

CWP-19776-2020 (O&M)

1

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-19776-2020 (O&M)

Date of decision:- 01.05.2023

Sumedha Goel

.... Petitioner

Vs.

Union of India and another

...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Rohit Sud, Advocate
Ms. Kuljeet Kaur, Advocates
for the petitioner.

Mr. Satya Pal Jain, Additional Solicitor General of India
with Mr. Shobit Phutela, Advocate
for the respondents.

Manisha Batra, J. (Oral)

This petition has been filed by the petitioner seeking a writ of certiorari for quashing a Look Out Circular (LOC) issued against her by respondent No.1 Bureau of Immigration, Ministry of Home Affairs, Government of India, at the instance of respondent No.2-Director of Enforcement.

2. The case of the petitioner is that she is a non-resident Indian, and has been residing at Singapore since 2016 where she has been working in a software company. Her permanent address is of Ludhiana.

After the demise of her husband in the year 2014, she had received certain properties in a family settlement from her in-laws. Out of her own income, she has purchased an apartment in Ludhiana in June/July, 2020. Her father, Kailash Aggarwal was engaged in business and had dealings with National Spot Exchange Limited (NSEL). An FIR bearing No. 213 was issued against NESL, its Directors and employees. Father of the petitioner and the companies owned by him have also been implicated as accused in the said case which was registered under the provisions of Prevention of Money Laundering Act, 2002 (PMLA) and her father is facing trial before the designated court at Greater Mumbai. Some other complaint filed against him is also pending in the same Court. She had come to visit her parents in March, 2020. However, due to outbreak of Covid and consequent lockdown, she had been staying with her parents since then. A raid had been conducted by the officials of respondent No.2 at the residence of her father on 11/12.08.2020 and then she came to know that bank accounts and D-mat accounts, which were existing in the name of her daughters and herself got frozen/suspended from her bankers by respondent No.2 by issuing some orders in that regard.

3. It has been further submitted in the petition that several documents were seized from the house of her father on 11.08.2020, which included gift deeds executed by her parents in favour of her daughters and herself as well as the sale deed of property owned by her at Ludhiana. Her statement had also been recorded by officials of respondent No.2. Subsequently, notices were issued to her by respondent

No.2 to appear in its office. Initially, due to fear of Covid, she could not appear there and had sent written requests in that regard. Then on 20.08.2020, she had gone abroad for her professional commitments and returned on 20.10.2020. She had again gone abroad and while she had returned on 10.11.2020 and reached Amristar Airport, she was detained by the immigration officers and was told that an LOC had been issued against her. She submitted that during her stay abroad for the period from 20.08.2020 till 10.11.2020, some notices were issued by respondent No.2, which could not be received by her. Some complaints had been filed under PMLA, 2002 by the respondents in the intervening period making allegations that her parents had sold attached properties and had transferred the sale price in their bank accounts. On 24.09.2020, respondent No.2 got the movable and immovable properties in the name of the petitioner and her daughters, provisionally attached. The petitioner has made prayer for quashing the LOC as issued against her by the respondents and to direct the respondents to allow her to travel abroad.

4. The respondents appeared in response to the notice and have filed their respective replies by way of affidavits admitting that provisional order qua attachment of properties of father of the petitioner, his companies as well as bank accounts etc. of the petitioner and her daughters had been passed by respondent No.2. It is alleged that the father of the petitioner had committed offences under PMLA and complaint had been filed against him. He had sold some of the attached properties for total sale consideration amount of Rs.4.93 Crores and the

sale proceeds had been transferred in the bank account of the parents of the petitioner and funds to the tune of Rs. 3.20 Crores had been transferred in the bank account of petitioner and her daughters while being shown as gifts in order to frustrate the proceedings under PMLA. It was alleged that the petitioner who was having knowledge about the transactions conducted by her parents had been deliberately avoiding receiving summons and joining the investigation by the authorities of respondent No.2 and that is why respondent No.2 was constrained to get LOC issued against her. It was, therefore urged that no constitutional right of the petitioner was violated and it was stressed that petition was liable to be dismissed.

5. Learned counsel for the petitioner argued that she was not an accused in any criminal case. She had no concern with the companies of her father and the transactions made by him. She was an NRI and needed to go there and travel frequently for the purpose of her job. She could not be deprived of her rights to travel abroad. She could not be prevented from leaving the country. Issuance of LOC amounted to violation of her fundamental rights. Her case did not fall under the provisions as issued by office memorandum No. 25016/31/2010-IMM dated 27.10.2010 (for short OM No.I) and the LOC issued against her was not covered by this office memorandum. During the pendency of this petition, another office memorandum No. 25016/10/2017-IMM dated 22.02.2021 (for short OM No.II) had also been issued and the petitioner was not covered even under that memorandum. With these broad arguments, it was urged that

the LOC was liable to be quashed. To fortify his arguments, learned counsel for the petitioner has placed reliance upon the judgments titled as ***Vikas Aggarwal and another Versus Union of India and others***, 2023(1) RCR (Criminal) 279, ***Satish Chandra Verma V. Union of India***, (2019) SCC Online SC 2048 and ***Kamalpreet Singh V. Union of India***, CWP No. 25686 of 2022 (O&M) decided on 12.12.2022, passed by co-ordinate bench of this Court.

6. On the other hand, learned counsel for the respondents has argued that the father of the petitioner was involved in criminal cases on the allegations of committing offences under the provisions of PMLA. He had done money laundering and by selling attached properties, had transferred sale proceeds worth Rs.3.20 Crores in favour of the petitioner and her daughters thereby involving the petitioner also. The petitioner had avoided appearance before authorities of respondent No.2 despite notices issued against her several times and it was on being compelled by these circumstances that LOC was issued against her. He argued that no fundamental right of the petitioner had been violated as the proceeds of the crime were also proved to have been transferred to her bank accounts by her father, which showed her connivance. He therefore, urged that the petition was liable to be dismissed. In support of her arguments, learned counsel for the respondents has placed reliance upon judgment dated 27.03.2018, passed in CRWP No.951 and 984 of 2016 titled as ***White Water Foods (P) Limited and others Vs. Directorate of Enforcement, Mumbai*** and judgment dated 03.12.2020 passed in CWP-20658-2020.

7. We have heard learned counsel for the parties at considerable length.

8. It is admitted fact that the petitioner had been residing in Singapore prior to March, 2020 and had been doing a job there. It is also on record that after issuing of LOC against her and during pendency of this petition, she has travelled abroad twice after seeking permission from this Court. On considering the controversies as raised in the petition, in our opinion the following questions require consideration:-

1. Whether LOC issued by respondent No.2 at the instance of respondent No.1 against the petitioner can be sustained in law or not?
2. Whether merely on the ground that the father of the petitioner is a defaulter and is involved in offence since punishable under the provisions of PMLA, 2002 and some of the proceeds of crime have been transferred to the accounts of the petitioner and her daughters, which presently stand attached by respondent No.2, can the petitioner be prevented from travelling abroad and her fundamental right under Article 21 of the Constitution of India be curtailed?

9. It is well settled proposition of law that to deny a person the right to go abroad requires a very high threshold and recourse to issuance of look out circular can be had only where the concerned person is involved in cognizable offences and is evading arrest or if such a person does not appear before the trial Court despite issuance of non-bailable warrants or even after adoption of other coercive measures. However,

where the subject of LOC is not involved in any cognizable offence, then he/she cannot be detained, arrested or prevented from leaving the country. Reliance in this regard can be placed upon the similar observations made by a co-ordinate Bench of this Court in **Vikas Aggarwal's** case (supra) and **Kamalpreet Singh's** case (supra).

10. The petitioner in the instant case has relied upon OM No.I and OM No.II as issued by respondent No.1 and as per the contents of these office memorandums recourse to look out circular can be taken by the Investigating Agency against persons involved in cognizable offences under IPC or other penal laws and in cases where the accused are deliberately avoiding arrest and are not appearing in the trial Court and there is likelihood of their leaving the country to avoid arrest. Undisputedly, in this case, the father of the petitioner has been facing trial in cases of money laundering. However, there is nothing on record to show that the petitioner has also been implicated as an accused in either of such cases. Admittedly, no FIR has been lodged against her so far. The look out circular had been issued against her on 29.12.2020. A period of almost 2½ years has passed since then. She has also placed copy of letters written by her to respondent No.2 showing willingness to join the investigation. There is nothing on record to show that the respondents tried to join her in investigation of any matter either pending against her father or contemplated to be initiated against her. No order for restraining the respondents from doing so had been passed by this Court at any point of time since the pendency of this petition and as such, it can be

reasonably assumed that respondent No.2 did not summon her during this period as her presence was not required. It is also important to mention that the properties in the names of the daughters of the petitioner and herself which have been alleged to be purchased from the proceeds of crime have already been attached and appropriate proceedings are being taken by the concerned department qua them. The right to travel abroad has been well recognized as falling within the scope of personal liberty enshrined under Article 21 of the Constitution of India by the Hon'ble Apex Court and it has been settled that such a right cannot be prevented from being exercised without due process of law and impairment of such right cannot be done without observing the principles of natural justice. Reliance in this regard can be placed upon the observations made by the Hon'ble Apex Court in ***Maneka Gandhi V. Union of India***, (1978) 1 SCC 248 and ***Satish Chandra Verma V. Union of India and others*** (2019) SCC Online SC 2048.

11. In these circumstances, in our opinion, the petitioner cannot be prevented from leaving the country by the respondents by issuing a look out circular and the action so taken by the respondents is not only violative of office memorandums as issued by respondent No.2 itself but also violative of principles of natural justice and against constitutional rights of the petitioner. In view of the discussion made above, the look out circular as issued against the petitioner by respondent No.1 at the instance of respondent No.2 is hereby set aside. The writ petition is allowed and the respondents are restrained from preventing the petitioner

from travelling abroad. However, it is made clear that whenever the petitioner shall visit abroad, she will inform about her departure/arrival to respondent No.2.

Passports of the daughters of the petitioners, which are lying with the Registry are ordered to be returned back to her against proper receipt. Accordingly, CM-15608-CWP-2022 stands allowed.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

01.05.2023
pooja saini

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No