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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **<u>W.P.(C) 7559/2017</u>**

NITIN SANDESARA ..... Petitioner

Through: Mr Mukul Rohotagi, Senior Advocate with Mr Saurabh Kirpal, Mr Sameer Rohatgi, Mr Ranjeeta Rohatgi, Mr Abhishek Vashisht, Advocates.

versus

DIRECTORATE OF ENFORCEMENT AND ORS ..... Respondents

Through: Mr Amit Mahajan, CGSC with Mr Nitya Sharma and Mr Kunal Dutt, Advocates for UOI.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% 29.08.2017

<u>CM No. 31234/2017</u>

1. Exemption is allowed, subject to all just exceptions.

2. The application stands disposed of.

<u>W.P.(C) 7559/2017 & CM No. 31233/2017</u>

3. The petitioner has filed the present petition, *inter alia*, praying that the Look Out Circular (hereafter 'the LOC') issued against the petitioner be set aside.

4. The present petition was moved on 28.08.2017 and this Court had directed respondent nos. 1 and 2 to produce the relevant file. The concerned

file has been produced and perused by this Court. The notings in the file indicate that the concerned officers of the Enforcement Directorate had found that there was a "*prima facie*" case of violation of the Foreign Exchange Management Act, 1999 (FEMA) against the petitioner and had, therefore, commenced investigations. Certain premises were searched in connection with the alleged offences pertaining to violation of FEMA and certain documents have also been seized from those premises. The file produced also indicates that certain search and seizure actions were also initiated by the Income Tax Authorities under the Income Tax Act, 1961.

5. The petitioner was also issued summons, which this Court was informed was duly complied with and the petitioner has been cooperating with the investigation being conducted by the Enforcement Directorate.

6. Notwithstanding that the petitioner had been appearing before the respondent, a request for a LOC was issued by the Enforcement Directorate on 10.8.2017. Curiously, the proforma of the LOC does not mention any offence or any pending case; the spaces in the proforma for the request for issuance of the LOC, which are required to be filled with such details, are blank and have been scored out completely. Nonetheless, the respondents have requested that the petitioner be detained, if found leaving the country.

7. This Court finds that the said action is palpably without authority of law. The intended effect of the request for LOC was clearly to detain the petitioner. This is so as the request made was to detain the petitioner and hand him over to police authorities. The respondents have not been able to show any statutory provision, which permits them to detain citizens in the

manner as sought to be done.

8. As noticed above, the petitioner is carrying on with the investigation and there is no FIR registered against the petitioner as yet. Although, in terms of section 19 of the Prevention of the Money-Laundering Act, 2002 (PMLA) certain officers of respondent no. 1 have the power to arrest a person; such action can only be taken only if the concerned officer has reasons to believe that the person is guilty of an offence punishable under PMLA. Further such belief would necessarily have to be grounded on material in possession of the concerned officer and such reasons would have to be recorded in writing. It is relevant to mention that in terms of Section 62 of the PMLA, detention or arrest of any person without recording reasons, invites punitive measures.

9. In the present case, the petitioner was detained at the airport at the instance of the Enforcement Directorate and such detention was, plainly, without following the provisions of PMLA and without authority of law.

10. The counsel for the petitioner also points out that violation of FEMA is not one of the scheduled offences under the PMLA. This court has perused the notings on the file produced and the same indicates that at the time when the request for the LOC was issued, the officers of the Enforcement Directorate were investigating violation of FEMA and not any scheduled offence. Thus, it is also difficult to accept that at the material time the officers of the Enforcement Directorate could entertain any belief that the petitioner was guilty of any offence under the PMLA.

11. Mr Kripal, learned counsel for the petitioner has also drawn the

attention of this court to the Office Memorandum (OM) dated 27.10.2010 which refers to the judgement dated 11.08.2010 passed by this court in ***Sumer Singh Salkan v. Asst director & Ors: W.P. (Crl) no. 1315/2008*** and sets down the guidelines for issuance of LOC. Paragraph 8(g) and (h) of the said OM are relevant and are set out below:-

> "8. In accordance with the order dated 26.7.2010 of the High Court of Delhi, the matter has been discussed with the concerned agencies and the following guidelines are hereby laid down regarding issuance of LOCs in respect of Indian citizens and foreigners:
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> xxxx xxxx xxxx
>
> g) 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.
>
> h) In cases where there is no cognizable offence under IPC or 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.
>
> xxxx xxxx xxxx"

12. In the present case, the LOC does not indicate any credible reason for issuing the same. Plainly, recourse to LOC cannot be taken as a matter of course; restricting the right of a citizen to travel is a serious imposition on

his/her fundamental rights and even if it is assumed that such action is permissible in law, it can be taken only when necessary and for good reason.

13. This Court also finds it difficult to understand the conduct of the officers of the Enforcement Directorate. Admittedly, the petitioner had joined the investigations and had appeared before the concerned officers as required by them. Notwithstanding the same, a request for LOC was issued and the petitioner was not even informed of such LOC. Notwithstanding the legality or validity of the LOC, the petitioner would have taken that into account before making his travel plans. The petitioner became aware of the LOC at 11.00 PM on 22.08.2017, when he was about to board a flight.

14. Mr Mahajan, learned counsel appearing for the respondent submits that even though the investigation may have commenced for violation of FEMA, it appears that the petitioner may have also violated other laws, which fall within the scope of scheduled offences under the PLMA, as well. However, this is not bourne out by the file notings and the request for LOC also does not indicate any such reason.

15. Thus, insofar as the LOC issued is concerned, the same is wholly unsustainable. Accordingly, the LOC issued against the petitioner is set aside. However, considering that the Enforcement Directorate is continuing with the investigation and may require the attendance of the petitioner, this Court considers it apposite to direct the petitioner not to leave this country till 04.09.2017. Mr Rohatgi, the learned counsel appearing for the petitioner also states, on instructions, that the petitioner shall not attempt to leave this country and will cooperate with the investigation. He further states that the

petitioner will appear before the respondent authorities today at 5.45 p.m.

16. It is clarified that the respondents are at liberty to take all steps as available to them in law, however, they shall not detain the petitioner in the manner as aforesaid and without complying with the provisions of the law.

17. The petition is disposed of.

18. Order *dasti* under the signature of Court Master.

VIBHU BAKHRU, J

AUGUST 29, 2017
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