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IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1309 of 2022

Vijay Verma

....

Petitioner

Mr. Saurya Kanta Padhi, Senior Advocate

-Versus-

Republic of India (CBI)

....

Opposite Party

Mr. S. Nayak, Standing Counsel for CBI

CORAM:

JUSTICE R.K. PATTANAİK

DATE OF JUDGMENT:03.11.2022

1. The petitioner has approached this Court by filing application under Section 482 Cr.P.C. invoking its jurisdiction assailing the correctness and judicial propriety of the impugned order dated 13th April, 2022 passed in SPE No.36 of 2014 by the learned Special Chief Judicial Magistrate (CBI), Bhubaneswar for having rejected revocation of the Lookout Circular (LOC) issued by the CBI.

2. The brief facts of the case are that the petitioner being the Promoter and Director of Golden Land Developers Group of Companies was alleged of having committed fraud by illicitly transferring and misappropriating public money, consequent upon which, Kaniha P.S. Case No.81 of 2013 was registered under Sections 120-B, 409, 420 IPC and Sections 4, 5 and 6 of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 which corresponds to G.R. Case No.542 of 2013 pending in the file of learned S.D.J.M., Angul.

3. The challenge in the present case is with regard to issuance of LOC by the CBI and according to the petitioner, it was unwarranted and uncalled for the fact that he is on anticipatory bail by order dated 16th May, 2013 in BLAPL No.13096 of 2013 which was much before commencement of investigation by the CBI. In other words, the petitioner claims for revocation of LOC which was refused by the learned court below under the impugned order dated 13th April, 2022.

4. Heard Mr. S.K. Padhi, learned Senior Advocate for the petitioner and Mr. S. Nayak, learned counsel for the CBI.

5. Mr. Padhi, learned Senior Advocate submits that the petitioner moved the learned court below to recall or revoke the LOC with an undertaking furnished by the petitioner to cooperate in the trial but the same was rejected. It is submitted by Mr. Padhi, learned Senior Advocate that when the petitioner is on bail by the Court's order vide BLAPL No.13096 of 2013, the CBI could not have issued the LOC. While contending so, a decision of the Madras High Court dated 28th April, 2021 in W.P.(MD) No.8722 of 2021 and WMP (MD) No.6581 of 2021 (**Syed Samsudeen Vrs. The Chief Immigration Officers and others**) is cited which is with reference to the LOC. In the decision (*supra*), the LOC was directed to be withdrawn considering the fact that the accused therein was granted anticipatory bail and accordingly, a writ of mandamus was issued in that regard. The purpose of LOC was discussed in **Syed Samsudeen** case and ultimately, the Madras High Court held that the LOC would have to be withdrawn when there is anticipatory bail granted to the accused. Mr. Padhi, learned Senior Advocate by placing reliance of the aforesaid decision as well as a decision of Kerala High Court in **CMC Vijay Verma Vrs. Republic of India**

No.4746 of 2017 (**Abhilash Vrs. State of Kerala**) would contend that the learned court below erred in passing the impugned order dated 13th April, 2022 . In said decision, the Kerala High Court concluded that once bail was granted to an accused, the LOC issued against him must be withdrawn as the purpose thereof is to procure his attendance only and when there was information about such release on bail, it was duty of the officer concerned to withdraw such notice even without waiting for any request received in that behalf.

6. Mr. Nayak, learned counsel for the CBI on other hand submitted that the petitioner did not cooperate in the investigation for which application for cancellation of bail has been moved which is pending decision of this Court. It is claimed that the petitioner despite a specific condition to cooperate in the investigation as directed by the Court in BLAPL No.13096 of 2013 violated the same and even travelled abroad. Under the above circumstances, Mr. Naik, learned counsel for the CBI submits that the impugned order dated 13th April, 2022 passed by the learned court below cannot be faulted with. A further ground is advanced that the petitioner has moved the Court through a Power of Attorney Holder which is not permitted in law and in that regard refers to a decision of the Delhi High Court in the case of **Amrinder Singh Through SPA Holder Vrs. State of NCT of Delhi** reported in **2020 SCC OnLine Del 24**.

7. The petitioner is on bail since 2013 by this Court's order in BLAPL No.13096 of 2013 with a condition that he shall appear before the IO as and when required and cooperate in the investigation. The question is when the petitioner has been granted anticipatory bail and was released as such, whether, the

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CBI was justified in issuing the LOC against him. It is claimed that the cancellation of bail moved by the CBI in CRLMC No.335 of 2017 was dismissed on 24th August, 2019. In any case, the petitioner claims that the LOC was issued later to the filing of the chargesheet despite the fact that he was granted bail in 2013.

8. As to the maintainability of the application, the Delhi High Court in **Amrinder Singh** (supra) in the peculiar facts and circumstances of the said case concluded that an action cannot be entertained through a SPA Holder which was. In fact, therein a decision in **Amit Ahuja Vrs. Gian Parkash Bhambri** reported in (2010) 3RCR Criminal (Cri) 586 was referred to wherein it has been held that the person aggrieved must approach the Court challenging the validity of an action and cannot be allowed to litigate through a third person. In the case of **Amrinder Singh** *ibid*, the petitioner was declared as an absconder and a proceeding under Sections 82 and 83 Cr.P.C. was initiated which was sought to be challenged through a SPA Holder and the same was not allowed by the Delhi High Court. In the instant case, as according to Mr. Padhi, learned Senior Advocate, the petitioner is not in India and for that reason, the petition has been moved through the Power of Attorney Holder which should be entertained and not objected to. Having regard to the facts of the case in hand, this Court is of the view that since the petitioner is presently outside India and is not in a position to file the application by himself, it should not be rejected on such technical ground considering the nature of relief prayed for.

9. Since the anticipatory bail is still in force and the same has not been revoked or varied, Mr. Padhi, learned Senior Advocate submits that in view of the law decided in **Syed Samsuddin and Vijay Verma Vrs. Republic of India**

Abhilash (supra), it has to be held that the CBI grossly erred in issuing the LOC against the petitioner which should be recalled on accepting an undertaking to the effect that he shall cooperate in the trial. When the petitioner is on anticipatory bail without having being revoked, the CBI ought not to have resorted to such an action by issuing the LOC against him which according to the Court should be recalled with a direction in that regard.

10. Accordingly, it is ordered.

11. In the result, the petition stands allowed. As a logical loquitur, the impugned order dated 13th April, 2022 passed in SPE No.36 of 2014 by the learned Special Chief Judicial Magistrate (CBI), Bhubaneswar is hereby set aside. Consequently, the LOC issued by the CBI vis-à-vis the petitioner in connection with the aforesaid case is directed to be withdrawn forthwith with a condition that he shall furnish an undertaking to unfailingly cooperate in the enquiry and trial with such other additional conditions as would be fixed by the court below keeping in view the facts and circumstances of the case.

(R.K. Pattanaik)
Judge

U.K. Sahoo