IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.2841 of 2022

Praful S/o Shridhar Vaidya,
Aged about 57 years,
Occupation – Business,
Having office at 23, Pushpkunj Complexes,
Central Bazar Road,
Ramdaspeth, Nagpur-440 010. ... **Petitioner**

Versus

1. **Union of India,**
   through Deputy Director,
   Bureau of Immigration,
   East Block VIII,
   R.K. Puram,
   New Delhi-110 066.

2. **Bank of Baroda,**
   through Chief Manager,
   a Banking Company,
   having its office at Regional
   Stressed Asset Recovery Branch,
   Mytri Willows,
   2nd Floor, Opp. Empress Mall,
   Sir Bezonjee Mehta Road,
   Nagpur-440 018. ... **Respondents**

Shri Sunil Manohar, Senior Advocate, assisted by Shri Atul Pande, Counsel for Petitioner.

Shri V.A. Bramhe, Counsel for Respondent No.1.

Shri S.N. Fuladi, Counsel for Respondent No.2.

CORAM : A.S. CHANDURKAR & MRS. VRUSHALI V. JOSHI, JJ.
Date when arguments were heard : 6th July, 2023.
Date when the judgment was pronounced : 25th July, 2023.

JUDGMENT (PER A.S. CHANDURKAR, J.) :

1. Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

2. In this writ petition preferred under Article 226 of the Constitution of India, the petitioner raises a challenge to the intimation for issuance of a look-out circular at the instance of the Bank of Baroda-respondent No.2, which seeks to restrain the petitioner from travelling abroad.

3. It is the case of the petitioner who is engaged in the business of trading of steel and allied products that he has availed credit facilities from the Bank with regard to establishments in which he has interest. The accounts of the said establishments have been categorized as non-performing assets and the petitioner has been declared to be a wilful defaulter on 1-10-2019. The Bank has initiated the proceedings before the Debts Recovery Tribunal, Nagpur for recovery of its dues. A recovery certificate has been issued in the said proceedings and further proceedings in that regard are still pending. In the meanwhile, on 13-2-2019, the Bank lodged a report against the petitioner, based on which an offence under Sections 199, 200, 406, 417, 418, 420 and 120-B of the Indian Penal Code came to be registered. On that basis, a request was made by the Bank on 11-8-2021 for issuance of a look-out circular against the petitioner. Accepting such a request, the said circular has been issued by the Bureau of Immigration- respondent No.1. It is in the aforesaid backdrop that the petitioner has approached this Court challenging the said action.

4. Shri Sunil Manohar, learned Senior Advocate for the petitioner, invited attention to the reasons furnished by the Bank for opening of the look out circular. As per the said reasons, it was stated that the petitioner was a guarantor to the credit facilities advanced by the Bank. The account in question having been treated as a non-performing asset on 15-5-2014, the balance outstanding was Rs.11.03 crores. It was further stated that though the petitioner was declared as a wilful defaulter, the publication of his name and photograph had been stayed by this Court vide order dated 18-10-2019. According to the Bank, the petitioner was frequently travelling out of the country for meeting his relatives and hence it was anticipated that he may not come back to India to avoid payment of the Bank's dues. Referring to the guidelines dated 20-2-2021 as well as the Circulars dated 13-6-2019 and 18-10-2021, it was submitted that the requirements therein had not been satisfied so as to warrant issuance of the look-out circular. As per this Circular dated 13-6-2019 with regard to an account where the borrower is declared as a wilful defaulter, the balance outstanding ought to be Rs.50 crores and above. It was submitted that on the Bank's own showing, the outstanding amount was less than

Rs.50 crores. As regards registration of offence against the petitioner, it was submitted that the Investigation Officer on 7-7-2021 had made a request in the form of 'B' Summary. The learned Judicial Magistrate, First Class on the same day accepted the said request and proceeded to grant 'B' Summary. Hence, it was clear that there was no criminal proceeding pending against the petitioner. Despite the fact that the requirements of the Circulars and the guidelines framed by the Bank were not satisfied, the look-out circular came to be issued. In fact there was no material whatsoever for accepting such request. By issuing the look-out circular, the Bank was seeking to recover its dues and the same was not permissible. Reliance was placed on the decision of this Court in *Om Prakash Bhatt* Versus *State of Maharashtra, through its Director, CBI Headquarters and others* **[(2021) 2 AIR Bom R (Cri) 638]** and the judgment of the Calcutta High Court in WPA 22748 of 2022 (*Mannoj Kumar Jain and another* Versus *Union of India and others*) decided on 9-6-2023 to submit that the look-out circular could not be issued in a casual manner without there being any supporting material. Pursuant to the interim order dated 24-6-2022, the petitioner had travelled to Cambridge, United Kingdom from 18-7-2022 to 1-8-2022 and had thereafter returned back. Hence merely on the apprehensions expressed by the Bank, the petitioner could not be prevented from travelling abroad. The intimation for issuance of the look-out circular therefore did not deserve to be accepted. It was thus submitted that the said action of the respondents was liable to be set aside.

5. Shri S.N. Fuladi, learned counsel for the Bank, submitted that the Bank was justified in seeking issuance of the look-out circular. The balance outstanding that was to be recovered from the petitioner on 15-5-2014 was about Rs.11.03 crores. With the passage of time, that amount had increased and it would be now more than Rs.50 crores. The proceedings for recovery of Rs.13,52,84,815.94 had been initiated by the Bank before the Debts Recovery Tribunal and the said proceedings were pending. It was thus clear that the recovery of substantial amount was required to be made from the petitioner. Further a First Information Report came to be registered against the petitioner on 13-2-2019. Though the learned Judicial Magistrate, First Class had issued 'B' Summary, that order had been challenged by the Bank by preferring a revision application. It therefore could not be said that there was no criminal proceeding pending against the petitioner. Various cases under the Prevention of Money Laundering Act, 2002 were also pending against the petitioner. Relying upon the judgment of the Delhi High Court in *Ghanshyam Pandey* Versus *Union of India and another* **[(2023) 237 Com Cas 317]**, it was submitted that the issuance of the letter of credit was in accordance with law and there was no reason to interfere in writ jurisdiction.

Shri V.A. Bramhe, learned counsel for the respondent No.1, submitted that the look-out circular had been issued pursuant to the request made by the Bank. It was for the Bank to justify its request for issuance of such look-out circular.

6. Having heard the learned counsel for the parties and having perused the documents on record, we are of the view that the reasons furnished by the Bank for opening of the look-out circular in its request dated 11-8-2021 are insufficient and the same do not warrant issuance of the look-out circular. From the affidavit filed by the Bank, it can be seen that with regard to M/s. Bhupati Steel Trading of which he is the proprietor, the amount due is Rs.2,39,90,122.50. As regards the account of M/s. Sridhar Casting of which the petitioner is a guarantor, the amount due is Rs.13,52,84,815.94 and recovery certificate for that amount has been issued on 24-10-2018. With regard to another account of M/s. Vidarbha Infotec Pvt. Ltd., insolvency proceedings are pending. It is also a fact that the petitioner has been declared to be wilful defaulter on 1-10-2019. Coupled with the aforesaid, according to the Bank, since the petitioner was frequently travelling out of the country, it was anticipated that he may not return back so as to avoid repayment to the Bank. When the aforesaid recommendation is perused, it becomes clear that these reasons are insufficient to seek issuance of the look-out circular. As per the Circular dated 16-3-2019 issued by the Indian Banks Association, various broad parameters for making such request have been laid down. The request for issuance of the look-out circular can be based on an apprehension that the person in question is likely to flee from India based on any reliable information which could include a criminal case registered with the police, the amount due and payable by such person or fraud being reported in any of the transactions with the Bank, the person or entity is declared as a wilful defaulter and the combined loan outstanding is Rs.50 crores and above. When the recommendation made by the Bank is perused, it can be seen that the outstanding amount referred to therein is not indicated to be Rs.50 crores and above. The affidavit of the Bank as filed also does not indicate aforesaid amount due to exceed Rs.50 crores. There is only an anticipation expressed that the petitioner may not return back to India to avoid repayment. The recommendation does not refer to any reliable information received by the Bank which is the requirement stipulated in the Circular dated 16-3-2019. These are the only statements made in the said recommendation.

7. The Circular dated 16-3-2019 requires a request for issuance of the look-out circular to be made carefully and judiciously. Such request is required to be based on the objective parameters supported by evidence. The recommendation placed on record does not indicate satisfaction of these primary aspects. The First Information Report bearing No.128 of 2019 was registered on 13-2-2019 but on 7-7-2021, the learned Judicial Magistrate, First Class was pleased to accept ‘B’ Summary therein. Though the said order has been challenged by the Bank, the fact remains that as of today, the order accepting ‘B’ Summary continues to operate. It is pertinent to note that the aforesaid 'B' Summary was accepted on 7-7-2021 while the request for issuance of the look-out circular was made by the Bank on 11-8-2021. Thus on the date when such recommendation was made, the 'B' Summary was already issued in the matter. Besides the aforesaid, there is no other material that was placed before the Bureau of Immigration to warrant issuance of the look-out circular.

8. The Circulars dated 5-12-2017 and 12-10-2018 permit issuance of the look-out circular if such travel of the person is shown to be detrimental to the economic interest of India. The Division Bench of this Court in *Om Prakash Bhatt* (supra) as well as the Calcutta High Court in *Mannoj Kumar Jain and another* (supra) have considered these Circulars and have cautioned against the unregulated abuse of power by the Banks in the absence of any such material for issuance of the look-out circular. These decisions support the case of the petitioner. As held, in *Ghanshyam Pandey* (supra), the question whether issuance of a look-out circular is justified or not has to be determined on the facts and circumstances of each case.

9. We may note that by the interim order dated 24-6-2022, the petitioner was permitted to travel abroad for a specified period. Undisputedly, the petitioner has complied with the said interim order and has returned back. It is not the grievance of the respondents that the said interim order has been breached by the petitioner in any manner whatsoever. We may also observe that even without making a request for issuance of the look-out circular, the Bank can always request the judicial forum where any proceeding for recovery is pending against the petitioner to impose appropriate conditions on the petitioner to ensure that he returns back after such travel outside India. The Court/Tribunal can always consider imposing appropriate conditions if found necessary in the facts of the case while granting such permission.

10. Hence for the aforesaid reasons, we find that the grounds furnished by the Bank for recommending issuance of the look-out circular against the petitioner vide its communication dated 11-8-2021 are not the reasons indicated in the Circulars dated 27-10-2010, 5-12-2017, 12-10-2018, 13-6-2019 and 18-10-2021 on the basis of which a look-out circular can be issued. The said recommendation was thus not liable to be accepted. Thus the look-out circular issued by the respondent No.1 at the behest of the respondent No.2 on the basis of the communication dated 11-8-2021 is rendered inoperative. It is clarified that this judgment would not preclude the Bank from seeking issuance of a look-out circular by complying with the requirement of prevailing Circulars in accordance with law.

11. Rule is made absolute in the aforesaid terms with no order as to costs.

(MRS. VRUSHALI V. JOSHI, J.) **(A.S. CHANDURKAR, J.)**

LANJEWAR