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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 11th April, 2023

\+ **W.P.(C) 3990/2022 and CM APPL. 11887/2022**

JITENDRA KEJRIWAL ..... Petitioner

Through: Mr. Anirudh Bakhru, Mr. Ayush Puri, Ms. Vijay Laxmi Rathi, Mr. Kanav Madnani & Mr. Prateek Kumar Jha, Advocates.

versus

UNION OF INDIA AND ORS ..... Respondents

Through: Mr. Anurag Ahluwalia, CGSC.
Mr. Ripu Daman Bhardwaj, SPP with Mr. Abhinav Bhardwaj & Mr. Kushagra Kumar, Advocate for CBI.
Mr. S. K. Sharma, Advocate for R-5 (M- 9871588055)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner - Mr. Jitendra Kejriwal seeking quashing of the Look Out Circular (*'LOC'*) issued by the Central Bureau of Investigation (*'CBI'*) against him and calling for records pertaining to the same.

3. The background of this petition is that the Petitioner had obtained certain loans/credit facilities from Punjab National Bank (hereinafter *'the Bank'*) which was then called the Oriental Bank of Commerce. The said Bank had, on 9th September, 2019 declared the Petitioner as a *'Wilful Defaulter'*.

4. The said declaration was challenged by the Petitioner by way of a writ

petition being ***W.P.(C) 11426/2019*** titled '***Jitendra Kejriwal v. Oriental Bank of Commerce & Anr.'*** wherein vide order dated 24th October, 2019, the said declaration was stayed till further orders.

5. Upon the Petitioner having been declared a *'Wilful Defaulter'*, on 4th November, 2019, the Petitioner acquired the knowledge that an LOC was issued against him at the behest of the Bank, which restrained him from travelling abroad, at the Kolkata Airport.

6. The case of the Petitioner is that the said LOC was contrary to the interim order granted by this Court on 24th October, 2019. Thus, the said LOC was challenged by the Petitioner in ***W.P.(C) 13117/2019*** titled '***Jitendra Kejriwal v. Union of India & Ors'***.

7. The court disposed of the said writ petition, vide order dated 18th February, 2022 recorded as a part of the submissions in the said order that the LOC issued at the behest of the Bank had already automatically expired. It is also observed in the said order that a fresh LOC had been issued at the behest of the CBI which had registered an FIR on 13th March, 2020 under the provisions of the Indian Penal Code (IPC) as also the Prevention of Corruption Act,1988. In view of the issuance of the second LOC, the Court permitted the Petitioner to take appropriate action in accordance with law with respect to the second LOC issued at the behest of the CBI. The said order reads as under:

> *"This matter is being heard through video-conferencing*
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> 1. *When the matter was listed on February 16, 2022, learned counsel for the Bank had sought time to take instructions.*
> 2. *Today, Mr. S.L. Gupta, Advocate appears for the*

respondent No.3 / Bank states that after October 01, 2021, as there was no request by the respondent No.3 / Bank to the concerned Authority for extending the LOC, the LOC has automatically expired.

3. *This submission is disputed by Mr. Asheesh Jain by stating that as per the recent guidelines, till such time a request for withdrawing the LOC is received from the originator, the LOC continues to stand. Mr. Jain also states that there is a second LOC issued against the petitioner at the behest of the CBI. This LOC is pursuant to an FIR by CBI being RC/DDI2020/E/0015CBIBSFB/New Delhi dated March 13, 2020 under Section 120B read with Section 420 IPC and Section 13 (2) read with Section 13(1)(d) of PAC, Act 1988 and the same is in vogue / operation today as well.*
4. *Mr. Gupta at this stage states that an intimation in that regard shall be sent to the Bureau of Immigration within two weeks.*
5. *Mr. Anirudh Bakhru, learned counsel for the petitioner states in view of the submission of Mr. Gupta, the petition be disposed of and on the second LOC, the petitioner shall take appropriate action in accordance with law.*
6. *In view of the submissions made, the petition and connected application(s) are disposed of, as nothing survives with regard to the limited challenge in this petition."*

8. The present petition has been filed in respect of the second LOC issued at the behest of the CBI.

9. The case of the Petitioner is that the Petitioner has settled with the Bank and has paid a sum of Rs.52.66 crores, in respect of which a no-dues certificate has also been issued by the Bank on 6th July, 2021. The registration of the FIR is however not disputed. The CBI has also registered

an RC on 31st December, 2020.

10. The submission of Mr. Bakhru, ld. Counsel appearing for the Petitioner is that the main dispute has been settled with the Bank. The Petitioner has also been permitted three opportunities to travel by this Court. In addition, it is submitted that on two occasions, the Petitioner has, in fact, travelled and returned to India. He has been called by the CBI on two occasions for investigation and has appeared before the CBI. It is further submitted by the ld. Counsel for the Petitioner that the Petitioner has his roots and family ties in India. He does not pose any flight risk. Since the main dispute itself has been settled with the Bank and the issuance of the LOC was contrary to the initial interim order which was granted on 24th October, 2019, the present LOC also deserves to be quashed.

11. On behalf of the Bank, ld. Counsel does not dispute the payment and the issuance of the no-dues certificate.

12. On behalf of the CBI, it is contended by Mr. Bhardwaj, ld. Counsel that the fact that the settlement which may have been arrived at with the Bank does not take away the criminality of the offence which has been committed.

13. Undoubtedly, a Look-out-Circular, has the effect of curtailing the free movement of a person. The right to travel is also a recognized and protected right in several decisions of the Supreme Court and of Coordinate Benches of this Court. Recently, this Court had the occasion to consider the legal issues arising in the context of issuance of LOCs. In ***WP(C) 3454/2022*** titled ***'Ghanshyam Pandey v. Union of India & Ors.' decided on 15th February 2023***, the Court has observed as under:

> *"28. <u>LOCs impinge upon the individual's right to travel which is recognised as a Fundamental Right.</u> However, the rights and interest of the investing public would also be a relevant consideration which cannot be ignored. Challenge to LOCs can be raised by way of a writ petition and the Court has to determine whether the extraordinary writ jurisdiction is to be exercised or not in favour of a person seeking relief. While LOCs cannot be resorted to for every case involving a loan transaction, the facts of the present case reveal that a large amount of public funds of public sector banks and financial institutions are at stake. The question as to whether the LOC would be valid or not would have to be determined in the facts and circumstances surrounding each case."*

14. In the present petition, the fact that the main dispute with the Bank is settled, is admitted by all parties. The initial declaration of *'Wilful Defaulter'* was also stayed by this Court on 24th October, 2019 and the writ itself stands disposed of. Both the LOCs were issued post the said interim order which was granted. The RC was also registered subsequently. Further, there is no allegation that the Petitioner has not cooperated with the investigation.

15. Ld. counsel for the Petitioner relies upon ***Kartik Tayal v. Central Bureau of Investigation [2020 SCC OnLine P&H 1618]*** to argue that if there is no deliberate evasion of arrest and non-appearance, LOCs ought not to be issued in this manner. The relevant portion of the said judgment is set out below:

> *"13. This answer has also been reproduced in office memorandum dated 27.10.2010 issued by the Ministry of Home Affairs. <u>Thus, there can be no doubt that according to the prevailing instructions, an LOC can</u>*

be opened against an accused person who is (a) deliberately evading arrest, (b) not appearing in the trial Court despite non-bailable warrants and other coercive measures. Coupled with either of these conditions should be a likelihood of the accused leaving the country to evade trial/arrest. Neither of these conditions exist in the instant case. The petitioner is not evading arrest. In fact, he has appeared before the investigating agency whenever required to do so and the investigating agency has not thought it proper to arrest him. Since the investigation is still pending and challan has not been presented, there is no question of any trial Court issuing/adopting coercive steps to ensure the presence of the petitioner. This requirement of law has been recognized by the Bombay High Court in the case of Afzal Jaffer Khan, (supra). The fact that the petitioner has travelled abroad on six occasions and has never violated the terms of the permission granted by the CBI Court, shows that the apprehension of the respondent is illusory.

14. In view of the above, It is evident that the conditions which must pre-exist before a request can be made for opening of an LOC, do not exist in the present case. Thus, the continuation of an LOC for more than 3 years against the petitioner is a violation of his fundamental right to Life and personal liberty. It is, thus, liable to be withdrawn.

15. Consequently, the writ petition is allowed and the respondent is directed to withdraw the LOC. However, the petitioner shall furnish an undertaking before the concerned investigating officer that he shall present himself whenever required by the investigating agency. On presentation of challan, if any, he shall undertake to appear before the trial court. For the said purposes, the petitioner shall make available his contact details such as mall ID and mobile number to the investigating officer. He shall also inform the investigating officer whenever he travels abroad."

16. In any event, since the dispute with the Bank is settled and in the opinion of this Court, the Petitioner does not pose any flight risk, the LOC issued at the behest of the CBI is set aside, subject to the condition that the Petitioner shall continue to cooperate with the investigation in the RC which has been registered by the CBI. The contentions of the parties are left open.

17. The present order shall not prejudice the pending investigation in the RC registered by the CBI. The CBI shall issue appropriate instructions to the Bureau of Immigration/Ministry of Home Affairs of today's order and give no objection for the Petitioner's travel in future.

18. The petition is disposed of in these terms. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

APRIL 11, 2023

Rahul/RP