IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.4.2023.

Delivered on : 05.6.2023

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Writ Petition No.26460 of 2022

C.Sivasankaran ... Petitioner

vs.

1 Foreigner Regional Registration Officer (FRRO),
Bureau of Immigration,
Ministry of Home Affairs,
Government of India,
No.26, Haddows Road,
Chennai 600 006.

2 The Secretary,
Ministry of Home Affairs,
Government of India,
South Block,
New Delhi 110 001.

3 The Deputy Superintendent of Police
Central Bureau of Investigation (CBI)
Bank securities and Frauds Branch
No.36 Bellary Road Ganga Nagar
Bangalore 32

4 The Deputy superintendent of Police
Central Bureau of Investigation (CBI)
Plot No. 5-B CGO Complex Lodhi Road
New Delhi 110 003

5 The Central Vigilance Commissioner
Satarkata Bhavan
A Block GPO Complex INA
New Delhi 110 023

6 The Assistant Foreigners Regional
Registration officer
Bureau of Immigration
Anna International Airport
Meenambakkam Airport
Chennai 600 027

7 The Director
Directorate of Enforcement
6th floor Lok Nayak Bhavan
Khan Market New Delhi 110 003

8 The Joint Director
Directorate of Enforcement
Ministry of Finance
Department of Revenue
2nd and 3rd Floor C Block
Murugesa Naicker Complex
84 Greams Road Thousand Lights
Chennai 600 006

9 Serious Fraud Investigation Office
Assistant Director and Investigation Officer
7th Floor Fountain Telecom Building
MG Road Mumbai Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the respondents to permit the petitioner to travel abroad to Seychelles on condition to return to India on 31st October 2022.

For Petitioner : Mr.P.S.Raman, Senior Counsel for Mr.Vijayan Subramanian

For R2 : Mr.AR.L.Sundaresan, Additional Solicitor General

For R3 & R4 : Mr.K.Srinivasan, Spl.P.P. assisted by Ms.G.Virunda

For R1, R6 & R9 : Mr.K.Srinivasamurthy SPC

For R5 : Mr.R.Rajesh Vivekananthan Deputy Solicitor General

For R7 & R8 : Mr.Cibi Vishnu, Spl.P.P.

ORDER

The present petition has been filed by a Seychelles National, who has been encircled by various investigating authorities in respect of serious economic offences involving huge public money and prevented from travelling abroad by way of a Look Out Circular, seeking for a direction to the respondents/authorities to permit him to travel to Seychelles on condition to return to India on 31st October 2022.

2. Brief facts behind filing of the present petition are as under:-

i) Suspecting fraud and money laundering, the Chief Vigilance Commission, vide its Office Memorandum dated 27.10.2017 requested the CBI to investigate into the sanction of loan to one M/s.Win Wind Oy, Finland by the Senior Management Officials of IDBI.

ii) The cat was out of the bag. The investigation by the CBI revealed that a huge sum of Rs.322.40 Crores was sanctioned as loan to the said Company by IDBI vide Letter No.IDBI/DIFC/WIN/2010-11/101 dated 4.11.2010 without following the guidelines and once again, surprisingly, ignoring the fact that the said loan was declared as Non Performing Asset (NPA) to the extent of Rs.393 Crores, a further loan to the tune of Rs.530 Crores was disbursed to one M/s.Axcel Sunshine Limited, another entity of the same group of companies during the year 2014 and adjusted the NPA and other overdue accounts of the group of companies and thereby caused a wrongful loss of more than Rs.600 crores to IDBI.

iii) The investigation further revealed involvement of various persons, Companies, unknown public servants and unknown private persons in the offence and thereby, the complaint was registered in FIR No.9/2018 for the offences punishable under Sections 120-B read with Sections 409 and 420 IPC and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988.

iv) In such a backdrop, when the petitioner landed at the Chennai International Airport on 6.8.2018, he was intercepted based on a Look Out Circular (LOC) issued by the first respondent.

Subsequently, on his representation, the LOC was withdrawn and the petitioner had travelled abroad.

v) Subsequently, the investigation of the original case in FIR No.9 of 2018 gave lead to --

a) the 7th respondent to register a case in ECIR/CEZO-I/10/2018(RK) dated 1.5.2018;

b) the 9th respondent to file a complaint for offences punishable under Section 439(2) read with Section 436(1)(a)(d) and (2) read with Section 212(15) of the Companies Act 2013 read with Section 621(1) of the Companies Act, 1956 read with Section 193 of Cr.P.C.

vi) Whileso, when the petitioner intended to travel to Italy on 27.1.2019, he was prevented by the Airport Authorities at the Chennai International Airport on the basis of another LOC.

vii) Claiming that the second LOC was illegal, the petitioner had, earlier, filed a writ petition in W.P.No.19743 of 2019 seeking a declaration that the LOC issued by the third and seventh respondent is invalid and without jurisdiction and consequently to recall the LOC.

viii) The said writ petition came to be dismissed on 6.11.2019. Further, a Division Bench of this court, finding that the jurisdiction exercised by the Single Judge would be a writ in Criminal Jurisdiction, had dismissed the appeal filed by the petitioner in W.A.No.SR 49793/2020 on 29.9.2020 as not maintainable.

ix) However, without challenging the order in W.P.No.19743 of 2019, the petitioner filed W.P.(Crl) No.302 of 2019 before the Apex Court under Article 32 of the Constitution of India asserting that he, being an Ambassador-at-large of Seychelles, enjoys diplomatic immunity and therefore, cannot be proceeded with before the Courts in India much less by way of criminal action. The Three Judges Bench of the Apex Court, finding that the very same argument was canvassed by the petitioner in the Writ Petition filed before the High Court, had dismissed the Writ Petition upholding the decision of this court.

x) Whileso, the Enforcement Directorate had preferred a complaint in consonance with the proviso of Section 45 read with Section 44 of the Prevention of Money Laundering Act, 200 on 11.1.2021 for the offences under Section 3 read with Section 7 of Prevention of Money Laundering (PML) Act punishable under Section 4 of PML Act 2002, wherein the petitioner has been arrayed as A1 and the case has been taken on file in Spl.C.C.No.2 of 2021 before the IX Additional Special Judge for CBI Cases, City Civil Court, Chennai.

xi) In such a background, the present petition has been filed by the petitioner seeking a direction to the respondent to permit him to travel abroad for a short period assuring that he would return to India completing some of his tasks.

3. Heard Mr.P.S.Raman, learned Senior Counsel appearing for the petitioner, Mr.AR.L.Sundaresan, Additional Solicitor General for the second respondent, Mr.K.Srinivasan, learned Special Public Prosecutor appearing for respondents 3 and 4, Mr.K.Srinivasamurthy, learned Senior Panel Counsel appearing for respondents 1, 6 and 9, Mr.R.Rajesh Vivekananthan, learned Deputy Solicitor General for the fifth respondent and Mr.Cibi Vishnu, learned Special Public Prosecutor appearing for respondents 7 and 8 at length and perused the materials available on record including the counter affidavits filed by the respondents.

4. From the submissions of the learned counsels appearing for either side and the materials available on record, this court infers the following.

5. The petitioner claims to be an Ambassador at large of the Republic of Seychelles and is a holder of diplomatic passport issued by the Republic of Seychelles. Despite that it appears that he is an entrepreneur. An LOC issued for the second time is hindering him to

proceed to abroad. Earlier, he had challenged the same and failed upto the Apex Body. Now, notwithstanding the orders passed in the earlier proceedings, the petitioner seeks for a direction to the respondents to permit him to travel abroad.

6. The contentions raised by the petitioner in support of his claim are as under:-

i) He seeks only for a permission to go abroad for a short period to wind up his Ambassadorship duties, to start his consultancy business on Food and Beverages and also to visit Paris, France to attend a trade fair/exhibition.

ii) He had been co-operating with the investigating agencies and he would come back and continue to extend his co-operation and he shall not flee away from investigation.

iii) He is not an absconding or proclaimed offender. He has strong roots in India and his family members are Indian citizens and are residing in Chennai .

iv) He cannot be deprived of his personal liberty and his right to go abroad guaranteed under the Constitution.

7. Vehement opposition has been made by the learned Additional Solicitor General and other Pleaders appearing for the

respondent-authorities raising the following contentions:-

i) Initially, a term loan of Rs.322.40 crores was sanctioned by the IDBI to M/s.Win Wind Oy, Finland on 4.11.2010. Post sanction, the performance of the said Firm showed stress and it was eventually granted voluntary bankruptcy by a Court in Finland in October 2013 and the Court appointed Bankruptcy Estate Administrator (BEA) for liquidation of the assets.

ii) Though the credit facilities advanced to the Firm M/s.Win Wind Oy, Finland became NPA, the erring officials of IDBI, having entered into a criminal conspiracy with the petitioner-Promoter/Directors of Siva Group of Companies and abusing their official position in the capacity of public servants, facilitated the latter to procure loan amounting to Rs.53 Crores from IDBI in favour of m/s.Axcel Sunshine Limited, a Company based in the British Virgin Islands and also an associate Company of the same Siva Group of Companies to use the same for repaying other loans of other associate Companies of the Group in flagrant violation of the regulatory guidelines.

iii) On disbursement of the loans, the amounts were utilized by the Directors of Siva Industries and Holdings Company Limited to clear the dues of the associate companies.

iv) The petitioner was the Promoter/Director of Siva Group of Companies till 2006 and he relinquished all the portfolios held by him in the said group of Companies before his appointment as Ambassador at large of Seychelles. The petitioner was instrumental alongwith other accused in hatching the conspiracy to get release the Corporate Guarantee of M/s.Siva Industries and Holdings Ltd., for the Bank's exposure to M/s.Win Wind Oy from the custody of the bank by bank's own funds in the form of a fresh loan to M/s.Axcel Sunshine Limited during 2014.

v) The contents of email correspondence among the officials of IDBI and Siva Group establishes that they knowing fully well that it was not possible to obtain Corporate Guarantee of M/s.Siva Industries and Holdings Ltd., for the fresh loan to M/s.Axcel Sunshine Limited, a foreign entity, with an intention to cheat the lender bank, deliberately modified the Corporate Guarantee as Letter of Comfort without any binding effect.

vi) The petitioner was instrumental alongwith other accused in the sanction and disbursement of the loan amount to M/s.Axcel Sunshine Limited during 201 to adjust the outstanding amounts of M/s.Win Wind Oy and other Siva group of Companies and he is the main beneficiary of the loan fraudulently got sanctioned to M/s.Axcel Sunshine Limited.

vii) The SFIO has issued LOC against the petitioner to secure his presence in two investigation viz., (a) IL & FS Financial Services Limited (IFIN) and (b) Tata Tele Services Limited (TTSL), Siva Industries & Holdings Limited (SIHL) and Kalimati Investment Company Limited (KICL).

viii) On the basis of the orders passed by the Ministry of Corporate Affairs (MCA) dated 30.9.2018, SFIO conducted investigation into the affairs of one of the subsidiary company of ILFS i.e., IFIN and submitted its investigation report dated 28.5.2019 to MCA. Such investigation revealed that loans over Rs.930 crores were sanctioned by IFIN to eight companies controlled by the petitioner, who was the promoter of Siva Group of Companies and it was only to tide over the liquidity issues faced by the companies and to repay loans of other lenders.

ix) Pursuant to the submission of the investigation report, MCA issued necessary directions on 29.5.2019 vide its letter F.No.Legal-35/16/2019 and thereupon, a Criminal Complaint bearing No.20/2019 has been filed before the Special Court (Companies Act), at Mumbai for the offence punishable under Section 447 of the Companies Act, 2013 and the Court is yet to take cognizance of the Criminal Complaint and thereby, to secure the attendance of the petitioner for facing trial and prevent the petitioner from leaving the shores of India, the LOC has been issued by the SFIO.

x) Similarly, the MCA, vide its order dated 28.3.2019 assigned investigation into the affairs of Tata Services Ltd., Siva Industries & Holdings Ltd and Kalimati Investment Company Ltd to the SFIO.

xi) The investigation revealed the petitioner was the shareholder having major role in all the three companies and thus, the petitioner being a foreign national, LOC was issued against the petitioner.

xii) Though the petitioner had attended the office of the Enforcement Directorate, his further presence is very much required to complete the investigation/trial.

xiii) The petitioner has not produced any documentary evidence for his requirement at Seychelles for winding up his Ambassadorship duties and there is every possibility of his escaping from the clutches of law in the event of permission being granted to him to travel abroad. In fact, he has already been relieved from Ambassadorship by his own admission and he had acknowledged the same vide his letter dated 8.2.2022. Further, he can pursue his business/legal consultations from anywhere in the world by online means. The other reason attributed by the petitioner viz., to attend a trade fair/exhibition is concerned, the petitioner claims to be a representative of a Company named "AIWO LIMITED" and the period of exhibition is shown as 15th to 18th October 2022. The Master Data of AIWO LIMITED maintained with the Ministry of Corporate Affairs reveals that the petitioner is not even a Director of the said Firm and moreover, the event has got over.

xiv) Just because he has, so far, been cooperating with the investigating agencies, inference cannot be drawn that he would come back if he is permitted to travel abroad. He has been appearing before the various courts and investigating agencies only because he has not been permitted to leave India and thereby, his constrained co-operation cannot be construed as a ground to infer that he would continue to cooperate even if he is permitted to leave India.

xv) Though the petitioner contends that he has strong roots in Chennai, he has furnished the address of the Hotel where he is temporarily staying and has not provided his permanent address in Chennai and thus, suspicion arises as to whether he would return to

India, and he may escape to any country with which India does not have any extradition treaty. Further, Seychelles country, which the petitioner claims to be a citizen of, does not have an Extradition Treaty with India, thereby making the extradition of the petitioner difficult.

xvi) There are no valid grounds for the petitioner to seek the permission to go abroad and thus, the petition is liable to be dismissed.

8. Having heard the learned counsel appearing for the parties and perused the materials available on record including the counter affidavits filed by the respondents, this court finds that this is virtually, a second round of litigation. On the earlier occasion, the petitioner had challenged the same LOC, which was in his way to proceed abroad, which was curtailed and failed in his attempt before this court as well as the Apex Court, he has come up before this court with a slightly modified relief of seeking permission to travel abroad on the assurance that he would come back to India to cooperate with the investigation agencies. Practically, the same LOC is preventing him to perform his travel even as of now and the relief sought for in this petition is nothing but the same old wine in a new bottle, of course with a different label.

9. All the contentions raised by the petitioner for revoking the LOC had been thwarted by the investigating agencies and the authorities who had issued the LOC and this court as well as the Hon'ble Apex Court had, in the earlier round of litigation, rendered specific findings rejecting each contention raised by the petitioner and the Apex Court has also agreed with the views expressed by this court in W.P.No.19748 of 2019. The idea of issuing LOC is only to ensure that big offenders do not go scot free by flying away to other countries and protract or dilute the smooth investigation of criminal cases/serious economic offences involving public money pending against them by taking shelter under the cumbersome process to bring them back into the circle of investigation.

10. Indisputably, the petitioner is facing charges of serious economic offences involving huge public money and money laundering, warranting investigation by various investigation agencies. In some of the cases pending against the petitioner, trial has commenced, it appears and many cases are under investigation. Further, the petitioner is a foreign national. Though he claims to have strong roots in Chennai/India, he has not come out with any permanent local address also to strengthen his claim. It is the case of the respondents

that the further investigation is on a crucial stage requiring the presence of the petitioner in the absence of which, the investigation process may get prolonged and diluted and therefore, under the guise of personal liberty to travel, he cannot be permitted de hors the existence of the LOC, especially, when there is no extradition treaty between India and Seychelles.

11. Whether declaring the LOC as *ultra vires* or directing the respondents to permit the petitioner to perform a short journey despite pendency of the LOC, whatever may be the relief sought for, the object of the petitioner, particularly, a foreign national, who is facing serious economic offences, a modern threat to the development of the country, is to be away from India. Considering the gravity of the offence and involvement of huge public money, this court is not inclined to entertain the camouflaging relief sought for by the petitioner. Accordingly, the writ petition is dismissed. No costs.

05.6.2023.

Index: Yes/No.
Internet: Yes/No.
ssk.

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10 Public Prosecutor,
High Court, Madras.

A.D.JAGADISH CHANDIRA, J.

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P.D. ORDER IN
W.P.No.26460 of 2022

Delivered on
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