

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 29 OF 2023

Mr. Rajnish Kumar
Son of Ravindra Prasad,
Aged about 32 years, unmarried,
businessperson, Resident of
Gram-Poari, Taluka – Harnaut,
District – Nalanda, Bihar. ... Petitioner

Versus

Deputy Director,
Directorate of Enforcement
Panaji Zonal Office
Office at : 1st and 2nd Floor, LIC Building,
Patto Plaza, Panaji Goa – 403 001. ...Respondent

Mr. D. Lawande and Mr. Ashish Kuncolienar, Advocates for the
Petitioner.
Mr. Purushottam Karpe, Special Public Prosecutor for the
Respondent.

**CORAM: M. S. SONAK &
VALMIKI SA MENEZES, JJ**

**Reserved on : 27th MARCH 2023
Pronounced on : 29th MARCH 2023**

JUDGMENT (Per M. S. Sonak, J)

1. Heard Mr D. Lawande with Mr Ashish Kuncolienar for the
Petitioner and Mr P. Karpe learned Special Public Prosecutor for the
Respondent.

2. Rule. The rule is made returnable immediately with the consent and at the request of the learned counsel for the parties.

3. The Petitioner questions the Look Out Circular issued in Enforcement Case Information Report No. ECIR/PJZO/03/2022 dated 28.01.2022. When instituting this petition, the Petitioner was unaware whether such a Look Out Circular (L.O.C.) was indeed issued. However, since there were strong apprehensions, this petition was instituted.

4. In the reply filed on behalf of the Respondent, it is now admitted that L.O.C. is indeed issued concerning the Petitioner on 04.02.2022 in Enforcement Case Information Report (E.C.I.R.) referred to above. Mr Karpe, however, submitted that the L.O.C. is in accord with the guidelines issued by the Ministry of Home Affairs, and therefore, no ground is made to interfere with the same.

5. The material placed on record, in this case, shows that an F.I.R. No.10/2022 was registered by the Porvorim Police Station, Goa, on 22.01.2022 alleging therein that the Petitioner and two others are involved in offences punishable under Sections 420, 408, 120-B read with Section 34 of the Indian Penal Code, Sections 3 and 4 of the Goa, Daman and Diu Public Gambling Act, 1976 and Section 66-D of the Information Technology Act, 2000. Regarding this F.I.R., the

Petitioner and two others were arrested, and the investigation was handed over to the Crime Branch, Ribandar.

6. On 28.01.2022, based upon the above F.I.R. No.10/2022, the Directorate of Enforcement registered the above E.C.I.R. against the Petitioner and two others referred to in F.I.R. No.10/2022. Mr Lawande, learned counsel for the Petitioner, pointed out that from the perusal of F.I.R. and E.C.I.R., it is evident that only Sections 420 and 120-B of I.P.C. are scheduled offences under the Prevention of Money Laundering Act, 2002 (P.M.L.A.). The remaining crimes referred to in the F.I.R. and E.C.I.R. are not scheduled offences under the P.M.L.A.

7. On 02.02.2022, the J.M.F.C. at Mapusa enlarged the Petitioner on bail subject to certain conditions like not leaving the State of Goa without prior permission of the J.M.F.C. and reporting to the Crime Branch Police Station for 20 days from the date of the Petitioner enlargement on bail. There is no allegation about the Petitioner breaching any of the terms and conditions subject to which he was enlarged on bail.

8. On 03.02.2022 and 04.02.2022, the Respondent recorded the Petitioner's statement under Section 50(2) of the P.M.L.A. To our pointed query as to whether there was any instance of the Petitioner not cooperating with the Respondent in the investigations in the E.C.I.R., Mr Karpe learned Special Public Prosecutor responded by

stating that there were no such instances. Mr Karpe, however, submitted that if the Petitioner is permitted to travel abroad, then the Respondent is apprehensive that the Petitioner would make himself scarce and not be available to face prosecution if and when launched by the Respondent. However, Mr Karpe could not point out any material upon which such apprehension was based.

9. The record shows that on 06.04.2022, the Respondent even searched the Petitioner's premises. But, again, there was no allegation about the Petitioner not cooperating with the Respondent during such a search. Moreover, the affidavit filed on behalf of the Respondent also does not allege any non-cooperation on the Petitioner's part.

10. On 27.06.2022, the Petitioner applied to modify the bail conditions regarding restraint on travel outside the State of Goa. The Additional Sessions Judge, vide order dated 12.07.2022, allowed this application after hearing the learned Public Prosecutor. The Petitioner was granted permission to leave the State of Goa with a direction to appear before the Investigating Officer whenever required and before the trial Court if any charge sheets were to be filed. The I.O. was directed to issue notice to the Petitioner if required for investigations, at least five days in advance.

11. The E.C.I.R., in this case, was substantially based upon F.I.R. No.10/2022. After investigating the E.C.I.R., the present Respondent

deemed it appropriate to file its prosecution complaint under Section 45 of the P.M.L.A. against Ankur Khanna and Hardeep Singh for the commission of the offence of money laundering as defined under Section 3 of the P.M.L.A. Significantly, no prosecution complaint was filed either against the Petitioner or the other two accused persons in F.I.R. No.10/2022. Accordingly, on 17.06.2022, the learned Special Court took cognizance of the offence under Section 3 of the P.M.L.A. against Ankur Khanna and Hardeep Singh.

12. Similarly, the I.O. of the Crime Branch, Ribandar, filed charge sheet No.104/2022 on 23.12.2022 before the J.M.F.C. In this charge sheet, the only allegation is that the Petitioner is involved in the offences under Sections 3 and 4 of the Goa, Daman and Diu Public Gambling Act, 1976. This charge sheet does not allege the commission of crimes under Sections 420 and 120-B of I.P.C., scheduled offences under the P.M.L.A. The charge sheet also does not refer to the offence under Section 408 of I.P.C. or Section 66-D of the Information Technology Act, 2000. The charge sheet shows that the charges under Sections 420, 120-B, 408 of I.P.C. and Section 66-D of the Information Technology Act, 2000 were not pressed against either the Petitioner or two other accused persons in the F.I.R.

13. On 09.02.2023, the J.M.F.C. took cognizance of the offence under Sections 3 and 4 of the Goa, Daman and Diu Public Gambling Act, 1976, against the Petitioner and the two others. At this stage also,

the Petitioner entered his appearance before the J.M.F.C. on 18.03.2023, the date the Petitioner was required to attend the J.M.F.C's Court after the charge sheet was registered as A.O.A. No.572/2022/F.

14. On 06.03.2023, the Petitioner called upon the Respondent to inform him whether any L.O.C. was indeed issued and, if so, to withdraw the said L.O.C. now that it was evident that no criminal prosecution into a scheduled offence was pending against the Petitioner. However, there was no response from the Respondent. Mr Lawande submitted that since the L.O.C. was issued concerning the two other accused persons in F.I.R. and E.C.I.R. referred to above, the Petitioner genuinely apprehended that such L.O.C. was issued concerning the Petitioner.

15. In the reply filed on behalf of the Respondent, it is now admitted that such L.O.C. was indeed issued on 04.02.2022 concerning the above E.C.I.R. against the Petitioner. However, the reply is silent about the authority which has issued such L.O.C., the contents of such L.O.C., and most importantly, the material based upon which such L.O.C. has been issued. Further and more significantly, the affidavit in reply does not allege any non-cooperation on behalf of the Petitioner. As noted earlier, even to the Court's pointed query as to whether there were any instances of non-

cooperation by the Petitioner, the response was that there were no such instances.

16. As noted above, the Petitioner is admittedly not an accused in the prosecution complaint under Section 45 of the P.M.L.A. This prosecution complaint is filed only against Ankur Khanna and Hardeep Singh. Similarly, even the other two accused persons in the F.I.R. and E.C.I.R. are not charged with any offences under the P.M.L.A.

17. In the charge sheet filed by the Crime Branch after investigating the F.I.R. No.10/2022, the scheduled offences under the P.M.L.A. were dropped. Therefore, at this stage, we are not even required to go into Mr Lawande's contention about "*Poker*" being a game of skill and not a game of chance. At one stage, Mr Lawande made this statement because Mr Karpe submitted that the Petitioner was involved in playing the game of Poker. Therefore, there was suspicion about his involvement in the offence under the P.M.L.A. However, in the affidavit in reply or documents annexed to such affidavit, no material is produced based upon which the impugned L.O.C. came to be issued against the Petitioner. Mr Karpe no doubt expressed apprehension about the Petitioner fleeing from justice or not cooperating with the investigating agencies. However, Mr Karpe could not point out any material supporting such apprehension.

18. Mr Karpe did submit that the Petitioner might attempt to destroy or manipulate the digital trail, particularly if he travels abroad. In the affidavit in reply, it is admitted that the investigating agencies seized the Petitioner's mobile phone, laptop, and all other electrical devices. There is no dispute that all such digital devices are with the Respondent presently. Therefore, the apprehension now expressed is based upon no credible material.

19. Mr Karpe also urged that the Respondents are continuing with the investigation and that information obtained is already shared with the Crime Branch (predicate agency) having regard to Section 66(2) of the P.M.L.A. Mr Karpe submitted that based on this shared information, there is a high possibility that the predicate agency may file a supplementary charge sheet invoking scheduled offence against the Petitioner. Again, given the facts discussed above, we are afraid that, in the absence of any supplementary charge sheet and based upon such possibilities, the L.O.C. cannot continue to operate.

20. The Ministry of Home Affairs relying upon certain decisions of the Delhi High Court in *Sumer Singh Salkan Vs Assistant Director and others in W.P. (Crl.) No.1315/2008, decided on 11.08.2010*, has issued an Office Memorandum dated 27.10.2010 in the context of the issue of L.O.C.s. This O.M. provides that recourse to L.O.C. should be taken in cognizable offences under I.P.C. or other penal laws. The details regarding the reason for the opening of L.O.C.

invariably be provided in the prescribed format, without which the subject of L.O.C. should not be arrested/detained. In cases where there is no cognizable offence under the I.P.C. or other penal laws, the L.O.C. 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.

21. The reply on behalf of the Respondent refers to L.O.C. being issued consistent with the M.H.A. guidelines. However, the response does not elaborate upon whether the safeguards provided in the O.M. have indeed been complied with. This was necessary because no prosecution complaint was filed against the Petitioner under Section 45 of the P.M.L.A. Further, scheduled offences have not been invoked in the charge sheet filed by the Crime Branch against the Petitioner. The charge sheet is only for offences punishable under Sections 3 and 4 of the Goa, Daman and Diu Public Gambling Act, 1976. Mr Lawande pointed out that the maximum penalty for a first-time offender under this Section is three months of imprisonment.

22. Mr Karpe relied upon *S. Martin Vs The Deputy Commissioner of Police and others in W.P. No. 32317 of 2012 decided by Madras High Court on 21.02.2014, Dr. Bavaguthuraghuram Shetty Vs Bureau of Immigration, Ministry of Home Affairs and others in W.A. No.315/2021 decided by the Division Bench of Karnataka High Court on 12.05.2021 and*

Sudarshan Ramesh Vs Union of India in W.P. No.1730/2022 on 20.06.2022 by the learned Single Judge of Karnataka High Court to submit that in similar circumstances the L.O.C. was not interfered with.

23. The Delhi High Court has considered *S. Martin (supra)* in *Rana Ayyub Vs Union of India and others in W.P. (Crl.) No. 714/2022*. The Delhi High Court observed that the allegations in *S. Martin (supra)* were that the Petitioner was non-cooperative and stalling the investigation. Based on such non-cooperation by the Petitioner, apprehensions were entertained about his attempting to flee from justice and evade the legal process.

24. As noted above, in the present case, there is no material to sustain any such apprehensions. Therefore, the decision in *S. Martin (supra)* will not apply. Instead, the principles in *Rana Ayyub (supra)* will apply where the Delhi High Court found that the Petitioner had appeared on each and every date the investigating agency had summoned the Petitioner. Therefore, the Delhi High Court ruled there was no basis for apprehension.

25. *Dr. Bavaguthuraghuram Shetty (supra)* was a case where the Petitioner was involved in the offence of defrauding public sector banks to the extent of ₹2800 crores. There was ample material on record to sustain apprehension based upon which the L.O.C. was

issued. Based on inputs received, the Respondent in the said case that the Petitioner's departure would be detrimental to the bilateral relations with a foreign country or to the strategic and/or economic interests of India on the issue of L.O.C. The Court had before it a forensic audit report based on which there were apprehensions about the Petitioner's liability to public sector banks exceeding ₹50000 crores. There was material about the diversion of funds, misrepresentation of facts, and defrauding of various banks.

26. All such facts are not even comparable to the facts and circumstances of the present case, where there is no allegation of any scheduled offence against the Petitioner. Even the Crime Branch, after the investigation, chose to file a charge sheet invoking only Sections 3 and 4 of the Goa, Daman and Diu Public Gambling Act, 1976, against the Petitioner. Therefore, the decision in *Dr Bavaguthuraghuram Shetty* (supra) can be of no assistance to the Respondent.

27. *Sudarshan Ramesh* (supra) only quotes and relies upon *Dr Bavaguthuraghuram Shetty* (supra). Again, the allegations against the Petitioner and his brother concerned hacking of crypto exchanges and poker websites in India and abroad. There were also allegations of hacking of the e-procurement portal of the Government of Karnataka and theft of ₹11.55 Crores from the Government portal bank account. There were inputs received by the Respondent that the

departure of the Petitioner is detrimental to India's sovereignty, security, or integrity. Considering all this and relying upon *Dr Bavaguthuraghuram Shetty* (supra), no relief was granted by the learned Single Judge of the Karnataka High Court. No such facts and circumstances were obtained in the present case. Therefore, the decision in *Sudarshan Ramesh* (supra) can be of no assistance to the Respondent.

28. For all the above reasons, including but not restricted to the circumstance that no prosecution complaint is filed against the Petitioner and even the charge sheet which is filed in F.I.R. No.10/2022 is only limited to the offence under Sections 3 and 4 of the Goa, Daman and Diu Public Gambling Act, 1976 and not to any of the scheduled crime under the P.M.L.A., the impugned L.O.C. will have to be quashed. Moreover, in this case, there is no allegation of any non-cooperation by the Petitioner. The Petitioner is enlarged on bail. The Court considered and modified the bail conditions for traveling outside the State after hearing the learned Public Prosecutor. Any material does not support the apprehension expressed on behalf of the Respondent. Even the affidavit in reply is quite vague, and details necessary to support such apprehension are not even stated in this affidavit.

29. For all these reasons, a case is made out to quash the impugned L.O.C. Mr Karpe then submitted that liberty may be granted to the

Respondent to reissue the L.O.C. if further investigations rendered it necessary. If further investigations render it essential to exercise the powers of issuing L.O.C., the Respondent would not be barred. However, the L.O.C. cannot continue based on the material or lack of material.

30. Mr Karpe also submitted that some conditions may be imposed upon the Petitioner. This request is reasonable. Accordingly, though we are quashing the impugned L.O.C., we direct the Petitioner to intimate his travel itinerary as and when he proposes to travel abroad to the concerned Respondent at least a week in advance. The Petitioner will also inform the concerned Respondent of full details of the names and addresses of the persons he will be visiting. The Petitioner will also file an undertaking with the concerned Respondent that he will return by the specified date and, upon his return, will appear before the investigating agencies and mark his presence.

31. The impugned L.O.C. dated 04.02.2022 is quashed. The Petitioner will, however have to abide by the above conditions.

32. The rule is made absolute in the above terms. There shall, however, be no order for costs.

VALMIKI SA MENEZES, J

M. S. SONAK, J