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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P.NO.21600 OF 2021

Prajeesh Raj

... Petitioner

Versus

1. The Superintendent of Police (Rural),
State Bank Road,
Coimbatore-641 018.
2. The Inspector of Police,
All Women Police Station,
Perur,
Coimbatore District.
3. The Immigration Officer,
Office of the Foreigners Regional Registration,
Bureau of Immigration,
Airlings Buildings, CIAL, Nedumbassery,
Cochin Airport PO, Kochi-638 111,
Kerala.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus, directing the 1st respondent to withdraw the Lookout Notice issued against the petitioner in connection with Crime No.3 of 2021 on the file of the 2nd respondent Police and consequently direct the 3rd respondent to lift the travel restriction imposed in pursuant to the above said Lookout Notice.



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For Petitioner : Mr.K.Vasanthanayagan
For R1 & R2 : Mr.A.Damodaran,
Additional Public Prosecutor
For R3 : Mr.J.Madhanagopal,
Senior Panel Counsel

ORDER

This Writ Petition has been filed to direct the 1st respondent to withdraw the Lookout Notice issued against the petitioner in connection with Crime No.3 of 2021 on the file of the 2nd respondent Police and consequently direct the 3rd respondent to lift the travel restriction imposed in pursuant to the above said Lookout Notice.

2.The learned counsel for the petitioner submitted that the petitioner is the Vice President in M/s.Vita International (Insurance Brokers) Limited, L.L.C at 1702, A1 Mussalla Tower Bank Road, Dubai, UAE. The petitioner was residing with his wife and children in Dubai from the year 2011. The petitioner's brother one Pratheesh Raj got married to one Archana Raj. After the marriage, there was some matrimonial dispute between them. Hence, Archana Raj lodged a complaint against her husband/A1, the petitioner/A2 and the petitioner's mother/A3 and a case in Crime No.3 of 2021 was registered, for offence under Sections 498A, 406, 506(ii) of IPC and Section 4 of the Dowry Prohibition Act. On 19.03.2021, the petitioner returned to India to meet his mother. When he landed in Cochin Airport to shock and surprise, the Central Investigative Security Force arrested him owing to the Lookout Notice issued by the 3rd respondent, since FIR was pending against him. The petitioner was handed over to Cochin Airport Police, who handed over the petitioner to the 2nd respondent Police and consequently, he was arrested by the 2nd respondent Police on the same day and produced for remand.

3.The learned counsel further submitted that the petitioner filed a bail petition in C.M.P.No.1403 of 2021 before the learned Principal District and Sessions Judge, Coimbatore. The learned Sessions Judge, by order, dated 31.03.2021 granted interim bail with conditions that the petitioner should not



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leave India without getting permission of the Court and appear before the 2nd respondent Police daily at 10.00 a.m. The petitioner complied with the conditions imposed and the learned Principal District and Sessions Judge, Coimbatore accepted the surrender and made the interim bail absolute and thereafter, the petitioner executed sureties and he was released on bail. The petitioner filed a modification petition in C.M.P.No.1858 of 2021 before the learned Principal District and Sessions Judge, Coimbatore to modify the condition imposed regarding permission to travel back to Dubai where his wife and children are residing and further sought direction to cancel the Lookout Notice. The learned Principal District and Sessions Judge, Coimbatore, by order, dated 29.04.2021 permitted the petitioner to travel to Dubai on condition that the petitioner shall file affidavit before the learned Judicial Magistrate, Additional Mahila Court, Coimbatore that he will cooperate with the trial as and when required and the petitioner shall furnish the details of his email address and ID, mobile number which is used by him in Dubai so that the 2nd respondent Police can contact him. In compliance to the order, dated 29.04.2021, the petitioner filed an affidavit dated 05.05.2021.

4.The learned counsel further submitted that the petitioner approached the respondents 1 and 2 and sought cancellation of the Lookout Notice, but all went in vain. The petitioner filed a petition on 04.09.2021 before the learned Additional Mahila Judge (Magistrate Level), Coimbatore seeking direction to cancel the Lookout Notice and the same was returned with endorsement that the learned Additional Mahila Judge (Magistrate Level), Coimbatore cannot pass any order in the petition. Subsequently, the petitioner filed a petition in CrI.O.P.No.8231 of 2021 to quash the FIR in Crime No.3 of 2021. This Court, by order, dated 06.05.2021 observed that the petitioner is an innocent victim in the crossfire between his brother and sister in law. While the investigation may go on, the respondents 1 and 2 shall not file any final report against the petitioner. He further submitted that after the marriage, the petitioner, his wife and children are living in rented house in flat No.314, Rashd Bakid Building, A1 Qusais, Dubai. The petitioner's elder son is now pursuing his education in Dubai and his wife is the housewife taking care of the children. The petitioner is the sole earning member of his family. Owing to Lookout Notice and arrest, the petitioner's family is severely



affected both mentally, economically and physiologically. The petitioner's absence in work, has paralysed the entire office work and the said company is facing difficulty in running the business. The petitioner's restriction to travel would jeopardised his future and hence, he prayed for appropriate direction.

5.The petitioner in the typed set filed his passport and ID proof, residence proof and his son's birth certificate, Tenancy Contract Certificate and the copy of the affidavit filed before the learned Additional Mahila Court (Magistrate Level), Coimbatore, etc.

6.The learned Additional Public Prosecutor appearing for the respondents 1 and 2 submitted that the petitioner is the 2nd accused and he is required for investigation in Crime No.3 of 2021. Apart from the offence under Section 498A IPC, the petitioner is facing prosecution for offence under Sections 406, 506(ii) IPC and Section 4 of the Dowry Prohibition Act. On the complaint, FIR registered against the petitioner, his brother and his mother and there are specific allegations against them. The petitioner was frequently travelling to foreign countries and not cooperated with the enquiry. Now, the petitioner making claim that he is the innocent victim and he caught in the crossfire between his brother and sister in law cannot be accepted and there are enough materials to proceed against him. He further submitted that the investigation completed and charge filed before the learned Additional Mahila Court (Magistrate Level), Coimbatore and the same was taken on file in C.C.No.1863 of 2021. If the petitioner is permitted to leave India, he will not abscond and appear for trial and the trial would get stalled and hence, he strongly opposed this petition.

7.The learned counsel for the 3rd respondent submitted on instructions received from the 1st respondent, the 3rd respondent detained the petitioner and handed over to the 2nd respondent. On 10.03.2021, the 3rd respondent received message from 1st respondent seeking detention of the petitioner and the retention to be kept in live till 08.03.2022. The 1st respondent had sent a communication to the 3rd respondent detailing the history of the case and the same is extracted hereunder:-



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"It is submitted that a case in AWPS Perur PS Cr.No.03/2021 U/S 408(A), 406, 506(2) IPC & 4 of DP Act was registered on 05.03.2021. The complainant filed by Archana Raj for which her husband Pratheesh Raj, her father-in-law Prajeesh Raj, her mother-in law Parvathi W/o Sivaraj with the common intention to harass her demanding money and jewells and illegal contact with ladies. The A1 husband of complainant Pratheesh Raj, Elder Brother Prajeesh Raj and his mother Parwathi may be left for Brunai, its in Asian country.

During the course of investigation, the investigation officer reveals that the A1-Pratheesh Raj, A-2 elder brother Prajeesh Raj and A-3 his mother Parwathi committed the offence with the knowledge and inducement of his family.

Since A1-Pratheesh, A-2 elder brother Prajeeshraj and A-3 his mother Parwathi had gone to Brunai, Asian country still they are in absconding. As the A1 to A3 presence are direly required for the investigation, it is humbly requested that the concerned authorities may be requested to issue look out circular to all. the international and domestic airport authorities and to the authorities of immigration in India. and they may also be requested to secure the accused A1 to A2 and impound their passport. here with sending particulars for al and A2."

8.Immediately on receipt of the above communication on 10.03.2021, the 3rd respondent gave necessary instructions to the Intelligence Officers of the various posts. It for the Law Enforcing Agency under whom enquiry/investigation may be pending against the petitioner to take a call in this matter. As regards the Bureau of Immigration is concerned, they have no objection in granting arrival/departure to the petitioner if the originator of the LOC modifies or deletes it. The letter of the Bureau of Immigration (MHA) Government of India No.26, Haddows Road, Shastri Bhavan Annexe, Chennai is extracted as follows:-



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"The respondents 3 has not initiated any Look Out Circular (LOC) against the petitioner. Immigration authorities act on LOCS originated by various law enforcement agencies.

It is humbly submitted that the Hon'ble High Court may direct the concerned Law enforcement agency/agencies under whom an enquiry/investigation may be pending against the petitioner, to take a call in this matter.

Bureau of Immigration has no objection in granting arrival/departure to the petitioner if the originator of the LOC modifies or deletes it.

The Hon'ble High Court may be informed accordingly for the dismissal of the case."

9.The learned counsel further submitted only on the request of the 1st respondent, the Lookout Circular was issued and with regard to the nature of complaint, he is not aware. If the respondents 1 and 2 do not require any restrictive order, the same can be removed.

10.This Court considered the rival submissions and perused the materials available on record.

11.It is seen that the Hon'ble Apex Court and this Court time and again have given guidelines that in the case of matrimonial cases, the Police officer not to register FIR immediately, find out the possibility of settlement. If the mediation fails, thereafter the FIR can be registered. In this case, it is only a matrimonial dispute. The complaint in this case was lodged on 05.03.2021, on the same day, the FIR was registered. As regards the petitioner is concerned, except passing reference, there is no serious allegations against him. From the requisition of the 1st respondent for Lookout Notice, the copy of the requisition was issued to the IG Intelligence, Chennai; IGP, Crime Branch CID, Chennai; DIG Intelligence, Chennai; SP, Sec.Branch CID, Chennai; SP, Q Branch CID, Chennai; SP, Crime Branch CID, Chennai and All ICP/Immigration Check Posts Including Sea and Land Ports in India. Further, the message has been sent through radio. The requisition for issuing Lookout Circular is for the persons, who is involved in offences of serious in nature. The Hon'ble Apex Court and this Court time and again had come across several matrimonial cases



wherein for a mere Lookout Notice are issued against the family members of estranged husband on a complaint under Section 498A IPC. Thus, the Lookout Notice is misused for the purpose of creating physiological pressure and put the entire in-laws, families to trauma and forced them for a settlement on this terms or just for fulling their ego.

12.It is strange to see that even at the level of the Deputy Commissioner of Police and the Superintendent of Police, who are authorized officers at the senior level in the Department mechanically cause such request to the Immigration Authorities on the request from the sponsoring Investigating Officer without verifying the request and finding whether it is absolutely necessary. The Deputy Commissioner of Police and the Superintendent of Police to independently peruse the material of the case. Only as a last resort, request for the Lookout Circular to be made, not at the first instance. This case is the classic example of misuse of the Lookout Notice. In this case, FIR registered on the same date of lodging the complaint and thereafter, radio message sent to the Immigration Authorities, following it, a requisition on the 5th day to the 3rd respondent. The petitioner unknowingly travelled to India to meet his mother and was detained on his arrival and restriction for travel imposed.

13.This Court finds that since the investigation completed and charge sheet filed, there is no necessity for further restricting the petitioner's movement. The Hon'ble Apex Court in the case of "Menaka Gandhi Versus Union of India reported in AIR 1978 SC 597" held that it is the constitution right of a person to go abroad and no one to be deprived of his life and personal liberty without following the procedure established by law guaranteed under Article 21 of the Constitution of India. Further, the persons involved in the criminal case for offences of serious in nature and who are antisocial elements, their movements to be restricted in such cases need may arise.

14.In this case, the petitioner already filed affidavit before the trial Court and gave undertaking that he shall appear as and when directed by the trial Court, he will not be impediment in the progress of the trial. Hence, the travelling embargo issued on the petitioner in Crime No.3 of 2021 on the



file of the 2nd respondent Police is hereby set aside.

15. In view of above, this Writ Petition is disposed of. The petitioner is free to travel in and out of India. The petitioner shall appear before the trial Court through his counsel on all hearing dates. The petitioner's presence is indispensable on the days when he has to receive the copies under Section 207 Cr.P.C., framing of charges, questioning under Section 313 Cr.P.C., and at the time of passing of judgment. The petitioner shall appear before the trial Court on any date if the trial Court directs. No costs.

Sd/-
Deputy Registrar(CS)

// True Copy //

Sub Assistant Registrar

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To

1. The Superintendent of Police (Rural),
State Bank Road,
Coimbatore-641 018.
2. The Inspector of Police,
All Women Police Station,
Perur,
Coimbatore District.
3. The Immigration Officer,
Office of the Foreigners Regional Registration,
Bureau of Immigration,
Airlings Buildings, CIAL, Nedumbassery,
Cochin Airport PO, Kochi-638 111,
Kerala.
4. The Public Prosecutor,
High Court, Madras.



Copy To

The Judicial Magistrate,
Additional Mahila Court,
Coimbatore.
(Crime No.3 of 2021)

+3ccs to Mr.K.Vasanthanayagan, Advocate, S.R.No.55563

W.P.No.21600 of 2021

MG(CO)
RLP(02/11/2021)