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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 18.10.2022

+ **W.P.(CRL) 2057/2022 & CRL.M.A. 18713/2022**

MOHD KASHIF

..... Petitioner

Through: Ms. Sangita Bhayana, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Manish Mohan, CGSC with Ms. Nimisha Menon, GP and Mr. Prakhar Vashitsh, Advocate for Union of India/R-1.

Ms. Rupali Bandhopadhaya, ASC for State with Mr. Akshay Kumar and Mr. Abhijeete Kumar, Advocates.

Ms. Sonu Bhatnagar, Sr. Standing Counsel for R-2 with Ms. Anushri Narain and Ms. Venus Mehrotra, Advocates.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

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JUDGMENT

ANOOP KUMAR MENDIRATTA, J. (ORAL)

1. Writ petition has been preferred on behalf of the petitioner under Article 226 of The Constitution of India read with Section 482 Cr.P.C. for issuance of appropriate writ, order or direction for quashing the Look Out Circular issued against petitioner and permitting the petitioner to go abroad by setting aside the order dated 17.08.2022 passed by learned CMM, New Delhi.

2. Learned counsel for the petitioner submits that the petitioner became aware of the LOC issued against him after he had moved an application for permission to go abroad before learned CMM, which was rejected on 17.08.2022. It is urged that the LOC appears to have been wrongly opened since the investigation in the case of the petitioner is already over and he is no more required for the purpose of any investigation. It is also pointed out that the petitioner is required to return to Dubai, failing which he will lose his job and his NRI VISA is liable to be cancelled. A period of six months after his arrival in India on 29.04.2022 is stated to be expiring on 29.10.2022. The opening of the LOC is also challenged relying upon the observations in Writ Petition (Crl.) 1315/2008 '**Sumer Singh Salkan vs. Asstt. Director & Ors.**' decided on 11.08.2010 by Delhi High Court that the LOC could be issued only against an accused who is deliberately evading his arrest or is not appearing before the learned Trial Court despite NBWs issued against him in cognizable offences under IPC or other penal laws. It is further urged that the petitioner did not receive any reply from respondent no. 2 and from the Chief Commissioner of Customs to his application dated 22.08.2022 for closing of the LOC which were sent by speed post.

3. In the counter affidavit filed on behalf of respondent no. 2, Additional Commissioner of Customs, it is submitted that the case of smuggling of 7.790 kgs Gold through baggage was booked at IGI Airport by the Customs Department. During the investigation, it appeared that the petitioner had smuggled 6 kgs Gold in the past, aided and assisted by two pax namely Syed Salman and Shazeb. The petitioner did not join the investigation in spite of repeated summons issued against him on 12.07.2021, 20.07.2021, 28.07.2021 and 23.12.2021. Thereafter, let with no option, the Deputy

Commissioner (Immigration) was requested to open Look Out Circular (LOC) against the petitioner by the competent authority after due diligence and consideration. Accordingly, the Bureau of Immigration, vide letter dated 14.10.2021 informed that LOC against the petitioner has been opened. Further, on completion of investigation, a show-cause notice dated 16.02.2022 was issued to the petitioner to show-cause as to why:

“(i) Penalty should not be imposed upon him under Section 112(a), 112(b) and 114AA of the Customs Act, 1962 for such act of smuggling of seized Gold total weighing 7790 grams valued at Rs.3,35,86,195/- recovered from Syed Salman and Shazeb respectively on 20.02.2021 for his various acts of omission and commission.

(ii) Penalty should not be imposed upon him under Section 112(a), 112(b), Section 114A and 114AA of the Customs Act, 1962 for such act of smuggling of Gold total weighing 5100 grams valued at Rs.2,27,98,326/- smuggled by Syed Salman and Shazeb on 04.01.2021 and 04.02.2021 and for his various acts of omission and commission.

(iii) Custom Duty@41.25% equivalent to Rs.55,05,427/- on gold total weighing 3000 grams valued at Rs. 1,33,46,490/- i.e. collectively, 3000 grams (by Mohd. Irfan along with the Petitioner) valued at Rs.1,34,75,400/- on 12.01.2021 and collectively, 3000 grams (by Mohd. Irfan along with the Petitioner) valued at Rs.1,32,17,580/- on 12.02.2021 respectively as admitted to have been smuggled and cleared without payment of Customs duty during previous visits by Mohd. Irfan along with the Petitioner should not be demanded & recovered from him being the beneficiary of the sale proceeds of already smuggled goods under Section 28(4) of Customs Act, 1962 along with applicable interest under Section 28AA of the Act ibid.

(iv) Penalty should not be imposed upon him under Section 112(a), 112(b), 114A and 114AA of the Customs Act, 1962 for such act of smuggling of gold total weighing 6000 grams valued at Rs.2,66,92,980/smuggled by Mohd. Irfan and the Petitioner on 12.01.2021 and 12.01.2021 and for his various acts of omission and commission.”

However, it is further submitted that the LOC issued against the

petitioner has been reviewed by the competent authority and recommended for withdrawal to the issuing authority i.e. Deputy Director (Bureau of Immigration) vide letter dated 30.09.2022.

4. I have given considered thought to the contentions raised.

An LOC is a coercive measure to ensure that a person surrenders and interferes with petitioner's right of personal liberty and free movement. LOC is to be issued in cases where the accused is deliberately evading summons/arrest or where accused fails to appear in Court despite issuance of Non-Bailable Warrants.

Learned counsel for the petitioner clarifies that no FIR stands registered against the petitioner except for the adjudication proceedings which have been initiated by the Custom Department. The investigation of the proceedings is stated to have been completed. As such the presence of the petitioner is not required except for adjudication proceedings. Learned counsel for the petitioner points out that the proceedings are merely pending for passing of orders before the competent customs authority and the petitioner already stands represented through counsel.

The prayer for quashing of LOC is fairly not opposed by learned counsel for respondent no.2, since the recommendation has already been made by respondent no.2 to the concerned authority i.e. Deputy Director (Bureau of Immigration). In the facts and circumstances, the LOC issued against the petitioner is hereby quashed and the order dated 17.08.2022 passed by learned CMM is set aside. Petitioner is further permitted to leave abroad (Dubai) for a period of three months from date of departure, which may be further extended by learned CMM, subject to furnishing of personal bond in the sum of Rs. 5,00,000/- (Rupees Five Lakhs Only) with one surety

in the like amount to the satisfaction of the learned CMM and subject to the following conditions:

- i. The petitioner shall authorize the counsel to receive notices on his behalf in the proceedings before the Customs Department or any further investigation initiated in this regard;
- ii. The petitioner shall also join the investigation or any other proceedings, as and when directed; and
- iii. The petitioner shall also indicate his tentative itinerary to the learned CMM.

Writ Petition is accordingly disposed of without any expression of opinion on merits on pending investigation. Pending application(s) also stand disposed of.

A copy of this order be provided to learned counsel for the petitioner under the signatures of the Court Master and be also forwarded to respondents for information and immediate compliance.

ANOOP KUMAR MENDIRATTA, J

OCTOBER 18, 2022/akc