against the petitioner held that the phrases such as “economic interest” or “larger public interest” could not be expanded in a manner so as to restrict an independent director who was in the past associated with the company being investigated.

from traveling abroad, without any specific role being attributed to him.

J. In the case of E.V.Perumal Samy Reddy v State, reported in 2013 SCC online Mad 4092, the Madras High Court while setting aside an LOC, observed as under:

"9. It is basic that merely because a person is involved in a criminal case, he is not denude of his Fundamental Rights. It is the fundamental right of a person to move anywhere he likes including foreign countries. One's such personal freedom and liberty cannot be abridged. In the celebrated case in MENAKA GANDHI Vs. UNION OF INDIA [AIR 1978 SC 597], the Hon'ble Supreme Court upheld the constitutional right of persons to go abroad. **The phrase no one shall be deprived of his "life and liberty" except procedure established by law employed in Article 21, had deep and pervasive effect on fundamental right and human right.** MENAKA GANDHI (supra) ushered a new era in the annals of Indian Human Rights Law. It had gone ahead of American concept of 'Due Process of Law'.

10. But, the fundamental right to move anywhere including foreign countries could be regulated. Where persons involved in criminal cases are wanted for investigation, for court cases, persons, who are anti-social elements their movements can be regulated.

Need may arise to apprehend persons, who have ability to fly, and flee away from the country. So, L.O.C. orders are issued. It is an harmonius way out between a person's fundamental right and interest of the society/state. But, in any case, it must be fair and reasonable. It should not be indiscriminate without any reason or basis.

K. In the case of Rana Ayyub v Union of India and another W.P. (CRL) 714/2022, reported in 2022 SCC Online Del 961 the Delhi High Court at paras 12 and 13 of the said judgment observed as under:

"12. In the particular facts of the case, it becomes evident that the LOC was issued in haste and despite the absence of any precondition necessitating such a measure. An LOC is a coercive measure to make a person surrender and consequentially interferes with petitioner's right of personal liberty and free movement. It is to be issued in cases where the accused is deliberately evading summons/arrest or where such person fails to appear in Court despite a Non-Bailable Warrant. In the instant case, there is no contradiction by the respondent to the submission of the petitioner that she has appeared on each and every date before the Investigating Agency when summoned, and hence, there is no cogent reason for presuming that the Petitioner would not appear before the Investigation

Agency and hence, no case is made out for issuing the impugned LOC.

13. The impugned LOC is accordingly liable to be set aside as being devoid of merits as well as for infringing the Human right of the Petitioner to travel abroad and to exercise her freedom of speech and expression. For the reasons discussed above, the impugned LOC is set aside and quashed.

L. In the case of Soumen Sarkar v State of Tripura, represented by the Secretary, Home Department and others reported in 2021 SCC online Tri 143, the High Court of Tripura on perusal of MHA's Office Memorandum dated 31.08.2010, stated that the reasons for opening LOC must be given categorically. It was held that LOCs could not be issued as a matter of course, but only when reasons existed and the accused deliberately evaded arrest or did not appear in the trial Court.

M. In the case of Karti P.Chidambaram v Bureau of Immigration, reported in 2018 SCC online Mad 2229, the Hon'ble Madras High Court observed as under:

"73. As observed above, the issuance of Look Out Circulars is governed by executive instructions as contained in the Office Memoranda Nos.25022/13/78-F1 dated 05.09.1979 and 25022/20/98-FIV dated 27.12.2000, as modified by Office Memorandum dated 27.10.2010. Such LOCs cannot be issued as a matter of course, but when reasons exist, where an accused deliberately evades arrest or does not appear in the trial Court. The argument of the learned Additional Solicitor General that a request for Look Out Circular could have been made in view of the inherent power of the investigating authority to secure attendance and cooperation of an accused is contrary to the aforesaid circulars and thus, not sustainable.

74. It is, in the view of this Court, too late in the day to contend that whether or not to issue an LOC, being an executive decision, the same is not subject to judicial review. **It is now well settled that any decision, be it executive or quasi-judicial, is amenable to the power of judicial review of the writ Court under Article 226 of the Constitution of India, when such decision has adverse civil consequences.** An LOC, which is a coercive measure to make a person surrender and consequentially interferes with his right of personal liberty and free movement, certainly has adverse civil consequences. This Court, therefore, holds that in exercise of power of judicial review under Article 226 of

the Constitution, the writ Court can interfere with an LOC.

16. This Court opines that the judgments relied upon by the learned counsel for the respondent bank have no application to the facts of the present case.

17. Taking into consideration the aforesaid facts and circumstances of the case and in the light of the discussion and conclusion as arrived at as above and duly taking into consideration the view and the observations and the law laid down by the Apex Court and other High Courts in various judgments (referred to and extracted above) and again enlisted hereunder:-

1. The Apex Court judgment in Sumit Mehta v State of NCT of Delhi reported in 2013 (15) SCC page 570.

2. The Apex Court judgment in "MENAKA GANDHI VS. UNION OF INDIA AND ANOTHER" reported in AIR 1978 SC 597 and in "SATISH CHANDRA VERMA v. UNION OF INDIA (UOI) AND OTHERS" reported in 2019 (2) SCC Online SC 2048.

3. The Apex Court Judgment in "Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer, reported in AIR 1967 SC 1836,.

4. The judgment dated 05.04.2022 in Noor Paul v Union of India and others reported in 2022 SCC on P&H 3408.

5. The judgment dated 07.11.2022 in W.P.A.No.9007 of 2022, in Suchita Dinodya v Union of India reported in 2022 SCC Online Cal.3536 the High Court of Calcutta
6. The judgment dated 02.06.2022 in Poonam Paul v Union of India and others reported in 2022 SCC Online P& H 1176 of the High Court of Punjab and Haryana at Chandigarh.
7. The Madras High Court judgment in E.V.Perumal Samy Reddy v State, reported in 2013 SCC online Mad 4092.
8. In Rana Ayyub v Union of India and another W.P. (CRL) 714/2022, reported in 2022 SCC Online Del 961 of the Delhi High Court.
9. In Soumen Sarkar v State of Tripura, represented by the Secretary, Home Department and others reported in 2021 SCC online Tri 143, of the High Court of Tripura.
10. In Karti P.Chidambaram v Bureau of Immigration, reported in 2018 SCC online Mad 2229 of the Madras High Court,

The Writ Petition is allowed and the Respondents herein are directed to forthwith take steps and pass appropriate orders recalling the Lookout Circulars opened against the Petitioner at the instance of Respondents No.5 and 6, duly taking into consideration the observations of the Apex Court and other High Courts pertaining to right to liberty and lookout circulars (referred to and extracted above) and duly

taking into consideration the fact as borne on record that FIR No.RC2(A)2019-R, dt. 12.03.2019 referred to as registered against the Petitioner at para 6.3 of the counter affidavit filed by the 6th Respondent having already been culminated in non-charge sheeting of the Petitioner for lack of evidence as per the final report dated 21.06.2022 filed in the said case by the Deputy Superintendent of Police, CBI, ACB Ranchi, within a period of one week from the date of receipt of the copy of the order and duly communicate the same to the Petitioner. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SUREPALLI NANDA, J

Dated: 26.02.2024

Note: L.R. copy to be marked

b/o

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