

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 3272 of 2019

Santoshkumar Prakashchand Doshi .. Petitioner
Versus
Union of India .. Respondents

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Mr. A.H. Ponda i/b Hitesh Patel for the petitioner.
Mr.Vinit Vaidya i/b H.S. Venegaonkar for respondent no.1.
Mr. Pradeep Sancheti, Sr. Advocate with Darshit Jain i/b S.I. Shah for respondent no.2.
Mr.Deepak Thakare, P.P with Sangita Shinde, APP for the State.

**CORAM: SHRI RANJIT MORE &
SMT. BHARATI H.DANGRE, JJ.**

DATED : 31st JULY 2019

P.C:-

1 Heard learned counsel for the respective parties.

2 By this petition filed under Article 226 of the Constitution, petitioner is seeking quashment of the Look Out Circular (LOC)/Alert dated 31st August 2018 issued against him. The brief facts giving rise to the present petition are as follows :-

Respondent no.1 CBI has registered FIR on 24th February 2012 under Sections read with Sections 120(B) r/w 420 IPC and 13(2) r/w Section 13(1))(d) of the Prevention of

Corruption Act, 1888 against 20 persons including the petitioner in respect of the offence for a period prior to 2008.

3 The premises of the petitioner Company was searched on 10th April 2012 and 19th September 2015. The petitioner gave statement to respondent no.1 which they claim were misplaced by them. It is the case of the petitioner that from the date of registration of FIR, he has attended the office of respondent no.2 around 14 times and he is still co-operating with the investigation. However, CBI has not filed charge-sheet since last more than 7 years. A specific statement is made in the petition that from the date of registration of the said FIR, he has gone abroad 61 times and returned.

4 The petitioner's grievance is that for the reasons best known to the CBI, LOC is issued against the petitioner on 31st August 2011 which LOC is challenged in the above writ petition.

5 Mr.Ponda, learned counsel for the petitioner invited our attention to the decision of the Delhi High Court in Writ Petition (Cri) 1315 of 2018 in Sumer Singh Salkan Vs. Assistant Director and Ors dated 11th August 2010 and decision of the Madras High Court reported in ***Karti Chidambaram Vs. Bureau of Immigration, Ministry of Home Affairs & ors.*** Relying upon these decisions, Mr.Ponda submits that petitioner

being co-operative with the investigation in the subject FIR, there was no need to issue LOC against him. On behalf of the respondent no.1, one Girish Soni, PI, CBI, ACP has filed affidavit dated 30th July 2019. In page 94, para-10, averment is made that the petitioner and his firm is named in the subject FIR and the case is under investigation. It is further averred that LOC was issued against the petitioner as there is apprehension that he may abscond and never return to India to face the legal action to be launched against him. Mr.Sancheti learned counsel for respondent no.2 submits that in terms of the decision of the Delhi High Court in Sumer Singh Salkan, petitioner has alternative remedy i.e. to approach the Officer who ordered issuance of investigation for the trial and this Court should not entertain the writ petition filed under Article 226 of the Constitution of India.

6 Having considered the rival submissions and having gone through the petition along with the annexures, affidavit in reply by the parties and the decision relied upon, we are of the opinion that the petition deserves to be quashed and set aside.

7 The Delhi High Court in Sumer Singh Salkan (supra) formulated four questions regarding the issuance of LOC and answered the same as follows :-

The questions raised in the reference are as under :

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 ?

The questions are answered as under :

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.

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 and 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.”

8 The Division Bench of the Madras High Court in Karti Chidambaram (supra) referred the decision of the Delhi High Court in Sumer Singh Salkan and further observed in terms of the decision of the Delhi High Court in Saltan's case (supra), the Government has issued the circular. The Madras High Court made the observations that the legality and validity of LOC has to be adjudged having regard to the circumstances prevailing on the date on which the request for issuance of Look Out Circular had been made. In the facts of that case, the Madras High Court was pleased to quash and set aside the LOC against the petitioner therein since the conditions precedent for issuance of the LOC was not satisfied.

9 Mr.Ponda also makes a statement that petitioner is ready to give an undertaking on instructions of the petitioner that he is ready and willing to co-operate with the CBI and he will continue to co-operate with the same. Statement is

accepted as an Undertaking. We find that the petitioner has attended the office of the respondent no.1 for more than dozen times and he was co-operating with the investigation of the subject FIR. Even it is not the case of the respondent no.1 in the affidavit that petitioner is not co-operating with the investigation in the subject FIR. The only ground to oppose the petition by the respondent no.1 is the apprehension that petitioner may abscond and never return to India to face the legal action to be launched against him. The fact remains and this is not disputed by either of the respondent that subsequent to registration of subject FIR, petitioner has gone abroad 61 times and returned back. Therefore, apprehension of the respondent no.1 that petitioner may abscond is misplaced.

11 In terms of the decision of the Delhi High Court in Sumer Singh Salkan (supra), recourse to LOC can be taken by the Investigating Agency in cognizable offences where the accused is deliberately evading arrest. The condition precedent to issue LOC therefore, is not satisfied. We are of the opinion that in the facts and circumstances of the present case, the respondent no.1 was not justified in issuing LOC against the petitioner.

This take us to consider the objection of Mr.Sancheti, learned counsel for respondent no.2. He raises a preliminary objection about maintainability of the petition on the ground that petitioner has alternative remedy. This

objection cannot be accepted, inasmuch as admittedly, petitioner has approached the trial court, challenging the issuance of LOC and his application was rejected by the trial Court on the ground that it has no jurisdiction. Restriction put upon the petitioner to travel abroad affects his personal liberty guaranteed under Article 21 of the Constitution and lately the Hon'ble Apex Court has recognized 'Right to travel Abroad' as a basic Human Right.

12 Even now, it is settled principle of law that availability of alternative efficacious remedy is no ground. In the facts and circumstances mentioned above, LOC issued against the petitioner by respondent no.1 cannot be sustained. Same is accordingly quashed and set aside.

13 Writ Petition is accordingly allowed in terms of prayer clause (a).

It is made clear that the observations made hereinabove are restricted to challenge the LOC issued against the petitioner and we have not gone into the merits of the allegation levelled in the subject FIR.

(SMT. BHARATI H. DANGRE, J.)

(RANJIT MORE, J.)