IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 25686 of 2022 (O&M)
Reserved on: 02.12.2022
Date of Decision:12.12.2022

KAMAL PREET SINGH

. . . . Petitioner

Vs.

UNION OF INDIA AND OTHERS

. . . . Respondents

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CORAM: ***HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO***
HON'BLE MRS.JUSTICE SUKHVINDER KAUR

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Present: - Mr. Satwant Singh Rangi, Advocate
for the petitioner.

Mr.Satya Pal Jain, Additional Solicitor General of India
assisted by Mr.Arvind Seth, Advocate,
for respondents No.1 & 2.

Mr. Shekhar Verma, Advocate, and
Ms. Bhawna Thakur, Advocate,
for respondent No.3-Bank.

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M.S. RAMACHANDRA RAO, J.

CM-19162-CWP-2022

Application is allowed and written statement along with annexures filed by the respondent No.3 is taken on record.

CWP No. 25686 of 2022

In this Writ Petition, the petitioner seeks a writ in the nature of *Certiorari* for quashing of the Look Out Circular (for short "LOC") issued against him at the instance of UCO Bank (respondent No.3) by the Bureau of Immigration (respondent No.2) on the ground it is violative of his rights under Article 14, 19, 20 and 21 of the Constitution of India and seeks direction to permit him to travel abroad by expunging the entries made in his Passport.

background facts

Notice of motion in this Writ Petition was issued on 11.11.2022 for 30.11.2022, and Mr. Satya Pal Jain, Additional Solicitor General of India, appearing on behalf of respondents No.1 and 2, was directed to produce a *copy of the LOC* issued against the petitioner at the instance of respondent No.3 by respondent No.2, and also *the request for issuance of such LOC* made by respondent No.3 to respondent No.2.

In compliance of the said order, the same have been produced before this Court on 02.12.2022 and are taken on record.

Sh. Satya Pal Jain, Additional Solicitor General of India contended that it is for respondent No.3 to defend its action in seeking the LOC against the petitioner, that the petitioner is not entitled to be given a copy of the LOC, and on the request of respondent No.3, LOC was issued against the petitioner.

A reading of the request made on 20.11.2021 by respondent No.3 to respondent No.2 for issuing of LOC against the petitioner indicates that respondent No.3 had merely referred to the Office Memorandum dt.12.10.2018 issued by the Ministry of Home Affairs permitting Chairmen/Managing Directors/Chief Executives of all public sector Banks to make requests for opening of the LOCs, and it is merely stated that the petitioner is a borrower of a Non Performing Account of the Bank against proceedings to consider treating him as a *Willful Defaulter* are under process.

Contentions of petitioner

The petitioner contends that he and his uncle, Bikram Singh had approached respondent No.3-Bank for taking a loan for the purpose of dairy farming and KCC in the year 2013, that a loan of ₹147 Lakhs was sanctioned, that father of the petitioner stood as a guarantor for the said loan and agricultural land belonging to the father and his uncle was mortgaged to the Bank as a collateral security by executing a deed of mortgage dt.10.10.2013.

He contended that due to certain reasons, the dairy business of the petitioner faced difficulties and he started incurring losses, and could not make payments of loan installments to respondent No.3. He also stated that respondent No.3-Bank had filed OA No.1425 of 2019 against him which is pending before the Debts Recovery Tribunal-III, Chandigarh.

He contended that he is a permanent resident of United States of America (USA) and had started the trucking business in USA registered with the name of M/s Lionson Trucking Inc., Modesto, California; after taking loan from respondent No.3-Bank, he visited several countries, and had never been prevented from travelling abroad; but on 23.10.2022 when he wanted to go from Indra Gandhi International Airport, New Delhi to USA, he was not allowed to travel abroad, that he was informed that there was an LOC issued against him, and an endorsement was made in his Passport that "the departure stamp was cancelled without prejudice".

He contended that he is not involved in any criminal case and no FIR has been registered against him, and he cannot be said to be evading arrest for appearing in any criminal Court, and no NBWs are issued against him. He further contended that merely because Officers of the Public Sector Banks were empowered to seek issuance of LOC against willful defaulters, such requests ought not to be entertained and LOCs issued; that they can only be entertained if the amount of default by a borrower is so high that it would affect the economic interests of India and the invocation of the Office Memorandum dt.04.10.2018 by respondent No.3 for issuance of the LOC against him is illegal and violates Article 21 of the Constitution of India.

It is further contended that non-issuance of the copy of the LOC to the petitioner or non-supply of reasons for issuance of the LOC, and not providing even a post decisional hearing to the affected person is arbitrary and it violates Articles 14 and 21 of the Constitution of India. According to him, right to travel abroad flows from Article 21 of the Constitution of India and the Hon'ble Supreme Court in the case of **Maneka Gandhi Vs. Union of India**[1] has recognized the same, and this Court in its decision in **Noor Paul Vs. Union of India and others**[2] has also granted relief.

He pointed out that the co-borrower and the guarantor are residing within India, that the claim of respondent No.3-Bank is covered by the security available with it, and no useful purpose would be served by preventing the petitioner from travelling abroad merely for non-payment of the pending loan amount when the petitioner is required to make such travel to attend to his business affairs in USA.

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[1] (1978) 1 SCC 248
[2] 2022 (3) RCR (Civil) 445

He therefore prayed for quashing of the LOC, and sought for permission to travel abroad.

Stand of Respondent No.3-UCO Bank

It is contended on behalf of respondent No.3-Bank that the loan account of the petitioner and his co-borrower was declared as NPA on 31.08.2018, that they have been declared as *willful defaulters*, and the loan account had been declared a *fraud* after following due process as per instructions issued by the RBI.

It is also contended that there is a police complaint lodged against the petitioner for committing economic offences.

It is contended that the petitioner cannot invoke Article 21 of the Constitution of India in these circumstances unless he settles the loan account and repays the public money.

It is stated that the outstanding loan amount owed by the petitioner is ₹1,22,49,511.82 ps. + contractual rate of interest and other permissible charges, and when such a large sum of money is owed to respondent No.3, and the petitioner has been declared as a willful defaulter on the basis of an inspection/investigation report indicating misuse by the petitioner of the amount borrowed for the purposes unrelated to agriculture and dairy farming for which the loan was borrowed, and as the borrower is maintaining high standards of living, respondent No.3 is entitled to seek issuance of LOC against the petitioner.

It is further stated that the loan account of the petitioner and co-borrower was declared as a fraud on 24.11.2022, and on 25.11.2022 a formal police complaint was lodged against the petitioner and other co-borrower for cheating, breach of trust and other offences.

It is further contended that since the petitioner is a permanent resident of the USA, allowing him to travel to the USA would impede the recovery of the dues since the petitioner may not return to India.

The consideration by the Court

We have noted the contentions of all the parties.

From the above narrated facts, it is clear that the petitioner allegedly owes amount of ₹1.23 Crores (Approximately) to respondent No.3, and that respondent No.3, after filing of the Writ Petition, had declared the loan account of the petitioner as *fraud,* and also declared the petitioner as a willful defaulter, and lodged a police complaint against the petitioner on 25.11.2022 alleging that the petitioner had diverted the funds taken from respondent No.3 for dairy farming to for other purposes.

It is also admitted fact that petitioner has a permanent residency Certificate from the USA and has business in USA.

The questions to be considered are thus:

(i) Whether the LOC issued by respondent No.2, at the instance of respondent No.3 against the petitioner can be sustained in law or not?

(ii) Whether merely on the ground that the petitioner is a willful defaulter for the loan taken by him, can the petitioner be prevented from travelling abroad and his fundamental right under Article 21 of the Constitution of India be curtailed?

The right to travel abroad has been recognized by the Supreme Court of India in the case of ***Maneka Gandhi (1 supra)*** and ***Satish Chandra Verma** Vs. **Union of India***[3], as falling within the scope of personal liberty enshrined under Article 21 of the Constitution of India. Thus, to deny a person such a right requires a very high threshold.

The issuance of the LOCs in respect of the Indian citizens and foreigners was initially governed by an Office Memorandum No.25016/31/ 2010-Imm dt.27.10.2010. In this Office Memorandum reference is made to certain judgments of the Delhi High Court and it was stated *inter alia* 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 Investigation 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 along 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 IO or should surrender before the court concerned or should satisfy the Court that LOC was wrongly issued against him. He may also approach

[3] 2019 SCC online SC 2048

the officer who ordered issuance of LOC and 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 Courts jurisdiction in affirming or cancelling LOC is commensurate with the jurisdiction of cancellation of NBWs or affirming NBWs.

The said Office Memorandum mentioned a list of Officers of various Departments of the Government who can make a request for opening of the LOCs.

Clause (h) of the above circular is relevant. It states:

> *"(h) In cases where there is no cognizable offence under IPC or 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."*

Thus, LOCs were permitted to be opened essentially against persons involved in cognizable offences and who were evading arrest and not appearing in the trial Court despite NBWs or other coercive measures, and there was a likelihood that they would leave the country to evade trial/arrest. It was intended as a coercive measure to make a person surrender to the investigating agency or Court of law.

But where the subject of the LOC is not involved in any cognizable offence, he or she 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.

The Office Memorandum stated that the LOC would be valid for a period of one year from the date of issue.

There were subsequently amendments made to the Office Memorandum from time to time.

Paragraph 8(j) was inserted in the office memorandum dt. 27.10.2010 through another Office Memorandum dt. 05.12.2017 which states:

> *"Para 8(j):*
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> *..... In exceptional cases, LOCs can be issued even in such cases, as would 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) of the above referred OM, 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 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 of time."*

Initially, Managing Directors and Chief Executive Officers of the Public Sector Banks were not authorized to make requests for opening of LOCs, but later an Office Memorandum dt.04.10.2018 was issued to include them also in the list of authorities who can seek LOCs. This was done in view of Paragraph 8(j) being inserted in the Office Memorandum dt.27.10.2010 to enable LOCs to be issued against the persons who are fraudsters/persons who wish to take loans, willfully default/launder money and then escape to foreign jurisdictions, since such actions would not be in the economic interests of India, or in the larger public interest.

But the amount of the default by a person which would not be (a) in the economic interests of India, or (b) in the larger public interest, for which an LOC can be sought and issued, is not mentioned in the said Office Memorandum.

However taking advantage of the said Office Memoranda, requests for LOCs are being made by Public Sector Banks against persons defaulting in payment of loan dues to them like in the instant case.

The contention of the respondent No.3-Bank that economic interests of India are affected by the non-payment of dues by the petitioner to it cannot be accepted since the amount of the loan default by a person which would not be in the economic interests of India, or in the larger public interest is not mentioned in the said Office Memorandums issued by the Ministry of Home Affairs. How a mere default of loan dues of ₹1.23 Cr affects the economic interests of India is not explained by respondents.

When they do not themselves draw any line about the quantum of default by a borrower to a financial institution which would be considered detrimental to the economic interests of India (assuming for the sake of argument without conceding that it is affected at all) *and* a quantum of default which would not fall in the said category, the fundamental right to travel abroad guaranteed by Article 21 of the Constitution of India cannot be curtailed by the respondent No.3 by seeking issuance of an LOC from respondent No.2.

Merely because the word 'public' is used in the exception clause in the OM, it does not elevate a mere default to an exceptional plane. It cannot be said that the departure of the petitioner from the country would adversely impact the economy of the *'country as a whole'* and destabilize the '*entire economy*' of the country.

Since the right to travel abroad flows from Article 21 of the Constitution of India, a very high threshold is mandated to deny such a right to an Indian citizen. Such a threshold is not met in the instant case.

The request dt.20.11.2021 made by the respondent no.3/Bank to respondent No.2 produced before us, shows no reason as to why such LOC is being sought against petitioner other than the fact the he is borrower of a Non-Performing Asset and that the Bank has started process to declare him as "willful defaulter".

So it appears that respondent No.2 has not applied its mind to the request for issuance of LOC made by respondent No.3 and did not consider whether grounds disclosed therein fall within the four corners of the OMs issued in that regard, though it may not be able to go into the merits/demerits of the allegations made against the petitioner by the respondent No.3. It appears that mechanically the respondent No.2 had issued the LOCs at the instance of respondent No.3.

Similar views have been expressed by this Court in ***Poonam Paul Vs. Union of India***[4] and in ***Noor Paul (2supra)***. It was further held in those decisions that non supply of the LOC to the subjects of the LOC at the time of issuance of the same and denial of opportunity to the subjects of the LOC, a *post-decisional hearing,* to explain why such LOC issued against them should not be withdrawn/cancelled by the Bureau of Immigration (respondent No.2), is arbitrary and illegal, and it cannot be said to have followed fair, just and reasonable procedure to deprive the subject of the LOC of his or her fundamental right to travel abroad.

We follow the said decisions rendered by the Division Benches of this Court and hold that respondent No.3-Bank cannot make a request for issuance of LOC to respondent No.2 in respect of dues owed by petitioner to it as per the Office Memorandums issued by the Ministry of Home Affairs from time to time or their extension.

Admittedly, Office Memorandum dt.27.10.2010 issued by the respondent No.1, LOC can be issued by the Respondent No.2 (amongst other authorities) for committing cognizable offences under the Indian Penal Code, 1860 or any other penal laws, where the accused deliberately evades arrest or does not appear before the trail courts despite non-bailable warrants or there is likelihood of the accused to leave the country to evade trial/arrest.

At the time the LoC was issued against the petitioner, he is not an accused of having committed a cognizable offence in India.

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[4] 2022 SCC Online P&H 1176 (DB)

As per Clause (h) of the Office Memorandum dt.27.10.2010 extracted above (clause (I) of the latest Office Memorandum No.25016/10/2017-IMM dt.22.02.2021), *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.

Since in the instant case, petitioner is admittedly having 'permanent residency certificate' of USA and has business interests in the USA, the petitioner cannot be prevented from travelling abroad.

The loan sanctioned to petitioner is secured with a mortgage of 87 Kanals valued at ₹4.02 Cr as per loan sanction letter dt.9.9.2013, and since the same would adequately cover the loan liability of the Bank, and it had initiated action before the DRT-III, Chandigarh to recover dues of ₹1.23 Cr from petitioner, it's objections to petitioner's travel abroad are not sustainable.

However in view of declaration of loan account as *fraud* and declaration of petitioner as a "*willful defaulter*" and filing of a police complaint, though *after* filing of the Writ Petition, subject to certain conditions, he can be permitted to travel abroad.

Accordingly the Writ Petition is allowed; subject to the petitioner depositing an FDR/TDR for ₹10 lakhs taken from a nationalized Bank and valid for one year with the Registrar General of this Court within 2 weeks, the LOC issued against the petitioner at the instance of respondent No.3 by respondent No.2 is set aside, and the petitioner is permitted to travel abroad for 2 months from the date of his departure from India; the stamp/endorsement "Cancelled" put on his passport is quashed; respondents No.1 & 2 shall expunge any remarks/endorsement/ entry that might have been made in the record/passport of the petitioner with respect to the aforesaid LOC; respondent No.3 shall communicate this order to respondent No.2; and officials/employees of respondent Nos.1&2 are restrained from preventing the petitioner from travelling abroad. In the event of petitioner returning to India and producing his passport before the Registrar (General) within the time of 2 months as aforesaid, the FDR/TDR deposited by him shall be returned otherwise it shall be forfeited.

Pending application(s), if any, shall also stands disposed of.

(M.S. RAMACHANDRA RAO)
JUDGE

December 12, 2022
Ess Kay

(SUKHVINDER KAUR)
JUDGE

1. Whether speaking/reasoned? : Yes/No
2. Whether reportable? : Yes/No