

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.01.2017

CORAM

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

W.P. Nos.1104 to 1106 of 2017

and

W.M.P.Nos.1077 to 1080 of 2017

--

Cheruvathur Chakkutty Thampi ... Petitioner
@ C.C.Thampi [in all W.Ps.]

Versus

- 1.Union of India,
Rep. by its Secretary,
Home Department, New Delhi.
- 2.The Directorate of Enforcement,
Rep. by its Deputy Director,
Government of India,
Room No.50, 6th Floor,
Lok Nayak Bhavan,
Khan Market, New Delhi.
- 3.The Directorate of Enforcement,
Rep. by its Director,
Government of India,
Ministry of Finance, Cochin Zone,
4th Floor, Tharakkem Centre,
Banerjee Road, Cochin - 682 018.
- 4.The Directorate of Enforcement,
Office of the Joint Director,
Directorate of Enforcement,
Chennai Zonal Office,
2nd and 3rd Floor,
Murugesu Naicker Complex,
No.84, Greaves Road,
Chennai - 600 006.

... Respondents
[in all W.Ps.]

PRAYER in W.P.No.1104 of 2017 : Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to forthwith withdraw the LOC issued against the petitioner.

PRAYER in W.P.No.1105 of 2017 : Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to permit the petitioner to have the assistance of his legal counsel and auditor during all personal hearings before the respondents.

PRAYER in W.P.No.1106 of 2017 : Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent in the impugned order bearing Ref.F.No.T-3/219/HQ/2015 dated 23.12.2016 and the Corrigendum in Ref.F.No.T-3/219/HQ/2015 dated 30.12.2016 and set aside the same as being arbitrary and illegal, and consequently directing the second respondent to forthwith release the petitioner's passport bearing No.Z3313067.

For Petitioners : Mr.Sathish Parasaran
[in all W.Ps.] Senior Counsel
for Mr.R.Parthasarathy

For Respondent No.1 : Mr.S.Ratnasabapathy
[in all W.Ps.]

For Respondent Nos.2 to4 : Mrs.G.Hema
[in all W.Ps.]

C O M M O N O R D E R

The Writ Petition in W.P.No.1104 of 2017 has been filed to issue a Writ of Mandamus to direct the respondents to forthwith withdraw the Look out Circular (LOC) issued against the petitioner. The petitioner has also filed another Writ Petition in W.P.No.1105 of 2017 to issue a Mandamus to direct the respondents to permit him to have the assistance of his legal counsel and auditor during all personal hearings before the respondents. Yet another Writ Petition in W.P.No.1106 of 2017 has been filed by the petitioner praying to issue a Writ of Certiorarified Mandamus to call for the records of the second respondent in the impugned order bearing Ref.F.No.T-3/219/HQ/2015 dated 23.12.2016 and the Corrigendum in Ref.F.No.T-3/219/HQ/2015 dated 30.12.2016 and set aside the same as being arbitrary and illegal, and consequently directing the second respondent to forthwith release the petitioner's passport bearing No.Z3313067.

2. The petitioner is a Non Resident Indian [NRI]. He is a promoter of various businesses in United Arab Emirates. He has been investing money in India by purchasing agricultural lands. While so, the respondents have initiated investigation against him for having purchased agricultural lands in India in violation of Foreign Exchange Management Act (in short) FEMA). In this context, a summon dated 06.11.2012 was issued to the petitioner requiring him to appear for an enquiry on 16.11.2012 at Cochin and the petitioner also appeared for such enquiry on 26.11.2012 and produced the documents required. The petitioner also received series of such summons from the respondents for his appearance in connection with the investigation both at Cochin and Delhi. Challenging the initiation of investigation against him, the petitioner has filed writ petition before the Kerala High Court and obtained interim stay. Ultimately, the Kerala High Court dismissed the writ petition filed by the petitioner on 06.09.2016. Thereafter, summon was issued to the petitioner on 13.12.2016 calling upon him to appear for an inquiry on 06.02.2017. According to the petitioner, before he could appear on the relevant date, since his sister was in death bed, he landed at Chennai Airport on 23.12.2016 on a private visit and on that date he was wrongfully detained in custody for one day on the basis of the alleged LOC, which according to the petitioner, was issued without any prior notice to him. In such circumstances, the petitioner filed Habeas Corpus Petition No. 2699 of 2016 before this Court and on the basis of an order dated 23.12.2016 passed by this Court in the above said case, he was released from detention. On the same date namely 23.12.2016, the petitioner's passport was ordered to be impounded under the provisions of FEMA read with Income Tax Act. Later, a corrigendum was issued on 30.12.2016 by the second respondent clarifying that the passport of the petitioner is impounded for 90 days. In the meantime, the petitioner was directed to appear for inquiry on 26.12.2016, which was postponed on being informed about the demise of the petitioner's sister and consequently he was directed to appear on 15.01.2017 though it was a Sunday. Even the hearing on 15.01.2017 was postponed on 23.01.2017.

3. When the writ petition was taken up for admission on 12.01.2017, this Court permitted the petitioner to appear before the concerned authority at New Delhi for an enquiry on 15.01.2017 along with his lawyer. It is now brought to the notice of this Court that on 15.01.2017, the enquiry was adjourned to 23.01.2017 and it was conducted on that day. Now, the enquiry is postponed to 03.02.2017. On both the dates of enquiry, the petitioner appeared before the respondents.

4. Mr. Satish Parasaran, learned senior counsel for the petitioner would submit that the respondents have no power to

issue Look Out Circular without issuing prior notice to the petitioner especially when there is no first information report registered against the petitioner. The petitioner is not an absconding offender warranting the respondents to issue the impugned notice. He further submits that the petitioner never violated any of the provisions of the Law. The petitioner cannot be branded like a terrorist when he is willing to cooperate with the enquiry. In this context, the learned Senior counsel submitted that in similar circumstances, this Court in CrI.O.P.No.27741 of 2013 dated 31.10.2013 [E.V.PERUMAL SAMY REDDY vs. STATE REPRESENTED BY the DEPUTY COMMISSIONER OF POLICE AND STATE REPRESENTED BY THE INSPECTOR OF POLICE] has set aside an identical LOC holding that there is no allegation to the effect that the petitioner therein has absconded. This Court also categorised the persons against whom such look out circular has to be issued in Paragraphs 9, 13 and 14. Useful reference can be made to the order passed by this Court which reads as follows:-

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 of a person to move anywhere he likes including foreign countries. One's such personal freedom and liberty cannot be abridged. In the celebrated 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 GANTHI (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 arose to apprehend persons, who have ability to fly, flee away 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.

11. The learned counsel for the petitioners brought to our notice the instructions issued with regard to the issuance of L.O.C. They runs as under:-

"14Q: What do we mean by a look out circular(LOC)
Ans: LOC is a tool to prohibit restrict/regulate the entry, stay and exit of

(i) all under able persons.

(ii) Whose presence is required to answer criminal charges.

(iii) persons notified by interpol.

15Q: How to include a wanted offenders name in the LOC of MHA which in turn will be included in all 23 the International Airport immigration countries.

Ans: SSP/CSP have to write to Addl. DGP(INT) with all details to address the JD/DD(Immgn) MHA New Delhi and all CHIOs(Chief Immigration Officers) of International Airports for left India already but are likely to come back again, or those who are not supposed to leave the country as they are charged as accused in heinous crimes. In Delhi, Mumbai, Chennai & Kolkata, the Intelligence Bureau takes care of the immigration and in other international airports concerned commissioners of police SSP are designated as CHIOs. For instance or Hyderabad International Airport. DCPb. SB is the CHIO.

16Q. What are the 4 broad categories of persons in LOC?

Ans: i) Persons to be arrested.

ii) Persons not to be allowed to land in our country (Ban entry).

iii) Persons not to be allowed to leave our country (Ban exit).

iv) Persons whose movements are to be watched and reported.

17Q: What are the parameters to be included in LOC.

Ans: i) Name in full and alias if any.

ii) Passport Number issuing office

iii) Nationality

iv) Date of birth

v) Place of Birth

vi) Parentage

vii) Address with photograph

18Q. What are the various types of persons who can be included in the LOC?

Ans: i) Persons with Terrorist or Militant Links,
ii) Belligerent Foreigners.
Iii) Foreigners previously noticed for violations of visa conditions.
iv) Persons required by courts in criminal / civil cases who are absconding.
v) Absconding Offenders wanted by Police / CBI / Customs / Central excise / Directorate of Rev. Intelligence / other agencies."

19Q: What is the upper limit for maintaining a wanted persons name in LOC?

Ans: (i) Visadex cards after expiry of one year will be weeded out unless and otherwise the originator asks for continuance.

(ii)MHA warning circulates/look out instructions will be retained permanently until specific instructions are given for deletion.

12. L.O.C. containing full particulars of the person is being sent throughout the world. Even to Interpol also. It is being sent using software techniques. Its effect is that the person against whom L.O.C. has been issued, if lands in an Indian Airport, he will be apprehended. There will be difficulty for him to land in a foreign country also as he will not allowed to enter the country from the Airport.

13. Petitioners are facing criminal prosecutions. They are granted bail/anticipatory bail. They are holders of valid Indian Passports. They have strong roots in the society. They are business people. They need to travel abroad often. So far there is no valid restriction on their movement by any Court order or Ministry of Home Affairs or External Affairs. They are not stated be involved in any heinous crimes. They are not terrorists. Nor anti-social elements. There is no allegation that they have absconded. Thus, they cannot be brought under any one of the categories with respect to whom L.O.C. orders are being issued .

15. In the facts and circumstances of this case and due to the subsequent developments, so far as the petitioners are concerned, L.O.C. orders becomes irrelevant.

16. In view of the foregoing, the 1st respondent, namely, the Deputy Commissioner of

Police, Ambattur Range, Chennai is directed to withdraw the Look Out Circular order issued as against the petitioners.

5. According to the learned Senior counsel appearing for the petitioner, the present order impounding the petitioner's passport by invoking Section 37 of FEMA, 1999 read with Section 131(3) of the Income Tax Act, 1961 is illegal. In this context, the learned Senior counsel for the petitioner relied on the decision of the Hon'ble Supreme Court in SURESH NANDA VS. CENTRAL BUREAU OF INVESTIGATION [(2008) 3 SCC 674] and also the Division Bench judgment of the Bombay High Court in Criminal Writ Petition No.2432 of 2007 dated 08.10.2008 [AVINASH BHOSALE vs. UNION OF INDIA]. By placing reliance on the above decisions, the learned Senior counsel for the petitioner would contend that the petitioner is neither an absconding offender nor terrorist. The learned Senior counsel for the petitioner also undertakes before this Court that whenever the petitioner is summonsed, he will appear without fail, unless a specific exemption is sought for and reasonable notice of appearance is given to him for his appearance. It is also submitted that the petitioner will cooperate for enquiry and he will not abscond.

6. On the contrary, the learned counsel for the respondents 2 to 4, based on the counter affidavit, would contend that the investigation is in a crucial stage. The petitioner, after the dismissal of the writ petition filed before the Kerala High Court, did not cooperate and did not appear before the respondents for inquiry. Therefore, the respondents have issued the Look Out Circular. As he is resident of Dubai, to record his statement he was detained at Chennai Airport on 22.12.2016. In this context, the learned counsel for the respondents 2 to 4 relied on the judgment of the Delhi High Court in SUMAN SEHGAL vs. UNION OF INDIA [AIR 2006 DELHI 216] wherein it was held that passport can be impounded even by invoking the provisions of the FEMA Act. Further, the passport of the petitioner is impounded for a limited period of 90 days in order to ensure his availability in the office of the second respondent for the purpose of investigation. Therefore, the learned counsel for the respondents prayed for dismissal of the writ petitions.

7. Heard the learned senior counsel for the petitioner, learned counsel for the first respondent as well as the learned counsel for the respondents 2 to 4.

8. The learned Senior Counsel for the petitioner pointed out that the fundamental right guaranteed to the petitioner under Article 21 of the Constitution of India cannot be curtailed by an investigating agency. The petitioner is a NRI,

investing funds for buying agricultural lands. Even if any violation has been committed by the petitioner for having purchased lands in India, such offence is compoundable in nature. Further, two investigations are being conducted simultaneously against the petitioner at Kerala and Delhi and the petitioner subjected himself to such inquiry. In any event, there was no notice issued to the petitioner before issuing the impugned Look Out Circular and it is in violation of principles of natural justice. According to the learned Senior counsel, the petitioner was detained unlawfully and subsequently on the basis of the order passed by this Court in Habeas Corpus Petition, he was released after 24 hours. Further, after dismissal of the writ petition filed by the petitioner before the Kerala High Court, he was not issued any notice except the notice dated 13.12.2016 for his appearance on 06.02.2017 at 10.00 hours. Therefore, in between time when the petition was dismissed at Kerala High Court and his appearance slated for 06.02.2017 there was no notice for any appearance. In fact, even a first information report has not been registered against the petitioner. The impugned Look out Circular is therefore issued without any prior notice. At any rate, when the petitioner is cooperating for the enquiry he cannot be unlawfully detained or he cannot be asked to be stated a person, who is absconding. In this connection, reliance was placed on the decision of the Bombay High Court in Criminal Writ Petition No.2432 of 2007 dated 08.10.2008 [AVINASH BHOSALE vs. UNION OF INDIA] wherein the Bombay High Court, placing reliance on the decision of the Honourable Supreme Court, held in para Nos. 12 to 15 as follows:-

12. In view of the clear pronouncement by the Supreme Court holding the Passports Act to be a complete code in dealing with impounding of the passport, we have no iota of doubt that the respondent's act of impounding of the Petitioner's passport is without authority of law. In the result, we cannot accept the submission made on behalf of the learned Solicitor General that impounding of the passport could be made by having recourse to general provision under the Income Tax Act, regulating the seizure of documents. The writ petition, therefore, must succeed. In view of the clear pronouncement by the Supreme Court in case of Suresh Nanda, we do not propose to deal with the High Court judgments, relied upon by the learned Solicitor General.

13. Certainly the law is tilted in favour of the Petitioner but the Court cannot overlook that the Petitioner has approached this Court under Article 226 of the Constitution of India, an equitable jurisdiction. During the course of arguments, it was argued with some emphasis that there are number of

accounts and some of them contain transactions of very highest magnitude which were not declared by the Petitioner despite specific directions of the Court. The only explanation that has been put forth on behalf of the Petitioner in that behalf is that he forgot to give complete statements and some of the accounts were dormant. It was stated and even mentioned in one of the affidavits filed on behalf of the Union of India that some transactions even exceeded the amount of US\$ 85,000. We are unable to accept in entirety the explanation rendered by the Petitioner for non furnishing the details of accounts. Thus, in order to balance the equities between the parties, we consider it appropriate to direct the Petitioner to furnish to the Respondents all these statements with details of transactions within a period of one week from the date of pronouncement of this order. Besides this, the Petitioner shall also furnish to the Respondents a letter of authorization requiring them to take information from all accounts which have now been detected by the Respondents, when one of their officers had visited Dubai. He shall also furnish an undertaking that he will fully cooperate with the Respondents in conducting of the inquiry that is in progress against the Petitioner. Within one week thereafter, the passport of the Petitioner shall be returned to him without any further delay.

14. We further make it clear that this order is without prejudice to the rights and contentions of the Respondents as well as of any other Competent Authority or Department including the Passport Authority under the Passport Act for impounding of passport, if they are so entitled and choose to do so.

15. We, therefore, allow the Writ Petition and direct Respondent No.2 Directorate of Enforcement to return the passport of the Petitioner within a period of 15 days from the date of pronouncement of this judgment, subject to compliance of directions stated above.

9. By placing reliance on the above decision, it is contended that there is no first information report registered against the petitioner. The petitioner is not an absconding offender and he appeared on two occasions on 15.01.2017 and 23.01.2017 and now the enquiry is postponed to 03.02.2017. Hence, the question of absconding does not arise at all. Therefore, it is contended that the impugned look out circular has to be withdrawn by the respondents.

10. The question arise for consideration in these writ petitions is whether the passport of the petitioner can be impounded and the impugned notices issued by the respondents are sustainable. In this connection, useful reference could be made to the decision of the Hon'ble Supreme Court in SURESH NANDA VS. CENTRAL BUREAU OF INVESTIGATION [(2008) 3 SCC 674] wherein the Honourable Supreme Court dealt with the power under Section 37 of FEMA Act and also the power under Section 131 of the Income Tax Act to impound a passport. The relevant portion is extracted hereunder:

11. The Act being a specific Act whereas Section 104 of Cr.P.C. is a general provision for impounding any document or thing, it shall prevail over that Section in the Cr.P.C. as regards the passport. Thus, by necessary implication, the power of Court to impound any document or thing produced before it would exclude passport.

12. In the present case, no steps have been taken under Section 10 of the Act which provides for variation, impounding and revocation of the passports and travel documents. Section 10A of the Act which provides for an order to suspend with immediate effect any passport or travel document; such other appropriate order which may have the effect of rendering any passport or travel document invalid, for a period not exceeding four weeks, if the Central Government or any designated officer on its satisfaction holds that it is necessary in public interest to do without prejudice to the generality of the provisions contained in Section 10 by approaching the Central Government or any designated officer. Therefore, it appears that the passport of the appellant cannot be impounded except by the Passport Authority in accordance with law. The retention of the passport by the respondent (CBI) has not been done in conformity with the provisions of law as there is no order of the passport authorities under Section 10(3)(e) or by the Central Government or any designated officer under Section 10A of the Act to impound the passport by the respondent exercising the powers vested under the Act.

11. Learned Additional Solicitor General has submitted that the police has power to seize a passport in view of Section 102(1) of the Cr.P.C. which states: Power of police officer to seize certain property: (1) Any police officer

may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.

In our opinion, while the police may have the power to seize a passport under Section 102 (1) Cr.P.C, it does not have the power to impound the same. Impounding of a passport can only be done by the passport authority under Section 10(3) of the Passports Act, 1967.

12. It may be mentioned that there is a difference between seizing of a document and impounding a document. A seizure is made at a particular moment when a person or authority takes into his possession some property which was earlier not in his possession. Thus, seizure is done at a particular moment of time. However, if after seizing of a property or document the said property or document is retained for some period of time, then such retention amounts to impounding of the property/or document. In the Law Lexicon by P. Ramanatha Aiyar (2nd Edition), the word impound has been defined to mean to take possession of a document or thing for being held in custody in accordance with law. Thus, the word impounding really means retention of possession of a good or a document which has been seized.

13. Hence, while the police may have power to seize a passport under Section 102 Cr.P.C. if it is permissible within the authority given under Section 102 of Cr.P.C., it does not have power to retain or impound the same, because that can only be done by the passport authority under Section 10(3) of the Passports Act. Hence, if the police seizes a passport (which it has power to do under Section 102 Cr.P.C.), thereafter the police must send it along with a letter to the passport authority clearly stating that the seized passport deserves to be impounded for one of the reasons mentioned in Section 10(3) of the Act. It is thereafter the passport authority to decide whether to impound the passport or not. Since impounding of a passport has civil consequences, the passport authority must give an opportunity of hearing to the person concerned before impounding his passport. It is well settled that any order which has civil consequences must be passed

after giving opportunity of hearing to a party vide State of Orissa Vs. Binapani Dei [Air 1967 SC 1269].

14. In the present case, neither the passport authority passed any order of impounding nor was any opportunity of hearing given to the appellant by the passport authority for impounding the document. It was only the CBI authority which has retained possession of the passport (which in substance amounts to impounding it) from October, 2006. In our opinion, this was clearly illegal. Under Section 10A of the Act retention by the Central Government can only be for four weeks. Thereafter it can only be retained by an order of the Passport authority under Section 10(3).

15. In our opinion, even the Court cannot impound a passport. Though, no doubt, Section 104 Cr.P.C. states that the Court may, if it thinks fit, impound any document or thing produced before it, in our opinion, this provision will only enable the Court to impound any document or thing other than a passport. This is because impounding a passport is provided for in Section 10(3) of the Passports Act. The Passports Act is a special law while the Cr.P.C. is a general law. It is well settled that the special law prevails over the general law vide G.P. Singh's Principles of Statutory Interpretation (9th Edition pg. 133). This principle is expressed in the maxim *Generalia specialibus non derogant*. Hence, impounding of a passport cannot be done by the Court under Section 104 Cr.P.C. though it can impound any other document or thing.

16. For the aforesaid reasons, we set aside the impugned order of the High Court and direct the respondent to hand over the passport to the appellant within a week from today. However, it shall be open to the respondent to approach the Passport Authorities under Section 10 or the authorities under Section 10A of the Act for impounding the passport of the appellant in accordance with law.

17. We, however, make it clear that we are not expressing any opinion on the merits of the case and are not deciding whether the passport can be impounded as a condition for grant of bail.

18. The appeal stands disposed of accordingly.

11. It is the contention of the petitioner that investigation have been initiated against him simultaneously at Delhi and Kerala and challenging the conduct of investigation at Cochin, the petitioner filed Writ petition before the Kerala High Court and obtained an interim stay. After such interim stay was granted, there was no notice issued calling upon the petitioner to appear for an enquiry. After dismissal of the writ petition, a notice dated 13.12.2016 was issued calling upon the petitioner to appear on 06.02.2017. Therefore, according to the petitioner, in the interregnum period, it cannot be stated that the petitioner is evading appearance before the respondents warranting them to issue the impugned Look Out Notice. Such an argument advanced on behalf of the petitioner is a plausible argument. In fact, this Court, in the decision rendered in E.V. Perumal Samy Reddy's case mentioned supra, has gone into the details of the persons against whom look out circular can be issued. As per the instructions issued by the respondents/department, look out circular can be issued against (i) persons with terrorist or militant links (ii) belligerent foreigners (iii) foreigners previously noticed for violations of visa conditions (iv) persons required by court in criminal/civil cases who are absconding and (v) absconding offenders wanted by Police/CBI/Customs/Central Excise/Directorate of Revenue Intelligence and other competent investigation agencies. In the present case, nowhere it was mentioned in the impugned circular that the petitioner comes under any of the categories mentioned in the instructions given by the respondents themselves.

12. In so far as impounding of passport is concerned, the Honourable Supreme Court in the case of Suresh Nanda vs. CBI mentioned supra, has held that the police may not have power under Section 102 (1) of Code of Civil Procedure to seize a passport or to impound the same. It was further held that impounding of a passport can only be done by the Passport Authority under Section 10 (3) of the Passports Act, 1967. The Honourable Supreme Court has also laid down a distinction and difference between seizing a document and impounding a passport by holding that a seizure is made at a particular moment when a person or authority takes into his possession some property which was earlier not in his possession. However, if after seizing of a property or document the said property or document is retained for some period of time, then such retention amounts to impounding of the property or document. In that case, the Honourable Supreme Court held that the detention of passport by the CBI is held to be illegal and impounding and revoking the passport under Section 10 of the Passport Act is illegal. It

was further held that as per Section 104 of Cr.P.C., a 'document' does not include a passport. In the present case, it is not the case of the respondents that they have taken necessary steps under Section 10 of the Passports Act to impound the passport Act and therefore, the mere detention of the passport of the petitioner at the airport without following the provisions contained under Section 10 of the Passport Act and issuing the look out circular without issuing prior notice are not legally sustainable.

13,. It is brought to the notice of this Court that after dismissal of writ petitions filed by petitioner before the Kerala High Court, the respondents themselves wanted the petitioner to appear for inquiry only at Delhi on the ground that cumulatively, investigation can be done in Delhi. At any rate, it is contended that the petitioner is cooperating with the enquiry.

14. It is to be noted that the petitioner's passport, which has been impugned by the second respondent, is in the custody of the authorities concerned for the past 30 days. In the meantime, the petitioner has appeared before the authorities for inquiry on 15.01.2017 and 23.01.2017 and extended his cooperation for conducting the enquiry. Therefore, as per the decision rendered by the Honourable Supreme Court as well as the Division Bench judgment of the Bombay High Court, mentioned supra, the impounding of the petitioner's passport is not warranted. In this case, in the impugned notices, there is no reason has been mentioned for calling the petitioner an absconder. It is also to be noted that the impugned look out circular has been issued without any prior notice to the petitioner and without giving him a reasonable opportunity. It is also not the case of the respondents that they have taken necessary action as contemplated under Section 10 of the Passport Act, without doing so, the impugned orders are legally not sustainable.

15. In the light of the above and as per the judgment of the Hon'ble Supreme Court, this Court direct the respondents to return the passport to the petitioner forthwith after cancelling the Look Out Circular with stringent conditions:

[i] the petitioner will appear before the authority concerned for the enquiry as and when he has been summoned when a notice is given to a reasonable time for his appearance;

[ii] the petitioner will undertake before this Court that he will specifically cooperate with the inquiry and will not abscond from the proceedings;

[iii] he will abide any other reasonable conditions which may be imposed by the authority concerned; and

[iv] he may be entitled for the assistance of a lawyer but the lawyer will be only present in the office of the respondent

at the time of enquiry.

16. It is made clear that since the next inquiry is on 03.02.2017 the petitioner has to necessarily appear before the respondents without fail.

16. In the result, the writ petitions are allowed and the orders, impounding the passport of the petitioners are quashed. No costs. Consequently, connected Miscellaneous Petitions are closed. The respondents are directed to forthwith handover the passport to the petitioner after withdrawing the look out circular notices issued against him subject to the conditions mentioned above.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

sri/rsh

To

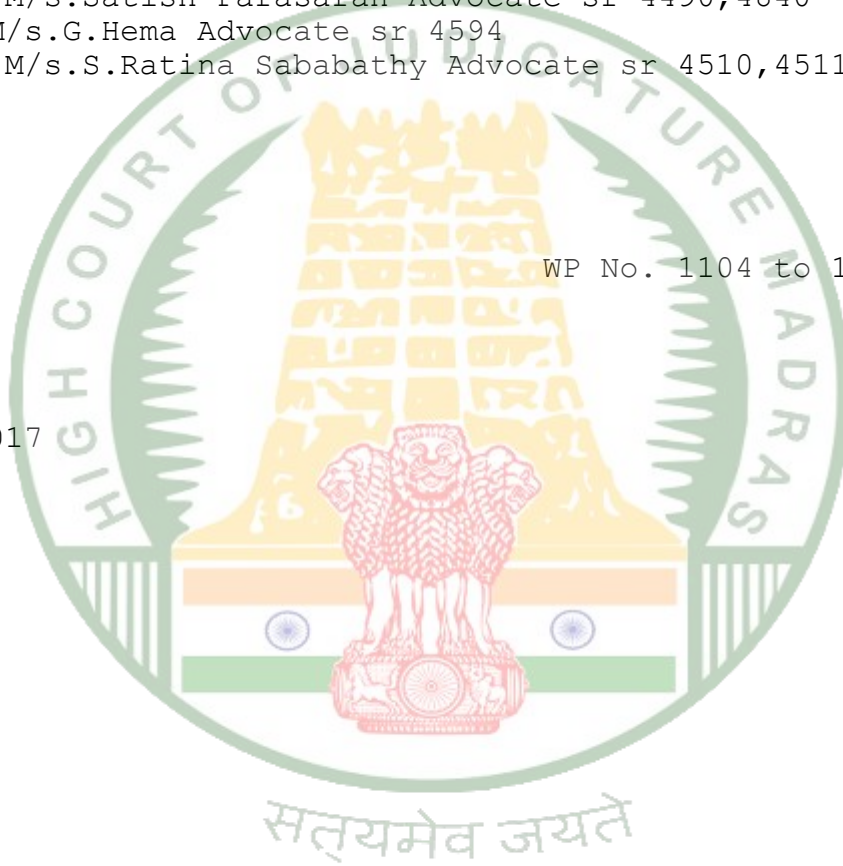
- 1.The Secretary,
Union of India,
Home Department, New Delhi.
- 2.The Deputy Director,
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Government of India,
Room No.50, 6th Floor,
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Khan Market, New Delhi.
- 3.The Director,
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Office of the Joint Director,
Directorate of Enforcement,
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+3 ccs to M/s.Satish Parasaran Advocate sr 4490,4840
+1 cc to M/s.G.Hema Advocate sr 4594
+4 ccs to M/s.S.Ratna Sababathy Advocate sr 4510,4511,
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