

ORISSA HIGH COURT : C U T T A C K

W.P.(C) NO.9502 OF 2022

With

W.P.(C) NO.12872 OF 2022

A F R

In the matter of Applications under Articles 226 & 227 of the Constitution of India.

In WP(C) NO.9502 OF 2022

Rajesh Kumar Agarwal & ors. : ***Petitioners***

-Versus-

***Regional Director (E),
Ministry of Corporate Affairs,
Kolkata & ors.*** : ***Opp.Parties***

In WP(C) NO.12872 OF 2022

Kapil Singhal : ***Petitioner***

-Versus-

***Regional Director (E),
Ministry of Corporate Affairs,
Kolkata & ors.*** : ***Opp.Parties***

In both Writ Petitions

For Petitioners : M/s.M.K.Mishra, Sr.Adv.,
T.Mishra, S.Das & S.S.Parida

For O.Ps. : Mr.P.K.Parhi, ASGI
& Mr.P.P.Behera, CGC

**CORAM :
JUSTICE BISWANATH RATH**

Date of hearing : 13.07.2022 & Date of Judgment : 25.07.2022

1. Both the Writ Petitions involve the following prayer :-

“It is, therefore, humbly prayed that this Hon’ble Court may graciously be pleased to issue Rule Nisi calling upon the

Opp. Parties to show cause and upon perusal of causes shown if any or upon insufficient causes shown make the said rule absolute by quashing the Look Out Circular issued against the Petitioner.

And may pass any appropriate order/orders as deemed just, fit and proper.

And may pass such other order/orders as deemed just and proper...”

2. For the grounds of challenge, even though independent persons involved but for the common nature of grounds involving both the Writ Petitions and common argument advanced by both side Counsel, on consent of the Parties, both the matters are taken up together and decided in one common judgment.

3. For substantial materials available in W.P.(C) No.9502/2022, this case is taken up as a lead case.

4. Facts, as borne in the lead case, are Petitioner No.1 is the Managing Director of M/s.Utkal Galvanizers Ltd., Petitioner No.2 is the former Director, Petitioner No.3 is one of the Directors of the Company and Petitioner No.4 is the CFO of the Company. It is necessary to bring here that the sole Petitioner involving W.P.(C) No.12872 of 2022 is also one of the Directors of the Company, M/s.Utkal Galvanizers Ltd. As disclosed, O.P.2, the ROC-cum-OL, Odisha forwarded a complaint on 21.10.2020 made by one Bangla Informer through email dated 5.11.2020. The Petitioners denied the contents in the complaint in their email response dated 9.11.2020. Complaint and several email responses are

available at Annexure-1 series. While the matter stood thus, almost after a gap of five months, O.P.2 on 13.4.2021 issued a letter to M/s.Utkal Galvanizer Ltd. disclosing therein that there has to be an inspection of the Company under Section 206(5) of the Companies Act, 2013 under the direction of the Ministry of Corporate Affairs, Government of India, vide Annexure-2. It is claimed, the Company cooperated with the O.Ps. in the entire process of inspection even presented therein as and when there is asking for personal appearance of any of them. There has been appearance of the persons so directed even the Company has also submitted written response to the queries raised by the O.Ps., vide Annexure-3 series. Through the pleading, it is claimed, looking to the whole correspondences as of now, there is no complain on the involvement of either of the persons in any offence under the penal provision of law. It is further claimed, while the matter stood thus, the Company Secretary of the Company, M/s.Utkal Galvanizer Ltd., Ms.Shaama Bano was prevented from travelling abroad at New Delhi International Airport by the Immigration Authorities. She was verbally informed by the Authorities that there was issuing of Look Out Circular (LOC) against all the key managerial personnel pending inspection of the Records and Accounts of the Company initiated under Annexure-1. Finding unnecessary harassment, the Managing Director of the Company,

Petitioner No.1, vide letter dated 2.3.2022 received by O.P.1 on 3.3.2022 requested O.P.1 to consider the decision of imposing restrictions on overseas travel of the Company Directors and key managerial personnel. In the said letter, there has been also showing of urgency of some Petitioners, as they are to participate in a business of export dealing through trade so supposed to take place in the USA between 26th - 28th of April, 2022. Petitioner No.1 had also enclosed supportive documents in claiming such relief. It is alleged, in spite of such request, there is no response. In the meantime, vide letter dated 7.3.2022, there have been some further queries, which were replied on 21.3.2022. O.P.2 again issued a letter on 5.4.2022. The Petitioners claimed, they were in the process of submitting their replies while filing the Writ Petitions. Taking recourse to the Office Memorandum dated 27.10.2010 of the Ministry of Home Affairs, the Petitioners claimed, restricting the movement of the Petitioners as well as issuing LOC, if any, involving the Petitioners remains complete contrary to the Circular of its own, vide Annexure-6. It is claimed that the Circular referred to is an outcome of the judgment of Delhi High Court in case of *Sumer Singh Salkan vrs. Assistant Director & ors.* The Petitioners in the pleadings also took support of the judgments of variety courts touching such issue, vide Annexure-7, 8 series, 9 series & 10 as well. It is on the premises that there is no initiation of any

criminal proceeding nor there is any correspondence or observation available on Record indicating the Petitioners entangled in criminal offences. While pleading that there is violation of Fundamental Rights of each of the Petitioners involved herein and there has been unnecessary harassment to each of the Petitioners in absence of their involvement in any non-compoundable offence as of now.

5. The Petitioners on their own have brought to the notice of this Court through Annexure-14 series that there is completion of investigation involving the Odisha part is concerned. Annexure-14 series also clearly depicts no involvement and non-compoundable offences involving the Petitioners. Through each of these documents, at the end of each document involving the show cause notices, vide Annexure-14 series, it is apparent that the Petitioners involved therein are all facing compoundable offences being covered under the provision of Section 441 of the Companies Act. The Petitioners claim that there is no material whatsoever available showing the Petitioners' involvement in non-compoundable offences, particularly, under the penal provision. The Petitioners also claim that they are all through cooperating. Thus the Petitioners through both the above Writ Petitions prayed for quashing the LOC involving the Petitioners.

6. Mr.M.K.Mishra, learned senior counsel appearing for the Petitioners on reiteration of the facts narrated herein above and after placing the notice so far issued to the Petitioners' Company and their responses, while not disputing that there is undertaking of an investigation under the provision of Section 207(3) of the Companies Act and that there has been full cooperation by each of the Petitioners representing the Company as of now. Demonstrated through the Circular at Annexure-3, which appears to be filed again by the Department Lawyer at Annexure-C to the additional affidavit dated 13.7.2022, taking through Clauses-H & I of the consolidated guidelines issued by the Government of India, Ministry of Home Affairs dated 22.2.2021 and at the same time, reading through series of show cause notices appended as Annexure-14 series issued on 15.6.2022, Mr.Mishra, learned senior counsel contended that even though the inspection proceeding involving the Petitioners commence since 13.4.2021, offences whatever alleged to have been committed by the Petitioners' Company remained compoundable as per their own disclosures in all such show cause notices appended as Annexure-14 series. Even answering on the preliminary affidavit and the additional affidavit of the Competent Authority, Mr. Mishra, learned senior counsel for the Petitioners taking through both the affidavits advanced his submission for quashing of the LOC on the

premises that whole submission and the process of investigation is yet to level the Company involving in any non-compoundable offence under any provision of law. The Petitioners are cooperating on the issue and in the meantime, almost one and half years from the commencement of such action of the Competent Authority and looking to the loss of time not only the Petitioners have already suffered for their unable to participate in the International Trade Fairs to attract their business, for the restrictions in the flying of the Directors of the Company if continues, it is claimed, there will be huge loss to the Company, which cannot be compensated otherwise.

Mr.Mishra, learned senior counsel at this stage took to this Court to the series of decisions to support the Petitioners' case. In the process, Mr.Mishra, learned senior counsel drew attention of this Court the decision of the Delhi High Court in ***Sumer Singh Salkan vrs. Assistant Director & ors.*** : ILR (2010) VI Delhi 706, another case of Delhi High Court in the case of ***Vikas Chaudhary vrs. Union of India & ors.*** : W.P.(C) No.5374/2021 & Crl.M.(Bail) 605/2021 decided on 12.1.2022, a decision of the Punjab & Haryana High Court in ***Noor Paul vrs. Union of India & ors.*** : CWP-5492-2022 (O & M) decided on 5.4.2022 reported in 2022 Live Law (PH) 69, another decision of Delhi High Court in ***Rana Ayyub vrs Union of India and Another:*** W.P.(CRL) 714/2022 decided

on 4.4.2022, a case of Madras High Court involving **Karti P.Chidambaram vrs. Bureau of Immigration** : W.P.(C) Nos.21305 & 20798 of 2017 decided on 23.7.2018 and another decision in **Rahul Surana vrs. The Serious Fraud Investigation Office & ors.** : W.P. No.2477 of 2020 and WMP Nos.2871 of 2020, 7332, 10903, 21891 and 3631 of 2022 decided on 7.3.2022. In the process, Mr.Mishra, learned senior counsel for the Petitioners taking this Court to the above decisions attempted to draw the support of each of the decisions indicated herein above to support the Petitioners' case.

7. To avoid a doubt for the Petitioners not enclosing copy of the LOC while claiming setting aside the same through the Writ Petitions, this Court takes note of the contentions of the O.Ps. admitting existence of the LOC through Paragraph-6 of the preliminary counter affidavit at Page-242A, which reads as follows :-

“6. That it is further submitted for the appreciation of this Hon'ble Court that the Ministry after receiving the representation/request of the Petitioners through the Regional Director (Easter Region) for the withdrawal of the Lookout Circular (LOC) have considered the same and the said request/representation was placed before the Screening Committee. The Screening Committee after verifying representation was of the view that, at this juncture withdrawal of the LOC would be a premature step. The withdrawal can only be considered after the inspection report is received and the same is accepted by the ministry. Further the LOC can be withdrawn if, after the inspection it is found that no non-compoundable offences are reported.”

8. Mr.P.K.Parhi, learned Assistant Solicitor General of India assisted by Mr.P.P.Behera, learned Central Government Counsel appearing for the O.Ps. in an attempt to seriously object the claim of the Petitioners, particularly, taking to the stage of the matter and the investigation is still in progress contended that the complain against the Petitioners involved herein received through one Whistle Blower in the Ministry of Corporate Affairs alleging that they are the key members of the M/s.Utkal Galvanizers Ltd. and planning to settle down outside India after taking a loan of Rs.600-700 Crores from various Banks. In the investigation process, it has also come to light that the Petitioners are the Directors of various Companies out of fifteen group companies including M/s.Utkal Galvanizers Ltd. registered in the State of Odisha. Mr.Parhi, learned Assistant Solicitor General of India resisted the Writ Petitions for the information of the Competent Authority of fleeing risk otherwise called as flight risk at the instance of the Petitioners. Looking to the stage of inspection, Mr.Parhi brought to the notice of this Court through Annexure-A regarding rejection of the request to take out the LOC and taking this Court to their own plea in the Writ Petitions that each of the Petitioners need to travel abroad involving countries like the USA and Dubai, contended, it is too early to consider the taking out of LOC involving the Petitioners.

9. It appears, the preliminary counter affidavit at the instance of O.Ps. was filed on 28.4.2022. The rejoinder affidavit was filed by the Petitioners on 1.5.2022. The Petitioners also filed an additional affidavit on 26.6.2022 bringing therein the level of charges as of now appearing through series of show cause notices. This Court nowhere finds any response to the plea of the Petitioners on the aspect of offences non-compoundable involving the Petitioners as of now.

10. Mr.Parhi, learned Assistant Solicitor General of India for the O.Ps. however took this Court to the further plea of the Department while bringing to the notice of this Court the Office Memorandum issued by the Government of India, Ministry of Home Affairs, i.e., consolidating guidelines for issuance of LOC. Reading through the same, Mr.Parhi attempted to justify issuance of LOC. Mr.Parhi further taking this Court to the response of the O.Ps. in Paragraph-6 of the additional affidavit filed on 13.7.2022 contended that for the Petitioners' closure association/involvement in so many Companies and the area of investigation extended also to West Bengal, the Inspecting Officer of the Directorate of Ministry of Corporate Affairs has in the meantime already inspected almost fourteen companies other than the companies in Odisha. It is further contended that inspection having come to an end, reports are also submitted in the Ministry on 10.5.2022. It is further contended,

further instruction from the Ministry is awaited. It is on the whole and looking to the gravity of allegations made against the Petitioners so far, Mr.Parhi contended, there is justification in issuing LOC against the Directors/KMPs of the Company where the Petitioners are actively involved. It is in the process, Mr.Parhi sought for rejection of the Writ Petitions on the premises of having no merit and premature one.

11. Considering the rival contentions of the Parties, this Court finds, there is no dispute that the Petitioners include Managing Director, Directors and CFO of the Company, M/s.Utkal Galvanizers Ltd. There is also no dispute that there exists a complain against the Petitioners by a Whistle Blower received by the Competent Authority and there was initiation of inspection of 15 nos. of Companies including that of M/s.Utkal Galvanizers Ltd. in this State under the direction of the Ministry of Corporate Affairs. The Writ Petition pleading and O.Ps.' response through preliminary counter affidavit as well as the additional affidavit make it clear that inspection involving M/s.Utkal Galvanizers Ltd. being completed, the Petitioners are already issued with show cause notices, vide Annexure-14 series clearly indicating the offence involved is compoundable. The additional counter affidavit also disclosed, in the meantime, there has been already closure of the inspection involving the Petitioners involving fourteen other companies in the State of West

Bengal. There is clear stand of the O.Ps. that the Petitioners are all through cooperating. It is claimed, even for report involving these fourteen companies outside Odisha already submitted since May, 2022, instruction of the Ministry of Corporate Affairs is still awaited. It appears, in the meantime, almost two months have passed. Both the R.O.Cs. involved have not reported on involvement of the Petitioners in non-compoundable offences as of now. LOC involved here appears to be on no concrete material and even on prima facie material. On perusal of the documents available at Pages-91 to 115 of the Brief, this Court finds, either the Company or the Petitioners have been several time rewarded for their best performance. Offences entangled the Petitioners as of now remain maximum within the frame working of Section 441 of the Companies Act, as clearly disclosed from Annexure-14 series. For reference of both sides to the Office Memorandum dated 22.2.2021 also keeping in view the guideline existing since 27.12.2000 and the guidelines issued on 27.10.2010, 5.12.2017, 19.9.2018 and 12.10.2018 all taken into account find place at Annexure-C to the additional affidavit of the O.Ps. on 13.7.2022, this Court finds, the Government of India in the Ministry of Home Affairs taking into account the decision of the Delhi High Court and the guidelines framed therein by such High Court after due deliberation in consultation with various stake holders in

supersession of the existing guidelines earlier issued by the same Ministry, with the approval of the Competent Authority has issued a plethora of consolidated guidelines, which shall be followed with immediate effect by all concerned, particularly for the purpose of issuance of LOC in respect of Indian Citizens and foreigners. Relevant guidelines for observance of the Competent Authority in issuing LOC, this Court finds through the provision at Clauses-H & I, there has been following prescription :-

“(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.”

Reading through the provisions at Clause-H, this Court finds, this is a guideline prescribing recourse to LOC is to be taken in cognizable offence under the Indian Penal Code (IPC) or other penal laws. Clause-I therein prescribes in cases where there is no cognizable offence under the IPC and other penal laws, the LOC subject cannot be detained, arrested or prevented from leaving the country. It further prescribes that the Originating Agency can only request that they be informed about the

arrival/departure of the subject in such case. For the material disclosure as of now instead of issuing LOC, even assuming there is trace of some compoundable offences, the Originating Agency maximum requested the Petitioners to keep them informed about departure and arrival of the subject.

12. This Court here takes into account the plea of the O.Ps. in Paragraphs-7 & 8 of the additional affidavit read as follows :-

“7. That the Look Out Notice was issued by the Ministry on 15.06.2021. Taking into consideration of the gravity of the allegation made in the complaint, the LOC was issued against the Directors/KMPs of the companies where the Petitioners are actively involved to ensure their presence during the course of Inspection and further course of action/proceeding.

8. That it is submitted that as per the method and procedure of the inspection the ROC report is not the final one. The ROC being the inspecting officer, has performed his duty to conduct the inspection under the direction of the Ministry but after the submission of the report the Ministry has to examine and take appropriate action either for further inspection/investigation or take appropriate steps for initiation of prosecution in accordance with law depending upon the case and circumstances. In the present case in hand the first stage of inspection is over but as there is serious allegation against companies and its key managerial persons (i.e. the Petitioners), there is issuance of LOC. Thus at this junction interference in the process of inspection or subsequent action will affect the public interest as well as the greater economic interest of the Nation.”

Reading the aforesaid plea of the O.Ps., it becomes clear that inspection involving all the Companies has already been completed by the Inspecting Officer under the jurisdiction of the R.O.Cs., Odisha as

well as West Bengal. So far Odisha part is concerned, the Petitioners are already in receipt of show cause notices ultimately establishing no involvement of non-compoundable offences. So far West Bengal part is concerned, there is specific plea that inspection not only completed with full cooperation of the Petitioners but reports so prepared have already been sent to the Ministry for its opinion and action, as appropriate and nothing is received as of now. The above thus discloses that investigation on all the allegations involving the Petitioners is already over. There is no possibility of allegation of non-cooperation in the inspection by any of the Petitioners. There is no complaining of non-cooperation against any of the Petitioners. Further as of now there is no existence of the Petitioners' involvement in any non-compoundable offence. In the circumstance, this Court finds, continuance of LOC may be dangerous, as it had already affected the Fundamental Rights of the Petitioners to travel abroad for promotion of their business. The entire inspection is already over and any of the Petitioners movement to abroad can very well be controlled by setting out terms and conditions involving each of the Petitioners.

Looking to the entire plea of the O.Ps., so far it relates to putting the Petitioners in the category of flight risk and entire reading of the plea nowhere it discloses any foundation for putting the Petitioners to such

category. Such claim is only based on bald statement while undisputedly there is no ascertainment of involvement of non-compoundable offence involving any of the Petitioners.

13. This Court here first takes into account the citations in ***Garikapati Venketeswara Rao vrs. Union of India and Others*** decided by the Telengana High Court in W.P.(C) No.6892/2022 dated 6.6.2022, in the case of ***Chaitya Shah vrs. Union of India and Others***, a decision by Bombay High Court in disposal of Criminal Writ Petition No. 3058/2021 decided on 17.11.2021 and the last decision in the case of ***Mrs. Leena Rakesh vrs Bureau of Immigration and Others***, a case decided by the High Court of Karnataka at its Bengaluru Sitting, a decision dated 20.06.2022 in W.P.No.11213/2022 relied upon by the learned ASGI for the Department finds the first decision already involved declaring the loan involving the company involved already NPA and proceeding under the provision of SARFAESI Act already commenced. Similarly the second case through paragraph-8 clearly disclosed, the petitioners therein not only worked under Mahul Choksi and Nirab Modi but have also been deeply involved in their transactions already involving so many disputes. Thus, this Court finds, first two decisions relied upon by the learned ASGI doesn't come to his rescue. The third decision relied the by the learned ASGI even the petitioner involving a fraud transaction, a Bank's

reporting fleeing of Petitioner may risk recovery and even after proceeding under provisions of the SARFAESI Act initiated, Karnataka High Court allowed the petitioner to have his Foreign Trip but subject to condition proposed. This decision rather supports the Petitioners for their yet to face any such proceeding.

14. In the grim situation, this Court now takes into account the decisions operating the filed as of now, which are discussed herein below.

In the case of *Noor Paul vs Union of India and Others* : reported in 2022 LiveLaw PH 69, Paragraphs-64, 65, 69 & 76 are extracted, as hereunder :-

“(64) We may point out that the Office Memorandum No.25016/10/2017 – IMM dt.22.2.2021 placed for our perusal by the learned Additional Solicitor General (the latest one said to contain consolidated guidelines for issuance of an LOC) states:

“ In cases where there is non-cognizable offence under the IPC and other penal laws, the LOC subject cannot be detained/arrested or prevented from leaving the country. The originating Authority can only request that they be informed about the arrival/departure of the subject in such cases.”

(65) When there is admittedly not even an FIR registered against the petitioner, and there is no question of her being accused of any non-cognizable offence, no LOC could have been issued by respondent No.3 to detain the petitioner. At best, the respondent No.3 could have only given information to respondent No.2 about the arrival/departure of the subject according to the OM dt. 22.02.2021.

(69) We are of the opinion that the quantum of the alleged default by the borrower by itself cannot be the basis for seeking issuance of an extreme process like an LOC for restricting the personal liberty of the petitioner to travel outside the country without something more. The OM itself does not draw any line about the quantum of default by a borrower to a financial institution which would be considered detrimental to the sovereignty or integrity of India or to the economic interest of India and a quantum of default which would not fall in the said category.

(76) It may be that respondent No.2 entertained the strong apprehension and believed that the guarantors/directors of respondent No.5 might leave the country without paying the dues of respondent No.2 and without informing them and so sought LOC from respondents No.1, 3 & 4. But that by itself is not sufficient to seek issuance of an LOC since mere suspicion is not enough and it cannot take the place of proof.”

Here the High Court of Punjab & Haryana considered the maintainability of the LOC while observing that quantum of loan cannot be a ground for issuing LOC and for the prescription in the guidelines, the O.Ps. are only required to inform the arrival and departure.

Paragraphs-41 & 42 of *Vikas Chaudhary vs Union of India and*

Others : WPC 5374 of 2021 are extracted, as hereunder :-

“41. Before I conclude, I must also refer to the decisions relied upon by the respondents. In paragraph 11 of GSC Rao v. State of U.P.(2019) 106 ACC 437 on which learned counsel for the respondent no.3 has relied in support of its plea, that the mere fact of an accused cooperating with an ongoing investigation, can have no impact on whether a LOC ought to have been issued against him or not, the Court held as under:

“11. We are not inclined to extend the benefit to the revisionist-accused of the law laid down in the judgment of Karti P. Chidambaram (Supra) because in

the present case, the LOC has been issued with a view to interrogating the revisionist in the matter at hand wherein the FIR has already been lodged and the investigation is going on. Merely because the revisionist so far had been cooperating with the investigation, may not lead us to believe that he would not evade his arrest in future. If some incriminating evidence comes on record against him, the possibility cannot be ruled out in this case of his fleeing abroad.”

What clearly emerges is that in the aforesaid case, the Court was dealing with a situation, where a FIR had already been lodged and a criminal investigation was ongoing against the person against whom the LOC had been issued. The same was the situation in *S. Martin v. Deputy Commissioner of Police SCC OnLine Mad 426*. In the present case, as has already been noted, no proceedings under any penal law have, in fact, been initiated against the petitioner. These decisions are therefore, clearly distinguishable and do not, in any manner forward the case of the respondents.

42. For the aforesaid reasons, impugned LOC is wholly unsustainable and deserves to be quashed. However, keeping in view the respondent no.3's plea, that it is still awaiting inputs from the authorities at Dubai, upon receipt of which information, cases under various penal laws are likely to be initiated against the petitioner, I am of the view, that it would be in the interest of justice for the petitioner to inform respondent no.3, as and when he decides to leave the country, for the next one year.”

Here the Delhi High Court held that looking to the background involved herein, the LOC was not sustainable, as the right to travel abroad is a Fundamental Right and the LOC was issued in absence of any pre-condition necessitating such a major requirement.

Paragraphs-73 & 74 of the decision in ***Karti P. Chidambaram vs. Bureau of Immigration*** : W.P. No. 21305 of 2017 are extracted as hereunder :-

“73. As observed above, the issuance of Look Out Circulars is governed by executive instructions as contained in the Office Memoranda Nos. 25022/13/78-F1 dated 05.09.1979 and 25022/20/98-FIV dated 27.12.2000, as modified by Office Memorandum dated 27.10.2010. Such LOCs cannot be issued as a matter of course, but when reasons exist, where an accused deliberately evades arrest or does not appear in the trial Court. The argument of the learned Additional Solicitor General that a request for Look Out Circular could have been made in view of the inherent power of the investigating authority to secure attendance and cooperation of an accused is contrary to the aforesaid circulars and thus, not sustainable.

74. It is, in the view of this Court, too late in the day to contend that whether or not to issue an LOC, being a executive decision, the same is not subject to judicial review. It is now well settled that any decision, be it executive or quasi-judicial, is amenable to the power of judicial review of the writ Court under Article 226 of the Constitution of India, when such decision has adverse civil consequences. An LOC, which is a coercive measure to make a person surrender and consequentially interferes with his right of personal liberty and free movement, certainly has adverse civil consequences. This Court, therefore, holds that in exercise of power of judicial review under Article 226 of the Constitution, the writ Court can interfere with an LOC. The question is whether the writ Court should exercise its discretionary jurisdiction to interfere with the impugned LOC.”

Here the High Court of Madras held that the LOC can be issued only in cases where the accused in a criminal case was evading arrest and not appearing in the trial court.

“Paragraphs- 28-32 of the decision in ***Rahul Surana Vs. The Serious Fraud Investigation Office*** : W.P.NO.2477 OF 2020 are extracted hereunder :-

“28. The investigation, even after the elapse of three years, is stated to reveal only prima facie materials and no concrete evidences are stated to have been found to implicate the petitioner or frame charges. Admittedly, however there are no proceedings against the petitioner so as to implicate him before the Criminal Court or in any other fora to justify the restrictions under which he has been placed.

29. Admittedly, there have been no instances when the petitioner has evaded summons/notices calling for his attendance/appearance. The Central Bureau of Investigation (CBI) has confirmed that there are no investigations that are ongoing in the case of the petitioner, though reserving their right to initiate appropriate action at an appropriate juncture in future.

30. No material is placed before the Court in support of the bald assertion that the petitioner is a flight risk and as a consequence there is no tangible material available, admittedly, to deny the petitioner of his Fundamental Right.

31. This Court, in the decision in the case of Karthi P.Chidambaram (supra) has stated as follows:

. . . . 63. Look Out Circulars are coercive measures to make a person surrender to the Investigating agency or the Court of law. In accordance with the order dated 26.7.2017 of the High Court of Delhi, the Ministry of Home Affairs issued Official Memorandum dated 27.10.2010 laying down the guidelines for issuance of Look Out Circulars. The said Circular provided: Recourse to Look Out Circular is to be taken in cognizable offences under IPC or other penal laws. The details in column IV in the enclosed proforma or regarding reason for opening LOC's must invariably be provided without which the subject of an LOC will not be arrested/detained.

70. The legality and/or validity of a Look Out Circular has to be adjudged having regard to the circumstances prevailing on the date on which the request for issuance of the Look Out Circular had been made.

73. As observed above, the issuance of Look Out Circulars is governed by executive instructions as contained in the Office Memoranda Nos.25022/13/78-F1 dated 05.09.1979 and 25022/20/98-FIV dated 27.12.2000, as modified by Office Memorandum dated 27.10.2010. Such LOCs cannot be issued as a matter of course, but when reasons exist, where an accused deliberately evades arrest or does not appear in the trial Court. The argument of the learned Additional Solicitor General that a request for Look Out Circular could have been made in view of the inherent power of the investigating authority to secure attendance and cooperation of an accused is contrary to the aforesaid circulars and thus, not sustainable.

32. In the light of the discussion as aforesaid, I am of the considered view that the petitioner's challenge to the LOC dated 09.12.2020 is liable to be accepted. Even assuming that the same has been extended for which no materials are placed before the Court, the respondents has not been in a position to establish that the settled parametres justifying the issue of an LOC are satisfied in this case. The mandamus, as sought for, is issued and this writ petition is allowed. MPs are closed with no order as to costs."

Here the Madras High Court again held that bald assertions the Petitioner is a flight risk is not sufficient to issue LOC and therefore, Madras High Court set aside the LOC.

15. This Court here finds, there is support of all above decisions to the case of the Petitioners.

16. Now reverting back to the factual aspect, this Court finds, even though there involves allegation all through that there is information of the Petitioners fleeing away after taking 600 crores to 700 crores from different banks even after a preliminary counter affidavit and an additional affidavit by the Department, there is even no specific allegation on actual loan involved the Petitioners and their Company and any default therein. It is needless to observe here that there is no declaration of NPA involving any account involving the Petitioners by any bank as of now. Allegation at this stage appears to be speculative and imaginary and in the circumstance, there cannot be taking away liberty of any of the Petitioners.

17. The investigation even after so much lapse of time failed in bringing any concrete evidence to implicate any of the Petitioners or framing any of them charges under any penal law.

18. Undisputedly, there have been no instances when the Petitioners attempted to evade summons/notices calling for their attendance and/or searching involved, if any.

19. There is even no material produced as of now in support of assertion of the Department, the Petitioners have flight risk, thus the allegation is bald and without any substance.

20. In the factual background and position of law, this Court while declaring the LOC involving the Petitioners as bad in law and inoperative, makes it clear that the setting aside of LOC at this stage shall have no impact in case of any future ascertainment.

However considering that investigation involving all Establishments is over and the Department is waiting for the further advice of the Ministry, this Court is imposing certain conditions for the overseas travel involving each of the Petitioners as follows :-

- I. Each of the Petitioners if undertaking overseas travel, while providing such intimation, has also to produce his overseas travel plan with photocopy of Visa approval with the Company Registrar in the State of Odisha.
- II. In the event of necessity of foreign visit of any of the Petitioners, he/she while providing the travel plan under Condition-I herein above shall also be required to produce a bank guarantee to the extent of Rs.5,00,000/- (rupees five lakh) in favour of the R.O.C., Odisha to remain valid for a period of six months at least.
- III. Each of the Petitioners shall co-operate the Department whenever their presence will be sought for by the Department.

IV. Each of the Petitioners shall co-operate in any further investigation and/or inspection.

21. The Writ Petitions thus succeed. No order as to Cost.

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(Biswanath Rath, J.)

Orissa High Court, Cuttack.
The 25th July, 2022/MKR, A.R.-cum-Sr.Secy.

