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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2022

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.NO.2477 OF 2020

AND

WMP NOS.2871 OF 2020, 7332, 10903,
21891 OF 2021 AND 3631 OF 2022

Rahul Surana

...Petitioner

Vs.

1. The Serious Fraud Investigation Office
Corporate Bhawan Ground Floor
No. 29 Rajaji Salai Chennai 600 001.
(Cause title amended vide order
dated 16/3/2021 made in WMP.2828/2020
in W.P.No.2477/2020)
2. The Senior Immigration Officer
(Batches A B C D) International Departure
Anna International Airport
Meenambakkam Chennai 600 027
3. The Senior Immigration Officer
(Batches A B C D) International Arrival
Anna International Airport, Meenambakkam
Chennai 600 027
4. The Immigration Officer
International Airport Authority of India,
Chennai
5. The Foreigner Regional Registration
Officer (FRRO)
Shastri Bhavan
Annex Building, 26 Haddows Road
Nungambakkam, Chennai 600 006.
6. The Deputy Superintendent of Police
CBI-BSFB Bangalore,
No.36 Bellary Rd, Ganganagar,
Bengaluru, Karnataka 560032.



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7. The Director
Directorate of Enforcement
No.84,Greams Road, Thousand Lights
Chennai 600 006.
(R6&R7 Impleaded Vide Order Dated 16/3/2021
made in WMP.5051/2020 in W.P.No.2477 of 2020).

8. Bureau of Immigration
Ministry of Home Affairs
Government of India
rep. by its Commissioner (Immigration)
East Block VIII, Level V
Sector-1,R.K.Puram, New Delhi 110
(R8 impleaded vide order dated 21.02.2022
in WMP No.21887 of 2021 in W.P.No.2477 of 2020)

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India writ in the nature of Mandamus forbearing the respondents from infringing the petitioner's right to abroad with his wife and two children for the medical treatment by withdrawing the lookout circular issued by the 1st respondent against the petitioner in connection with an undisclosed complaint.

For Petitioners : Mr.P.S.Raman, Senior Counsel
For Mr.S.N.Kirubanandam

For Respondents : Mr.R.Sankaranarayanan
Additional Solicitor General of India
Assisted by B.Rabu Manohar
Senior Central Government
Panel Counsel [R1 to R5]
Ms.Brinda Ramesh - R6
No appearance - R7 & R8

O R D E R

The petitioner challenges Lookout Circular No.1/SIC/ACK/LOC 2020-8862, New Delhi dated 09.12.2020 issued by R8/Bureau of Immigration and seeks quash of the same.

2. The petitioner's father, one Dinesh Chand Surana was the Managing Director of Surana Industries Limited (SIL). The petitioner states that he has no connection whatsoever with the day-to-day affairs, management or administration of SIL nor is



he a shareholder of the Company. He was caught unawares by virtue of a restriction placed on his travel when he went to the Chennai Airport with his wife and children on 30.01.2020 to travel abroad for medical treatment of his wife.

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3. The reason given was that a LOC had been issued by R1 in connection with Crime No.11 of 2019 that has been registered against the Promoters and Directors of SIL for alleged offences under Sections 120B r/w Sections 420, 467, 468, 471 of the Indian Penal Code and Section 13(2) r/w 13(1d) of the Prevention of Corruption Act, 1988.

4. The petitioner is admittedly not arrayed as an accused in Crime No.11 of 2019. He would also submit that he has no connection to SIL, no investigation has implicated him thus far and his credentials to travel thus cannot be questioned, particularly seeing as he holds a valid passport.

5. He relies on the decision in the case of Karthi P Chidambaram vs Bureau of Immigration, passed by the First Bench of this Court in W.P. Nos.21305 and 20798 of 2017 on 23.07.2018 as well as the decisions of learned Single Judges of this Court in the cases of S.Martin Vs. Deputy Commissioner of Police in W.P. No.32317 of 2012, dated 21.02.2020, S.Martin vs. Regional Passport Officer, W.P. No. 20976 of 2017, dated 10.09.2018 and C.Sivasangaran Vs. Foreigner Regional Registration Officer and ors, W.P. No.19743 of 2019 dated 06.11.2019.

6. He draws attention to a counter filed by the Deputy Superintendent of Police, Central Bureau of Investigation/R6 confirming that CBI, BSFB, Bangalore has registered three cases against the Surana Group and the petitioner is not arrayed as an accused in any one of the three. The CBI also confirms that the LOC, aggrieved by which the petitioner is before this Court, has not been issued at their instance, the cases as aforesaid are under investigation, and as and when evidence against the petitioner surfaces, if at all, appropriate legal action would be initiated.

7. Thus the petitioner would argue that there is no justification whatsoever for curtailing the fundamental right of the petitioner and his family to travel. The emergent requirement to travel is on account of the medical treatment of his wife. This Court, taking note of the aforesaid circumstances, had permitted the petitioner to travel with wife pending writ petition, however ensuring that the children were left behind with the family in Madras.



8. Even this condition, the petitioner would urge, is not to be countenanced, since the very restriction as imposed is illegal and has no basis whatsoever in law. He points out that the First Bench of this Court in the case of Karti P.Chidambaram (supra) has categorically held that there should be sufficient basis for issuance of LOC and the conditions precedent to issue such notice must be satisfied, particularly, since the issuance of LOC is a coercive measure intended to make a person surrender to the Investigating Agency or a Court of Law.

9. The contesting respondent in this case, the SFIO, has filed a detailed counter indicating the extent of alleged discrepancy committed by SIL and Surana Corporation Limited (SCL) and its Directors and servants. Counters filed by R1 and R7 dated 17.02.2022 and 31.08.2021 respectively, set out the details of investigation stated to be on-going into the affairs of various entities of the Surana Group, such as SIL, SCL, Surana Power Limited (SPL) and 12 others.

10. They would state that the authorities have prima facie evidence of large scale diversion and siphoning of funds borrowed from Banks and Financial Institutions resulting in substantial loss of public money. Some of the Companies in the Surana Group were listed before the Stock Exchanges and some are under liquidation as per the orders of the National Law Company Tribunal.

11. In the course of the hearing, a preliminary question that arose was in regard to the veracity of the writ petition itself since the LOC was effective only for a period of one year. In response to the specific query of the Court as to how any restriction could be placed on the right to travel beyond the period of one year as contemplated under Lookout Circular dated 07.03.2019, a counter is filed by R1 on 17.02.2022, wherein, at paragraph 9 they submit that 'the Look out Circular continues and it is still in force'.

12. The counter is accompanied by a copy of a Corrigendum issued by the Ministry of Home Affairs Foreigners Division, dated 10.08.2021 to state that an LOC, once opened shall remain in force until and unless a deletion request is received by the Bureau of Immigration (BOI) from the originator, that is the source of the request for opening of LOC.

13. The Corrigendum states as follows:

No.25016/10/2017-Imm (Pt.)
Government of India
Ministry of Home Affairs



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Foreigners Division
(Immigration Section)
Hall No.18, 2nd Floor, Open Gallery, MDCNS
India Gate, New Delhi, Dt. 10th August, 2021
CORRIGENDUM

Subject:- Consolidated Guidelines for issuance of Look out Circular (LOC) in respect of Indian Citizens and foreigners.

Reference this Ministry's OM of even number dated 22nd February 2021, Para 4 under the heading "Relevant Information And Instructions" of Proforma for issuance of LOC may be read as :-

"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 LOC's 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."

2. This issues with the approval of the Competent Authority.

Sd/-
(Vinod Kumar T.A)
Under Secretary (Imm)

14. The LOC in this case is dated 07.03.2019 and has been extended till 20.01.2022 vide order dated 09.12.2020, reading as follows:

No.1/SIC/ACK/LOC/2020-8862
Bureau of Immigration
(Ministry of Home Affairs)
Government of India

Subject: Continuation of 6 Regular LOC(s):
W.r.t. letter/memo No.
SFIO/Surana/LOC/HYD/PROS/2019/3592 Dated : 08-12-2020
regarding continuation of LOC (s) in respect of RAHUL



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DINESH SURANA +5. It is intimated that, as requested continuation of LOC(s) against the subject(s) has/have been completed at our end. And the LOC(s) would remain valid till 20-01-2022.

Sd/....
I/C-DMC/S/C

To,
ADDL DIRECTOR/SFIO
SURVEY NO 127/1, 4TH FLOOR,
CORPORATE BHAWAN, TATTAIANNARAM VILLAGE,
BANDLAGUDA, HYDERABAD TELANGANA-68

Note: NIL

Important Note:- Originator of the LOC is requested to strictly ensure the prevention of the unauthorized access of this classified LOC document to LOC subject or his/her representative or any other unauthorized person other than the originator.

15. No materials have been placed before this Court indicating extension of the LOC beyond 20.01.2022 and had there been any such order based upon the approval/sanction granted by the competent authority in the SFIO, it would/should have been placed on record before me.

16. According to the SFIO, the impact of corrigendum dated 10.08.2021 is to automatically extend the LOC till such time it is deleted by the SFIO itself. In this regard, they also press into service a communication from the BoI wherein the latter makes it clear that the extension of the LOC is at the instance of the originating entity, in this case, the SFIO only, and it is only they that have to take a decision in this regard.

17. The communication as aforesaid, dated 15.02.2022, reads thus:

No.F.1/CC/FRRO/CH/2021 (2477)-781
Bureau of Immigration
(MHA) Govt of India
No.26, Haddows Road
Shastri Bhavan Annexe
Chennai-600006

To
Shri Rabu Manohar, SPC,
J-74-B, Plot No.1964,
Anna Nagar,
Chennai-600040

Dated, the 15 Feb 2022



Sir,

Sub:-WP No.2477/2020-Rahul Surana Vs. FRRO, Chennai & Others-reg.

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The respondents (No.2 to 5 and 8) have not initiated any Look Out Circular against the petitioner. Immigration authorities only act on LOC request made by various law enforcement/government agencies.

2. It is humbly submitted that the Hon'ble High Court may direct the government agency under whom an enquiry/investigation may be pending against the petitioner to take a call in this matter. The LOC is still existing. The LOCs are deleted only when the originator send letters for delition.

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

Your sincerely

Sd/..

FRRO/Chennai

18. It is thus clear to my mind that no sanction/approval has been received from the competent authority in the SFIO as on the date when the aforesaid letter has been sent, on which date the LOC in question has already expired. No such LOC is produced till the final date of hearing of the matter, which is 01.03.2022, Corrigendum dated 10.08.2021 is an enabling measure to ensure that in cases where an extension of LOC is required, a methodology is available to facilitate such extension.

19. However, the specific caveat under the corrigendum is that there should be an exchange of communication between the originating entity, the SFIO and the BOI on a periodic basis leading to the extension of the LOC. For this purpose, approval should have been given by SFIO in time, and even prior to the expiry of the LOC to ensure a seamless extension of the LOC.

20. Since no such extension of competent authority has been placed before this Court, the position as on date appears to be that there is no such extension as on date.As such, LOC dated 07.03.2019 stands extended only till 20.01.2022 and no extension thereof has been produced for the period thereafter. This issue is decided accordingly.

21. On merits, the challenge to the LOC is on the ground that there is no justification for the very issuance of the same. R1, being the originating entity at whose instance the LOC



has been issued, has commenced investigation into the affairs of several companies of the Surana group at the instance of the Ministry of Corporate Affairs in terms of a reference made in terms of Section 212 (1) (c) of the Companies Act, 2013 on 28.10.2019.

22. In the course of the hearing on 01.03.2022, reference was made to the interim report that R1 had forwarded to the Government in November 2021 and the respondents were asked to produce a copy of the same for the perusal of this Court. However, immediately thereafter, R1 has filed affidavit dated 23.02.2020 confirming the position that no such interim report has been sent to the Government, since none was sought.

23. They however reiterate the gravity of the offences that they allege qua the petitioner and the related concerns. They also state that the investigation is at an advanced level. R1 has submitted a Report in a sealed cover on 21.02.2022 indicating the alleged extent of involvement of the petitioner in the affairs of the Surana Group Companies and its prima facie findings of diversion and embezzlement of public money.

24. Based upon the on-going investigation that they say is at an 'advanced' stage, urging that there is a tangible and real danger of him absconding from the country, if he is allowed to travel. In all, they would submit that their apprehensions in regard to the petitioner absconding must be taken note of and the LOC enforced till such time the investigation is completed and a final report formulated at by them.

25. In the regard, Office Memorandum issued in the matter of Look Out Circulars (LOC) in respect of Indian citizens and foreigners dated 05.09.1979, read with Office Memorandum dated 27.12.2000 'Look Out Circulars (LOC) in respect of Indian citizens and foreigners' is illuminating. The relevant paragraphs read as follows:

OFFICE MEMORANDUM

Subject: Issuance of Look Out Circulars (LOC) in respect of Indian citizens and foreigners

Under the existing practice, the issuance of LOCs is governed by this Ministry's letter number 25022/13/78-F.I dated 5.9.1979 and OM number 25022/20/98- F.IV dated 27.12.2000.

2. It has, inter-alia, been stated in the letter dated 5.9.1979 of MHA that 'apart from the Govern



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India in the Ministry of Home Affairs, circulars are issued by various authorities for keeping a watch on arrival/departure of Indians and foreigners. These authorities include the Ministry of External Affairs, the Customs and Income Tax Departments, Directorate of Revenue intelligence, Central Bureau of Investigation, Interpol, Regional Passport Officers, Police authorities in various States, etc.' It has further been stated that 'unless otherwise specified in the warning circular itself, the circulars issued by any of the various authorities specified above will be regarded as invalid if it is more than one year old and the card will be weeded out. For the future, it is considered that whenever any authority issues a warning circular to the immigration authorities, the period of validity should be clearly specified in the circular. If this is not done, the circular will be considered to be valid only for a period of one year from the date of issue and a watch will be maintained by the person concerned at the immigration check posts only for that period.'

3. The OM dated 27.12.2000 of MHA specifies the steps required to be taken for opening an LOC in respect of an Indian citizen. It has been mentioned in the said OM that the request for opening an LOC in respect of an Indian citizen is required to be made to all the Immigration Check Posts (ICP) in the country in a prescribed proforma . It has further been stated that the request for opening of LOC must invariably be issued with the approval of an Officer not below the rank of Deputy Secretary to the Government of India / Joint Secretary in the State Government / concerned Superintendent of Police at district level. Further, 'Care must be taken by the originating agency to ensure that complete identifying particulars of the person, in respect of whom the LOC is to be opened, are indicated in the Proforma...' It is further provided that 'an LOC is valid for a period of one year. It can, however, be extended further before the expiry of the one year period. In case no request for extension of LOC is received before expiry of one year period, an LOC will automatically be closed by the Immigration Officer concerned after expiry of one year period.'

6. In a related judgement delivered on 11.8.2010 by the Hon'ble High Court of Delhi in W.P. (Cr1.) No. 1315/2008-Sumer Singh



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Salkan Vs. Asstt. Director &Ors and CrI. Ref.1/2006-Court on its Own Motion Re: State Vs. Gurnek Singh etc., the Court has answered four questions raised by a lower court on the LOC. These questions are as below:

a) What are the categories of cases in which the investigating agency can seek recourse of Look-out-Circular and under what circumstances?

b) What procedure is required to be followed by the investigating agency before opening a Look-out-Circular?

c) What is the remedy available to the person against whom such Look out-Circular has been opened?

d) What is the role of the concerned Court when such a case is brought before it and under what circumstances the subordinate courts can intervene?

7. The High Court has answered these questions in its judgement dated 11.8.2010 which are reproduced below for guidance of all concerned agencies:

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 before I.O. or should surrender before the court



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Intelligence or Central Board of Direct Taxes or Central Board of Excise and Customs; or
viii. Assistant Director of IB/Bol; or
ix. Deputy secretary of R&AW; or
x. An officer not below the level of Superintendent of Police in National Investigation Agency, or
xi. Assistant Director of Enforcement Directorate; or
xii. Protector of Emigrants in the office of the Protectorate of Emigrants or an officer not below the rank of Deputy Secretary of the Government of India; or
xiii. Designated officer of Interpol Further, LOCs can also be issued as per directions of any Criminal Court in India.

26. The investigation that is referred to in this case is stated to have commenced on 28.10.2019. Even as on the last date of hearing, which is 01.03.2022, and in the affidavit filed by R1, dated 23.02.2022, they only state that the investigation is at an 'advanced stage' and that substantial materials are available to implicate the petitioner in various economic alleged offences.

27. A report has been filed by R1 on 17.0.2022 under the heading Role of Rahul Dinesh Surana in the case under investigation, setting out the details of various economic irregularities under investigation. The report concludes stating at para 39 that the investigation is in a crucial stage and that it is 'reasonably apprehended that the applicant would not return to the country and might attempt to evade the process of law, more so as investigation prima facie finds siphoning of large extent of funds to foreign entities.'

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.

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

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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.

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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.

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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.

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Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

sl/ska

To

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8. The Commissioner (Immigration)
Bureau of Immigration
Ministry of Home Affairs
Government of India
East Block VIII, Level V
Sector-1, R.K. Puram, New Delhi 110

+1cc to Mr. B. Rabu Manohar, Advocate, S.R.No.15190

+1cc to Mr. P. Krishnan, Advocate, S.R.No.15356

W.P.No.2477 of 2020
and WMP Nos.2871 of 2020, 7332,
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MG(CO)
RLP(24/03/2022)