



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.08.2018

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD) No.18485 of 2018

Balamurugan

... Petitioner

Vs.

1.The Superintendent of Police,
Thanjavur District,
Thanjavur.

2.The Inspector of Police,
All Women Police Station,
Pattukkottai,
Thanjavur District.

3.The Chief Immigration Officer,
Shastri Bhavan Annexe Buildings,
No.26, Haddows Road,
Nungambakkam,
Chennai - 6.

... Respondents

PRAYER:- Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus, directing the Respondent No.1 to withdraw the Lookout circular issued against the petitioner in connection with the Crime No.06 of 2016 on the file of the second respondent and consequently direct the first respondent to communicate the order of lifting of travel restriction imposed in pursuant to above said Lookout circular to the Immigration offices.

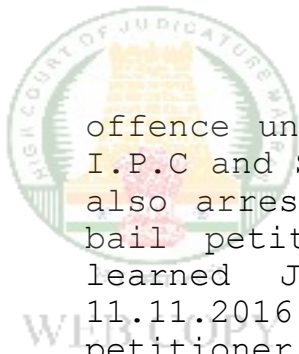
For Petitioner : Mr.K.A.S.Prabhu

For Respondents : Mr.B.Bhagawathi
Government Advocate

ORDER

This Writ Petition has been filed for a direction to the first respondent to withdraw the Lookout circular issued against the petitioner in connection with Crime No.06 of 2016.

2.The case of the petitioner is that a complaint was given by one Senthil against the petitioner and six others and the same was taken on file by the second respondent police and a First Information Report was registered in Crime No.06 of 2016 for the



offence under Sections 417, 493, 294(b), 506(ii), 147 and 148 of I.P.C and Section 4 of the Dowry Prohibition Act. The petitioner was also arrested in the said Crime Number and the petitioner filed a bail petition before the Judicial Magistrate, Pattukkottai. The learned Judicial Magistrate, Pattukkottai by an order dated 11.11.2016 made in C.M.P.No.7911 of 2016, granted bail to the petitioner with a condition that the petitioner should report before the second respondent police daily at 10.00 a.m for a period of 30 days. The petitioner has also complied with the condition.

3.The investigation was carried on and ultimately a final report came to be filed on 07.08.2017 and the same has been taken on file in C.C.No.287 of 2017 for an alleged offences under Sections 417, 493, 506(ii) read with 147, 148 of I.P.C. and under Section 4 of the Dowry Prohibition Act. It was also brought to the notice of the Court that the charges have been framed and the case is at the stage of trial.

4.The learned counsel for the petitioner would submit that the petitioner is working in Singapore and that he has always co-operated with the investigation and has also attended all Court hearings. However, on 03.08.2017 when he went to Chennai Airport on his way to Singapore, he was restrained by the Immigration officer on the ground that there is a lookout circular against the petitioner. The learned counsel would submit that the lookout circular has been issued by the first respondent and as a result of the same, the petitioner is not in a position to continue his job at Singapore.

5.The learned counsel for the petitioner would submit that the petitioner has been working at Singapore from the year 2007 onwards and his livelihood is totally dependant upon his job at Singapore. The learned counsel would further submit that the petitioner has subjected himself to investigation and has been arrested and released on bail and a final report has already been filed in the case and the charges have also been framed. The learned counsel would further submit that the petitioner has specifically undertaken in the affidavit that he will appear for the enquiry as and when his presence is required in future.

6.Per contra, the learned Government Advocate would submit that the petitioner is admittedly living in Singapore and he has his job in Singapore and therefore, there are chances that the petitioner may escape from the clutches of the respondents police and may delay the trial, that is now pending in C.C.No.287 of 2017. The learned counsel would further submit that P.W.1 to P.W.3 has already been summoned and the trial will be completed within a short time. The learned counsel justified the issuance of the lookout circular against the petitioner by the first respondent.

7.This Court has carefully considered the submission made on either side and also the materials placed on records.



8. It is an admitted case that the petitioner is working in Singapore and he is living in Singapore from the year 2007 onwards. After the registration of the First Information Report, the petitioner was arrested and released on bail with conditions and the petitioner has also complied with the conditions. Subsequently, after investigation, the charges have also been framed and there is no complaint that the petitioner did not co-operate during investigation. The first respondent has issued the lookout circular, when the case was at the stage of F.I.R. and the same is continuing till today. This Court had an occasion to deal with the issue as to when lookout notice can be issued and this Court in *E.V. Perumal Samy Reddy and others V. State Represented by The Deputy Commissioner of Police*, reported in 2014(1)MLJ 125 has held 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. [See: Article 21 Constitution of India]. 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'.

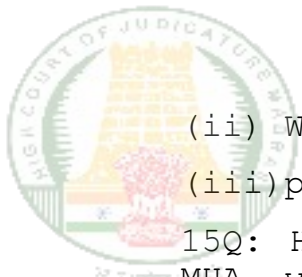
10. But, the fundamental right to move anywhere including foreign countries could be regulated. Where persons involved in criminal cases are wanted for investigation, for court cases, persons, who are anti-social elements their movements can be regulated. Need may arise to apprehend persons, who have ability to fly, flee away the country. So, L.O.C. orders are issued. It is a harmonious 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 & Kolkota, the Intelligence Bureau takes are 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."

9. Similarly, this Court in S.Martin V. The Deputy Commissioner of Police, Central Crime Branch, reported in 2014 (1)MLJ 647 has held as follows:

"33. It cannot be lost sight of that the settled law is that 'Right to Travel Overseas' is a 'Fundamental Right' guaranteed under Article 21 of the Constitution of India, which was held so, in the decision of the Hon'ble Supreme Court in Satwant Singh Sawhney V. D.Ramarathnam, AIR 1967 SC 1836 and also the same was reiterated in the decision of the Hon'ble Supreme Court in Menaka Gandhi V. Union of India, AIR 1978 SC 597.



34. At this stage, this Court aptly points out the decision of this Court in *Sri-la-Sri Arunagirinathar Sri Gnanananda Desika Paramachariya Swamigal, Madurai V. State of Tamil Nadu* and another, AIR 1989 Madras 3, wherein it is laid down as follows:

WEB COPY "The right to travel abroad is a fundamental right guaranteed under Art.21 of the Constitution of India. A person holding a valid passport cannot be interdicted, nor can he be prevented from travelling abroad by a mere oral order. Where a person holding valid passport was so prevented from going abroad on ground that a message was received from the Police Officials of the State Govt. that since a criminal case is pending against the person he should not be allowed to proceed abroad, the action would be without any basis in law. It is the Passport Authority alone who could prevent a person from going abroad. Even assuming that the State Government had vital information which, if placed before the concerned Passport Officer, might even entail either impounding or revocation of the passport, it was open to the State Government to pass on that information to the concerned officer who may take action. But that has nothing to do with the oral interdiction."

.....

39. This Court worth recalls and recollects the decision in *Rajinder Kaur and another V. Union of India* and others, AIR 2004 Punjab and Haryana 347, wherein it is held as follows:

"A person can be denied the right to travel abroad if the authorities are satisfied that ingredients of S.6(2)(b) are satisfied. The language of the Section indicates the gravity of the involvement or likely involvement of an application in activities which would be prejudicial to the sovereignty and integrity of the Country. These provisions, thus, must receive a strict construction as their consequences in law are not only serious but have the effect of taking away freedom granted to the petitioners in law. Before it could be stated that a person is involved in activities which are prejudicial to the sovereignty of the Country, there must be some reasonable and cogent material in possession of the respondents to show involvement of the petitioners in such activities. The expression, "likely to" cannot be treated so lightly as to include every activity and relationship to be prejudicial to the sovereignty of the State. Likelihood may take in its scope the apprehension which essentially must be record based or founded on a reasonable cause, of course, may not be directly substantiated by written documentation. Surveillance, maintenance of appropriate registers under the Police



Rules, entry of the name of the person therein and at least some reasonable analytical examination by the concerned quarters in the Union of India would normally be the records which should substantiate such reasonable apprehension."

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42.As far as the present case is concerned, the Look Out Circular which was originally issued by the 1st Respondent on 06.10.2012 and opened for a year against the Petitioner, was further extended for six months period till 26.05.2014 by the Bureau of Immigration, (MHA) Government of India, Chennai # 6 as per letter dated 27.01.2014, in terms of the request received from the 1st Respondent dated 16.12.2013. Ordinarily, when Look Out Circular is issued against an individual ought to join the investigation by making his appearance before the Investigating Officer or to surrender before the concerned Court or should satisfy that the LOC was wrongfully issued against him. The other option available to the said individual is that he may approached the concerned Officer, who ordered the opening/issuance of LOC and explain to him that the said LOC was incorrectly/wrongfully issued. Added further, the said LOC can be withdrawn by the authority concerned who issued the same and that apart, the said LOC can also be cancelled by the trial Court where case is pending or having jurisdiction over the concerned police station on an application/petition being projected by the concerned individual."

10.In this case, the petitioner has specifically undertaken that he will attend the Court during all the hearings and he will not in any way delay the progress of the trial. The petitioner has also given such an undertaking in para -6 of the affidavit filed in support of the Writ Petition. The petitioner is having a job at Singapore and he cannot be prevented from going to Singapore and the same would amount to denying the livelihood of the petitioner.

11.From the judgments that have been cited supra, it is clear that even in cases where a person is facing criminal prosecution, where he is granted bail/anticipatory bail and is not involved in any heinous crimes and are not terrorists or anti-social elements and there is no allegation that the person may abscond, normally such a lookout circular should not be issued against such persons.

12.In order to strike a via media and in order to ensure that the petitioner does not delay the trial proceedings, the Writ Petition is disposed of with the following directions:

"a.The first respondent is directed to immediately send a communication to the third respondent and ask the third respondent to keep the lookout circular in No.N5930477 in



abeyance. So that the petitioner can move out and come into the country freely in view of his job in Singapore.

b.If the petitioner tries to flee away from the clutches of law and attempts to delay the trial, the first respondent is at liberty to communicate to the third respondent and revive the lookout circular No.N5930477."

However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

- 1.The Superintendent of Police,
Thanjavur District,
Thanjavur.
- 2.The Inspector of Police,
All Women Police Station,
Pattukkottai,
Thanjavur District.
- 3.The Chief Immigration Officer,
Shastri Bhavan Annexe Buildings,
No.26, Haddows Road,
Nungambakkam,
Chennai - 6.

+1CC to Mr.K.A.S.Prabhu Advocate in Sr.No.80097.
+1CC to Special Government Pleader in Sr.No.80267.

LS

DS SKN SAR-4 ;28.08.2018; 8P/6C

W.P. (MD) No.18485 of 2018
24.08.2018