

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRI WRIT PETITION NO. 263 OF 2019
IN
RC (A)/2012 Mum

Afzal Jaffer Khan ...Petitioner

Versus

The Officer , CBI ACB Office & ors. ...Respondents

Dr. Sujay Kantawala, I/b Jayant Gohil, for the Petitioner.
Mr. H. S. Venegaonkar, for Respondent no.1/CBI.
Mr. M. S. Sawant, for Respondent no.2/UOI.
Mr. K. V. Saste, APP for the State/Respondent no.3.

CORAM: RANJIT MORE &
N. J. JAMADAR, JJ
DATED: 29th AUGUST, 2019

PC:-

1. Heard Dr. Kantawala, the learned Counsel for the petitioner, Mr. Venegaonkar, the learned Counsel for respondent no.1/CBI, Mr. Sawant, the learned Counsel for respondent no.2/UOI and Mr. Saste, the learned APP for the State/respondent no.3.

2. The petition is filed for the following reliefs.

“(a) That this Hon'ble Court be pleased to direct and call upon the Respondent No.1 and 2 to furnish the details of Look-out-Notice issued by them the present petitioner, for the alleged offence under Section 420 r/w 120(B) of IPC and u/s 13(2); 13(1)(d) of Prevention of Corruption Act, 1988, vide No. RC 12(A)/2012 Mum.

(b) That this Hon'ble Court be pleased to issue a Writ, or direction or any order in the nature of Writ of Certiorari under Article 226 of the Constitution of India and be pleased

to quash and set aside the Look Out Notice issued by Respondent No.1 and RC 12(A)/2012 Mum. for the alleged offence under Section 420 r/w 120(B) of IPC and u/s 13(2); 12(1)(d) of Prevention of Corruption Act, 1988 against petitioner.”

3. It is the case of the petitioner that on 3rd April, 2012, search and seizure was conducted by respondent no.1 at his premise. On 20th June, 2018, respondent no.1 asked for copy of passport and photograph of the petitioner. On very same day, the petitioner via e-mail furnished copy of his passport and photograph to respondent no.1. The petitioner further submits that on 15th August, 2018, he was restrained/ detained and off loaded and was not allowed to travel out of India by the immigration officers of respondent no.2 on the basis of respondent no.1’s look-out-notice. The petitioner, thereafter, on 24th December, 2018, requested respondent no.1 to provide and furnish the details of the look-out-notice. Those details were not provided. Thus, the petitioner has approached this Court for the reliefs stated here-in-above.

4. Mr. Venegaonkar, the learned Counsel for respondent no.1/CBI has opposed the petition by filing an affidavit-in-reply dated 12th February, 2019. Mr. Venegaonkar, submitted that on the basis of complaint dated 23rd February, 2012,

filed by Mr. Paul E. Lyngdoh, the then Branch Manager of the State Trading Corporation of India Ltd. (STC), Mumbai, the FIR came to be registered by CBI, ACB, Mumbai, for the offences punishable under Section 120-B read with Section 420 of Indian Penal Code and Sections 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988. There are total 20 persons arraigned as accused, including the petitioner, whose name appears at serial no.18. Mr. Venegaonkar, further submitted that in view of an apprehension that the petitioner may abscond and may never return to India to face legal action launched against him, look-out-notice was issued against the petitioner on 22nd June, 2018, at the instance of respondent no.1. He lastly submits that, since the FIR is pending against the petitioner, no interference is called for, in this petition, at this stage.

5. Dr. Kantawala, the learned Counsel for the petitioner submitted that FIR is registered seven years back and from the date of registration of the subject FIR, he has travelled abroad on 17 occasions and the details of each of those visits abroad are given at 'Exhibit – C', at page 23 of the petition. He also submitted that the petitioner has reported to respondent no.1 for the purpose of investigation of the

subject FIR on eight occasions and, therefore, it cannot be said that the petitioner is not co-operating with the investigation agency. Relying upon the decision of Delhi High Court in the case of **Sumer Singh Salkan vs. Asstt. Director & ors.**¹, he submitted that the respondent could not have issued Look Out Circular (LOC) in the absence of any material with respondent no.1 to conclude that the petitioner is deliberately evading arrest/trial.

6. Before the Delhi High Court in the case of **Sumer Salkan** (supra) the following questions arose for consideration:

- “A. What are the categories of cases in which the investigating agency can seek recourse of Look-out-Circular and under what circumstances?
- B. What procedure is required to be followed by the investigating agency before opening a Look-out-circular?
- C. What is the remedy available to the person against whom such Look-out-Circular has been opened?
- D. What is the role of the concerned Court when such a case is brought before it and under what circumstances, the subordinate courts can intervene?”

Those questions were answered as follows:

- “A. Recourse to LOC can be taken by investigating agency in cognizable offences under IPC or other penal laws, where the accused was deliberately evading arrest or not appearing in the trial court despite NBWs and other coercive measures and there was likelihood of the accused leaving the country to evade trial/arrest.

1 ILR (2010) VI Delhi 706

- B. The Investigating Officer shall make a written request for LOC to the officer as notified by the circular of Ministry of Home Affairs, giving details & reasons for seeking LOC. The competent officer alone shall give directions for opening LOC by passing an order in this respect.
- C. The person against whom LOC is issued must join investigation by appearing before I.O. or should surrender before the court concerned or should satisfy the court that LOC was wrongly issued against him. He may also approach the officer who ordered issuance of LOC & explain that LOC was wrongly issued against him. LOC can be withdrawn by the authority that issued and can also be rescinded by the trial court where case is pending or having jurisdiction over concerned police station on an application by the person concerned.
- D. LOC is a coercive measure to make a person surrender to the investigating agency or Court of law. The subordinate courts' jurisdiction in affirming or cancelling LOC is commensurate with the jurisdiction of cancellation of NBWs or affirming NBWs."

7. The decision of the Delhi High Court is based on the judgment of the Apex Court in ***Maneka Gandhi vs. Union of India***.² The decision of the Delhi High Court in ***Sumer Salkan*** (supra) is followed by the Madras High Court in the case of ***Cheruvathur Chakkutty Thampi @ C. C. Thampi vs. Union of India and others***. in ***Writ Petition No.1104 to 1106 of 2017 and W.M.P. Nos.1077 to 1080 of 2017***.

8. The decision of the Delhi High Court in the case of ***Sumer Salkan*** (supra) makes it abundantly clear that recourse to look-out-notice can be taken by the investigating

2 1978(1) SCC 248.

agency in cognizable offences under IPC or the other penal laws, where the accused was deliberately evading arrest or not appearing in the trial court despite NBWs and other coercive measures and there was likelihood of the accused leaving the country to evade trial/ investigation.

9. In the case at hand, Dr. Kantawala has placed on record the chart of the dates, on which the petitioner has appeared before respondent no.1 in the subject investigation. The chart shows that from 10th April, 2012 to 24th July, 2019 he appeared before respondent no.1 for eight times. This chart is not disputed by respondent no.1. That apart, the petitioner has travelled abroad on 17 occasions as disclosed in the chart annexed at 'Exhibit – C'. This chart is also not disputed by respondent no.1. On the contrary, an additional affidavit dated 15th March, 2019, filed by Mr. Girish Soni, P.I., CBI, ACB, Mumbai, on behalf of respondent no.1, shows that for the investigation purpose the petitioner was contacted by the investigating agency on 8th February, 2019 and the petitioner was directed to come to CBI office on 11th February, 2019. It is not the case of respondent nos. 1 and 2 that prior to February, 2019, either the petitioner was called or he did not appear before them when called. Though the

apprehension is expressed by respondent no.1 that petitioner will abscond and never return to India, however, there is absolutely no material in support of this apprehension.

10. On the contrary, the material relied upon by the petitioner shows that the petitioner is very much available for the investigation. The petitioner is a Managing Director of Shalimar Rexine India Limited, which is stated to be engaged in manufacturing PVC leather and its ailed products and a largest exporter. The petitioner appears to have roots in India and Society to bind him down to his place of abode and business.

11. Dr. Kantawala, further submits that the petitioner needs to travel UAE and Saudi Arabia from Monday i.e. 2nd September, 2019, for pilgrimage.

12. In these circumstances, we are of the considered view that the look-out-notice could not have been issued after the period of six years from the date of registration of subject crime, especially in absence of any material to support respondents apprehension. The look-out-notice, therefore, cannot be sustained and the same deserves to be quashed and set aside. At the same time, we deem it appropriate to put the petitioner to terms to co-operate with the

investigating agency in the investigation of the subject crime. To this end, we deem it appropriate to defer the quashment of look-out-notice by a reasonable period to facilitate effective investigation in the intervening period. At the same time, to address the immediate concern of the petitioner to travel abroad urgently, we find it appropriate to direct the suspension of operation of look-out-notice for a period of 10 days.

13. In the above circumstances, we dispose of the petition by passing following order:

- (i) The subject look-out-notice issued at the instance of respondent no.1, on 22nd June, 2018, shall remain suspended for the period of 10 days i.e. from 2nd September, 2019 till 11th September, 2019.
- (ii) The petitioner is allowed to travel to UAE and Saudi Arabia during the abovementioned period and the petitioner shall return before the expiry of 10 days as indicated above.
- (iii) The petitioner, after his return from abroad, shall co-operate with the respondents – investigating agency in the investigation of the subject crime

and shall remain present before respondent no.1,
as and when called, during the period of one
month thereafter.

(iv) The subject look-out-notice shall remain in
operation for the period of one month, thereafter,
i.e. from 12.09.2019 to 11.10.2019 and petitioner
cannot travel out of India, in the said period.

(iv) The said look-out-notice dated 22nd June, 2018,
and renewed from time to time, shall finally
stands quashed and set aside with effect from 11th
October, 2019.

14. In view of the above, the petition stands disposed of.

[N. J. JAMADAR, J.]

[RANJIT MORE, J.]