IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3058 OF 2021

Mr. Chaitya Shah …. Petitioner
Versus
The Union of India
and others …. Respondents

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Mr. Aabad Ponda, Senior Advocate a/w. Manvendra Mishra, Akhilesh Singh, Nikhil ahuja i/b. Khaitan and Co. for the Petitioner.
Mr. S.H. Halwasia, Additional PP for Respondent Nos.1, 2 and 3.
Mr. J.P. Yagnik, APP for Respondent No.4-State.

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CORAM : NITIN JAMDAR AND SARANG V. KOTWAL, JJ.

DATE : 17 NOVEMBER 2021

JUDGMENT: (Per Sarang V. Kotwal, J.)

The Petitioner has approached this Court for various reliefs. The main relief claimed by the Petitioner is for quashing and setting aside of the Look-Out Circular (for short, 'LOC') issued against him. There are other consequential prayers made in the Petition.

2. The Respondent No.1 is the Union of India, the Respondent No.2 is the Bureau of Immigration, Ministry of Home Affairs, Government of India, the Respondent No.3 is the Serious Fraud

Investigation Office and the Respondent No.4 is the State of Maharashtra.

3. The case of the Petitioner is that he is a Non-Resident Indian citizen holding Indian Passport which was valid till 2nd May 2028. The Petitioner is a resident of Hongkong where he was residing with his wife and two daughters for the past nine years. He is the Managing Director of Chaitya Private Limited, which is a Company incorporated in Hongkong and which deals in the trade of diamonds and other precious stones. The Petitioner and his family were scheduled to travel from New Delhi to Hongkong on 10th September 2020 from New Delhi – Indira Gandhi International Airport. While the Petitioner was in the process of boarding the flight, he was denied permission to go past the immigration check. The Immigration Officer put a stamp "cancelled without prejudice" on the passport of the Petitioner and did not permit him to travel. The Petitioner was detained at the Airport. On the next day i.e. on 11th September 2020 he was served with a summons issued from the office of the Respondent No.3 directing him to appear in person in their Mumbai Zonal Office on 11th September 2020 i.e. on the same day on which the summons was served upon him. The Petitioner was prevented from travelling abroad because LOC was issued against him by the Respondent No.3.

4. According to the Petitioner, he appeared before the Mumbai Zonal Office of the Respondent No.3 in compliance with the

summons issued. The Respondent No.3 was investigating into the affairs of M/s. Gitanjali Gems Limited under Section 212(1)(c), (d) of the Companies Act, 2013.

5. On 11th September 2020 another summons was issued calling upon the Petitioner to appear in person before the office of the Respondent No.3 on 18th September 2020. On this occasion also the Petitioner duly attended and according to him he fully co-operated with the investigation. According to the Petitioner, he had purchased the shares of M/s. Gitanjali Gems Limited. One Mr. Mehul Choksi was one of its Directors against whom criminal proceedings were initiated by the Respondent No.3 and other investigating agencies. According to the Petitioner, he was a bonafide investor who had purchased 68,02,896 convertible warrants of M/s. Gitanjali Gems Limited worth Rs.49,25,71,553/- between January 2015 and August 2016. Those warrants were converted into equity shares on 5th October 2015 and 9th August 2016. They were sold between the period of 28th November 2017 to 26th December 2017 for total sale consideration of Rs.50,51,42,923/-. These transactions were conducted through the banking channels. The Petitioner has stated that the money used for purchasing the shares belonged to the Petitioner and it had nothing to do with Mr. Mehul Choksi.

6. Apart from these two summonses, the Respondent No.3 had sent emails dated 12th March 2019 and 3rd December 2019 to the Petitioner calling upon him to furnish the documents in relation to his

Companies. It is his case that he has provided all the details available with him and had submitted the same to the Respondent No.3. Through another email dated 22nd February 2021, the Respondent No.3 called for more documents from the Petitioner. On this occasion also the Petitioner furnished the necessary documents. It is his case that after 22nd February 2021, the Petitioner has not received any communication from the Respondent No.3. He was never called for any questioning after 22nd February 2021. Thus, according to the Petitioner, inspite of his full co-operation in the enquiry; he is prevented from travelling abroad because of the existence of LOC against him.

7. The Petitioner made a representation to the Respondent No.3 dated 3rd August 2021 seeking information regarding issuance of the LOC, copies of the same and requesting the Respondent No.3 to permit him to travel abroad and to Hongkong to attend to his business and to fulfill his duties towards his family. However, no response is received by him. The Petitioner thereafter has approached this Court with the present Petition. It is his case that he is being victimized on the basis of false and malicious charges. The action on the part of the authorities is in violation of Articles 14, 19 and 21 of the Constitution of India. His business and family are suffering because of his absence from Hongkong. His business activities and the banking transactions are adversely affected because of his continuous stay in India. Apart from these factual aspects, the Petitioner has raised grounds regarding

the necessity and procedure for issuing LOCs. According to the Petitioner, his case is not covered by any of the contingencies on which the LOCs could be issued. It is submitted in the Petition that the action on the part of the Respondents was illegal, arbitrary and unfair in curtailing the personal liberty of the Petitioner. In this background, apart from the main relief of quashing of the LOC, the Petitioner has sought other consequential reliefs. He has sought declaration that issuance of the LOC was highly arbitrary, illegal and without authority of law and was in violation of Articles 14, 19 and 21 of the Constitution of India. Through another prayer, the Petitioner is seeking declaration that the action on the part of the Respondent No.2 in issuing an endorsement of "cancelled without prejudice" on the passport of the Petitioner be declared as arbitrary, illegal and without authority and violating the same Articles of the Constitution of India. He is also seeking directions to the Respondent No.2 to permit the Petitioner to travel abroad. The Petitioner has also prayed for awarding costs.

8. The Petition is opposed by the Respondents. An affidavit-in-reply on behalf of the Respondent No.3 affirmed by the Assistant Director working with the Serious Fraud Investigation Office, Mumbai is filed. It is stated in the affidavit-in-reply that the Ministry of Corporate Affairs, Government of India, in exercise of its powers under Sections 210 and 212 of the Companies Act, 2013 vide Order F. No.3/106/2018-CL-II(WR) dated 17th February 2018 assigned the

investigation into the affairs of M/s. Gitanjali Gems Limited and 106 other companies and seven limited liability concerns to the Serious Fraud Investigation Office. According to the Respondent No.3, the investigation carried out had revealed that Mr. Mehul Choksi was the Promoter and a Director of Gitanjali Group of Companies. He has caused huge wrongful loss to the public exchequer in connivance with his trusted employees and bank officials. He had incorporated a web of companies in India and Overseas and had managed to get issued unauthorized letter of undertaking in favour of the entities under their control. The investigation has revealed that the Punjab National Bank had reported a fraud amounting to Rs.7,080.86 Crores in respect of entities under control of Mr. Mehul Choksi. The entities controlled by Mr. Mehul Choksi were enjoying a credit exposure from a consortium of 32 banks and these banks have reported outstanding balance with respect to those entities to the tune of Rs.5,099.74 Crores as on 31st December 2017. The total fraud amount was likely to exceed approximately Rs.12,100/- Crores in respect of the entities controlled by Mr. Mehul Choksi. The investigation has revealed that as on date of filing of the affidavit, Mr. Mehul Choksi and Mr, Nirav Modi have collectively defaulted the amount of Rs.20,600/- crores to the Banks. It was huge misappropriation of public money.

9. As far as the Petitioner is concerned, according to the Respondent No.3, he was knowing Mr. Mehul Choksi for many years. The funds from Mr. Mehul Choksi were taken on loan by the

Petitioner and they were used by him to acquire 5.74% share holding in M/s. Gitanjali Gems Limited. His share holding was sold just before Mehul Choksi fled the country. It is the case of the Respondent No.3 that the Petitioner has not co-operated with the investigation and has failed to provide required documents pertaining to his overseas entities. It is specifically contended in the affidavit that the Petitioner is an NRI. He has substantial business interest in Hongkong and other foreign countries. Thus, he has ample connections abroad and, therefore, the possibility that he could evade the course of investigation and that he was at flight risk, was not ruled out. Though his statement was recorded under oath by the Inspector under Section 217 of the Companies Act, 2013 on 25th August 2020, he has not cooperated in the investigating and had attempted to conceal the relevant information pertaining to the investigation. It is contended by the Respondent No.3 that the action of issuance of LOC was not taken in a casual manner. The investigation in the affairs of the Company and the investigation had started in February 2018. The LOC was not issued immediately but was issued only after examining the information and evidence collected during the investigation and upon examination of the role of the Petitioner. In this background, the Petition was strongly opposed by the Respondents.

10. We have heard Shri Aabad Ponda, the learned Senior Counsel for the Petitioner, Shri S.H. Halwasia, the learned Additional

PP for Respondent Nos.1, 2 and 3 and Shri J.P. Yagnik, the learned APP for Respondent No.4-State. All the parties made their submissions with reference to various judgments and guidelines in respect of issuance of LOC.

Submissions on behalf of the Petitioner:

11. Shri Ponda, the learned Senior Counsel for the Petitioner made various submissions. He submitted that the LOC should not be issued if a person was attending and has co-operated with the investigation. The Petitioner had appeared before the Respondent No.3 even before 25th August 2020 and had co-operated with the investigation. The first summons issued by the Serious Fraud Investigation Office was dated 12th March 2019. The Petitioner had supplied the information by email and had also supplied hard copies. In February 2020, he returned to India and had joined the investigation on 25th August 2020, 1st September 2020, 11th September 2020 and 18th September 2020. He had also submitted the documents from time to time. The Petitioner could not submit the documents which were not in his possession, otherwise, he had fully co-operated. The last time he was directed to remain present was on 18th September 2020. Thereafter he was never called. The LOC was pending for more than a year and yet he was called only on a few occasions. That means, his presence for investigation purposes is not really required. The Petitioner was not an accused in any case and he was not evading his arrest. Therefore, issuance of LOC which was a

coercive proceeding; should not have been resorted to.

12. Shri Ponda submitted that several persons who are made accused during investigation or during Court proceedings; can go abroad but the Petitioner who is not even an accused has to wait endlessly. This is arbitrary and malafide exercise of powers on the part of the Respondent No.3.

13. Shri Ponda submitted that the Petitioner had invested in M/s. Gitanjali Gems Limited and had sold his shares making a very small profit. He submitted that there was no connection between his investments and Mr. Mehul Choksi. The Petitioner had invested his own money and just because only a small profit was made, it cannot be assumed that the Petitioner was not a genuine investor.

14. Shri Ponda submitted that the Petitioner has deep roots in Mumbai. His parents reside in Mumbai. He has immovable properties in Mumbai and Gujarat. The Petitioner was willing to surrender the passports of his parents to show his bonafides that he would return to India if permitted to travel abroad. The Petitioner had nothing to do with the bank frauds allegedly committed by the Company of Mr.Mehul Choksi and by other beneficiaries. The other investigating agencies have not named him as an accused in any of their investigations.

15. On legal issues regarding the LOC, Shri Ponda submitted that the LOC cannot operate endlessly and as per the Guidelines, its

operation had come to an end after one year from its issuance. According to Shri Ponda if there is any change in policy during pendency of the LOC, even by this change of policy, the pending LOC cannot be extended for a further period as it was issued under the earlier Guidelines. As per the Guidelines, the satisfaction of the authorities should be in respect of his activities in future which could be detrimental to the financial interest of the country and not in respect of his past activities.

16. Shri Ponda submitted that the grounds raised in the affidavit-in-reply filed by the Respondent cannot justify issuance of the LOC against the Petitioner. Shri Ponda relied on various judgments in support of his contentions. He relied on the following judgments. His submissions with reference to these judgments are referred to in the following paragraphs.

(i) *Sumer Singh Salkan Vs. Asstt. Director and Ors.*[1]

(ii) *Karti P. Chidambaram Vs. Bureau of Immigration and others*[2]

(iii) *Om Prakash Bhatt Vs. State of Maharashtra and others*[3]

(iv) *Deept Sarup Aggarwal Vs. Union of India and another*[4]

(v) *Afzal Jaffer Khan Vs. The Officer, CBI ACB Office and others*[5]

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1 2010 SCC OnLine Del 2699

2 2018 SCC OnLine Mad 2229

3 2021 SCC OnLine Bom 555

4 2020 SCC OnLine Del 1913

5 Decided on 29.8.2019 by the Division Bench in Criminal Writ Petition No.263/2019 (Bombay High Court)

(vi) *Brij Bhushan Kathuria Vs. Union of India and others*[6]

Submissions on behalf of the Respondents No.1 to 3:

17. Shri Halwasia strongly opposed this Petition with reference to the affidavit-in-reply, on factual aspects as well as on the legality of the impugned LOC. He submitted that the Serious Fraud Investigation Office is established under the Companies Act, 2013. These are special provisions and the special procedure provided under that Act is entirely different from the investigation under the Code of Criminal Procedure. The experts in different fields are taken on the Board because the matters investigated under those Sections are complex matters requiring expertise in different fields. Because of complexity of the transactions and enormity of the offence, the time required for investigation is much longer. There is total non-cooperation from the persons involved and it is difficult to trace the modalities and roots of the offence.

18. Shri Halwasia submitted that the Petitioner claimed to be a businessman and yet he had invested almost Rs.50 Crores for a long period only for a meager profit of 2%. This itself is unbelievable. Shri Halwasia strongly submitted that the investigation has revealed that it was the money of the absconding accused Mr. Mehul Choksi who has left the country. The money was routed through different countries through different means and it was necessary to find out how it was done exactly. However, the Petitioner was not answering the key

6 2021 SCC OnLine Del 2587

questions and there was total non co-operation on his part. He relied on the affidavit filed by Respondent No.3 and in particular referred to paragraphs-6 and 7 thereof. The contents of these paragraphs are already referred hereinabove. He also relied on the averments in the affidavit-in-reply wherein it was stated that the Petitioner was an NRI, he has substantial business interest in Hongkong and other foreign countries and the possibility of the Petitioner evading the course of investigation and being at flight risk could not be ruled out.

19. Shri Halwasia submitted that the Look Out Circular was issued on 8th September 2020. It was renewed on 2nd September 2021 by virtue of the Guidelines issued in February 2021 in that behalf. He submitted that it is a policy matter and cannot be equated with the change in the statute as far as the extension of LOC is concerned. There was nothing illegal or wrong in extending the LOC which was already existing.

Reasoning :

20. Before considering the facts of this case it is necessary to refer to certain provisions under the statute and to the Guidelines issued in respect of the Look Out Circulars. Chapter XIV of the Companies Act, 2013 (for short, “said Act”) makes provisions for inspection, inquiry and investigation in respect of the affairs of a company. Section 210 provides the circumstances under which the Central Government can order investigation into the affairs of the

company. Section 211 of the said Act provides for establishment of Serious Fraud Investigation Office (SFIO), which the Central Government is empowered to establish under this Section and which consists of persons of ability, integrity and experience in banking, corporate affairs, taxation, forensic audit, capital market, information technology, law or such other fields as can be prescribed. Sub-section (2) of Section 212 of the said Act is important, which reads thus :

> *"212. Investigation into affairs of Company by Serious Fraud Investigation Office.-*
> *(1) xxxx*
> *(2) Where any case has been assigned by the Central Government to the Serious Fraud Investigation Office for investigation under this Act, no other investigating agency of Central Government or any State Government shall proceed with investigation in such case in respect of any offence under this Act and in case any such investigation has already been initiated, it shall not be proceeded further with and the concerned agency shall transfer the relevant documents and records in respect of such offences under this Act to Serious Fraud Investigation Office."*

. Sub-section (3) thereof provides that the investigation shall be conducted following the procedure provided under the said Chapter XIV and that the SFIO has to submit its report to the Central Government within such period as is specified in the order. On completion of the investigation, the SFIO is required to submit the investigation report to the Central Government and on receipt of such report, the Central Government may direct the SFIO to initiate prosecution against the company, its officers, employees or any other person directly or indirectly connected with the affairs of the company.

21. Thus, Shri Halwasia is right in his submissions that special procedure is prescribed and special powers are conferred on the authorities conducting investigation under these Sections of the Companies Act, 2013. The SFIO consists of various experts on different subjects. The investigation entrusted to the SFIO on many occasions involves complex questions and, therefore, the entire process takes longer time than other investigations under the Cr.P.C.. In the present case, the SFIO is investigating into the affairs of M/s. Gitanjali Gems Limited and other group companies involving huge amount which is employed and deployed through various means and through various routes. Therefore, naturally the SFIO is required to be given sufficient time and opportunity to unearth the illegal affairs of these companies.

22. In this context it cannot be said that the Petitioner has absolutely no connection with the investigation which is being conducted by the SFIO. It cannot be mere a co-incidence that within a short span of time of the Petitioner selling his share holding, Mr. Mehul Choksi had left the country. It is case of the SFIO that the money used by the Petitioner actually belonged to Mr. Mehul Choksi and it was routed through different countries. The Petitioner has to explain these allegations and for that he has to fully co-operate with

the investigation. It is a specific case of the Respondents that the Petitioner has not co-operated with the investigation. Merely attending the office of the SFIO will not mean that the Petitioner has fully co-operated with the investigation.

23. Shri Ponda in support of his arguments has relied on various judgments, as mentioned earlier. *Sumer Singh Salkan's* case (supra) was one of such judgments. The Delhi High Court in that case had considered the questions which were referred to that Court in respect of LOC. The said judgment refers to the concerned circular being Ministry of Home Affairs Circular No.15022/13/78-F.1 dated 5th September 1979. The LOCs could be issued at the behest of different agencies in accordance with this circular either to monitor the arrival/departure the foreigners or Indians or to restrict arrival/departure of foreigners or Indians. The LOCs were based on the originator's request to send communication to various immigrations, check posts on the basis of substantive/procedure laws in respect of persons wanted in some cases. The Ministry of Home Affairs' Office Memorandum dated 27th December 2000 required that a request for opening of LOC must be issued with an approval of the officers of certain ranks. After discussing other judgments, the Delhi High Court answered the reference 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 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 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 & 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 I.O. or should surrender 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 court's jurisdiction in affirming or cancelling LOC is commensurate with the jurisdiction of cancellation of NBWs or affirming NBWs."

24. Based on these Guidelines, the Foreigners Division of Ministry of Home Affairs, Government of India issued Office Memorandum No.25016/31/2010-Imm. dated 27th October 2010 incorporating these issues. The Guidelines were subsequently modified by further memorandums dated 5th December 2017, 19th September 2018, 12th October 2018 and finally on 22nd February 2021. The Guidelines issued in the year 2010 were referred to in the cases of *Karti P. Chidambaram* (supra) and *Om Prakash Bhatt* (supra).

25. In *Karti P. Chidambaram'* s case (supra), a Division Bench of the High Court of Madras has observed that issuance of the LOC was a coercive measure to make a person surrender before the investigating agency or Court of law.

26. In *Om Prakash Bhatt's* case (supra), the Guidelines dated 5th December 2017 were discussed. In the facts and circumstances of the

case before a Division Bench of this Court, it was observed that the Petitioner therein was not arraigned as accused for cognizable offence. It was not even the case of the Respondents therein that if the Petitioner therein was permitted to leave the country it would be detrimental to the sovereignty, security or integrity of India or bilateral relations with any country and that it was not their case that any amounts were to be recovered from the Petitioner therein who was a former Chairman of the State Bank of India. In those circumstances, that petitioner was permitted to travel abroad.

. Shri Ponda has relied heavily on these two judgments.

27. In *Deept Aggarwal*'s case (supra), it was observed that though a LOC could be issued even in cases not covered by the Guidelines and in economic interest of India, no such case had been made out against the Petitioner in that case. It was not explained how the travel of the Petitioner in that case would in any manner prejudice the economic interest of the country. With these observations, the LOC was quashed and set aside.

28. A Division Bench of this Court in *Afzal Jaffer Khan*'s case (supra) had observed that though an apprehension was expressed that the petitioner would abscond and never return to India, there was absolutely no material in support of that apprehension and hence he was permitted to travel abroad.

29. In *Brij Kathuria*'s case (supra), the Delhi High Court had

observed that there was no criminal case pending against the Petitioner in that case. The phrases such as "economic interest" and "larger public interest" cannot be extended in a manner so as to include an Independent Director who was in the past associated with the company being investigated. It was observed that the Petitioner posed no flight risk because his wife and children were residents of Delhi. On that basis, the Petitioner therein was permitted to travel abroad.

30. All these judgments and submissions of Shri Ponda will have to be looked in the background of the Office Memorandum dated 22nd February 2021. The relevant important clauses in those Guidelines are as follows:

> *"(H) 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.*
>
> *(I) In cases where there is no cognizable offence under IPC and 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.*
>
> *(J) The LOC opened shall remain in force until and unless a deletion request is received by BoI from the Originator itself. No LOC shall be deleted automatically. Originating Agency must keep reviewing the LOCs opened at its behest on*

quarterly and annual basis and submit the proposals to delete the LOC, if any, immediately after such a review. The BOI should contact the LOC Originators through normal channels as well as through the online portal. In all cases where the person against whom LOC has been opened is no longer wanted by the Originating Agency or by Competent Court, the LOC deletion request must be conveyed to BoI immediately so that liberty of the individual is not jeopardized.

(K) xxxxxxxx

(L) In exceptional cases, LOCs can be issued even in such cases, as may not be covered by the guidelines above, whereby departure of a person from India may be declined at the request of any of the authorities mentioned in clause (B) above, if it appears to such authority based on inputs received that the departure of such person is detrimental to the sovereignty or security or integrity of India or that the same is detrimental to the bilateral relations with any country or to the strategic and/or economic interests of India or if such person is allowed to leave, he may potentially indulge in an act of terrorism or offences against the State and/or that such departure ought not be permitted in the larger public interest at any given point in time."

[In these Guidelines, BoI means Bureau of Immigration. Clause (B) has given list of about 15 Authorities who can make request under Clause (L)]

31. Shri Ponda had submitted that the LOC could be issued on the apprehension of future conduct of the person concerned and not on the basis of his past activities. We are unable to agree with this

contention as the Guidelines give no such indication. It is but obvious that the entire procedure is initiated on the basis of the past activities of the concerned person against whom the LOC is issued.

32. In the present case the SFIO is investigating into the affairs of the aforementioned companies and its investigation overrides the investigations by other investigating agencies. Therefore recourse to LOC was not unfounded as the Petitioner has definite connection with the investigation as discussed hereinabove. From the facts of the case it is clear that Clause (L) of these Guidelines clearly covers the Petitioner's case as it is detrimental to the "economic interests of India" and that his departure ought not be permitted in the larger public interest. The words "economic interests of India" and "larger public interest" are not empty words in the context of the present case because as mentioned earlier the Petitioner is directly involved and was concerned with considerable share-holding of M/s. Gitanjali Gems Limited. It involves huge amount of almost Rs.Fifty Crores which requires serious explanation from the Petitioner in the background of the allegations that the money belonged to Mr. Mehul Choksi, who has left India and has not returned back. This transaction is an important part of the entire fraud involving huge amount. Sheer magnitude of the offence and its spread through various banking operations and transfer of money through different modes and different countries shows that it has definitely affected the economic interests of India and the larger public interest is definitely involved

and affected. Therefore, we do not find that issuance of LOC against the Petitioner was unnecessary.

33. The next question that arises for consideration is as to whether the original LOC issued against the Petitioner stands continued beyond its life of one year. Shri Ponda submitted that as per the existing Guidelines, on the day on which the LOC was issued it could be issued only for one year and thereafter it had to lapse automatically. Shri Halwasia countered this argument by submitting that LOC was issued on 8th September 2020 and while it was pending fresh Guidelines were issued in February 2021 which gives powers to the authorities to extend the life of the LOC, pursuant to which it was renewed on 2nd September 2021 for one year. Clause (J) of the Guidelines dated 22nd February 2021, reproduced hereinabove, mentions that no LOC shall be deleted automatically and it shall remain in force unless and until a deletion request was received from the Originator itself. In this case, while the LOC was still in existence, such a request was made and it was renewed and, therefore, under Clause (J) such an extension was not illegal. Even otherwise the LOC has been specifically extended as stated by Shri Halwasia.

34. Shri Halwasia strongly submitted that the Petitioner was at a flight risk and there is a strong possibility that he would not return to India once he leaves the country. Though Shri Ponda submitted that his parents are in India and he also has some immovable property in India, however, it is an admitted fact that the Petitioner's main

business concerns are in Hongkong. His wife and daughters are based in Hongkong and, therefore, it cannot be presumed that the Petitioner would return to India because his parents are based in India. Though Shri Ponda has offered to deposit his parents' passports, Shri Halwasia rightly submitted that in case of default by the Petitioner, his parents cannot be touched by the SFIO and such offer of depositing their passports is rather meaningless. The Petitioner does have dual citizenship and, therefore, in case he decides not return to India it would become very difficult to bring him back. In the background of this case his presence for the investigation purposes is necessary. In none of the cases discussed above the Petitioners therein had such a dual citizenship and, therefore, the Petitioner's case is distinguishable.

35. Shri Ponda relied on the order of a Single Judge of the Madras High Court in the case of *V. Sathiamoorthy Vs. The Inspector of Police*[7]. In that case the Petitioner was a citizen of India and was a permanent resident of U.S.A. holding a Green Card and yet he was permitted to travel abroad. We find that said case was under Sections 498-A and 406 of the Indian Penal Code read with Section 4 of the Dowry Prohibition Act. The case was pending for more than six years without trial and in that background, the Court had permitted the Petitioner therein to travel abroad. Present case is vastly different from that case as the present case is not between two individuals and is of enormous magnitude. Therefore, even this order does not help Shri Ponda's submissions.

7 Decided on 1.10.2021 passed in Crl.O.P. No.13333/2021 (Madras High Court)

36. Since we were called upon to decide the competing interest, i.e. the right of the Petitioner and the power and duties of the authorities, our order is in respect of the legality, validity and justifiability of the impugned LOC and its extension for one year.

37. To conclude, we find that the LOC is properly issued, it is extended through proper procedure and the appropriate authority has approved its extension. The Petitioner's presence is necessary for effective investigation into the affairs of Gitanjali Gems Limited and other concerns. There is a strong flight risk as far as the Petitioner is concerned and, therefore, the relief sought for in this Petition cannot be granted and the Petition is accordingly dismissed.

(SARANG V. KOTWAL, J.) (NITIN JAMDAR, J.)

Deshmane (PS)