

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL WRIT PETITION NO. 749 OF 2024**

1. Hiten Khatau  
Aged 66 years, Occupation :  
Businessman Residing at 6, Manav  
Mandir Road, Malbar Hill,  
Mumbai, PS: Greater Mumbai City,  
Maharashtra, India.
2. Rohan Khatau  
Aged 37 years, Occupation :  
Businessman  
Residing at 6, Manav Mandir Road,  
Malbar Hill, Mumbai, PS: Greater  
Mumbai City, Maharashtra, India. ...Petitioners

Versus

1. The Union of India  
Through Secretary, Ministry of  
Home Affairs, represented through  
the office of Central Government  
Pleaders, 2<sup>nd</sup> floor, Income Tax  
Building, Marine Lines, Mumbai.
2. Bureau of Immigration  
Ministry of Home Affairs, East  
Block – VIII, R.K.Puram, New  
Delhi – 110066  
Email : [boihq@nic.in](mailto:boihq@nic.in)

3. State of Maharashtra  
Through MIDC Police Station  
subsequently transferred to Senior  
Inspector of Police, Economic  
Offences Wing, Unit – 3, Police  
Commissioner's Office, 25 DN  
Road, Mumbai 400 001.
4. State of Maharashtra  
Through the office of the Public  
Prosecutor, PWD Building, High  
Court, Bombay. ...Respondents

**ALONGWITH**  
**INTERIM APPLICATION (ST) NO. 8268 OF 2024**  
**IN**  
**CRIMINAL WRIT PETITION NO. 749 OF 2024**

|                           |                |
|---------------------------|----------------|
| Vijay Pramod Karia        | ...Petitioner  |
| Versus                    |                |
| The Union of India & Ors. | ...Respondents |

Mr. Aabad Ponda, Senior Advocate a/w Ms. Savani Gupte, Mr. Lalit Munshi, & Ms. Siddhi Somani i/b Samvad Partners, for the Petitioner/Applicant.

Mr. H.S.Venegavkar, P.P a/w Mrs. P.P.Shinde, A.P.P for the Respondent-State.

Mr. Dashrath Dube a/w Mr. Rupesh Dubey & Mr. Sachhidanand Singh for the Respondent Nos.1 and 2.

Senior Counsel Mr. Venkatesh Dhond, Counsel Mr. Prateek Pansare, Counsel Mr. Saurabh Mehta a/w Rishir Daulat, Raj Adhia i/b TRD Associates for the Applicant/Intervenor.

**CORAM : REVATI MOHITE DERE &**  
**MANJUSHA DESHPANDE, JJ.**  
**DATE : 30<sup>th</sup> APRIL, 2024**

***ORAL JUDGMENT (PER : REVATI MOHITE DERE, J.)***

1. Heard learned Counsel for the parties.
2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Mr. Dashrath Dubey waives notice on behalf of the respondent Nos.1 and 2. Learned APP waives notice on behalf of the respondent Nos.3 and 4.
3. By this petition, the petitioners seek quashing and setting aside of the Look Out Circular (‘LOC’) issued at the behest of the respondent No.3 - EOW, Unit-III, Mumbai, against the petitioners.

4. Mr. Ponda, learned Senior Counsel for the petitioners submits that there are two cases registered as against the petitioner No.1- Hiten Khatau i.e. C.R.No.34 of 2018 registered with the Malvani Police Station, subsequently transferred to EOW, Mumbai and C.R.No.148 of 2024 registered with the MIDC Police Station and subsequently transferred to EOW, Mumbai and re-numbered as C.R.No.15 of 2024 and one case against petitioner No.2 – Rohan Khatau i.e. C.R.No.148 of 2024, subsequently numbered as C.R.No.15 of 2024 with the EOW, Mumbai.

5. Learned Senior Counsel for the petitioners submits that only petitioner No.1 is an NRI and the petitioner No.2 is an Indian citizen residing in Mumbai with his family and children. He submits that the petitioner No.1 was never arrested in C.R.No.34 of 2018 and neither has any LOC been issued in the said C.R., despite chargesheet having been filed. He submits that

as far as C.R.No.15 of 2024 is concerned, the petitioners have succeeded in the arbitration proceeding between the parties. He submits that even this Court vide order dated 1<sup>st</sup> April, 2024 passed in Criminal Writ Petition No. 963 of 2024, preferred by the petitioners has observed in para 4 that since 41(A) notice has been issued to the petitioners, the Investigating officer does not presently intend to arrest the petitioners. Accordingly, this Court vide order dated 1<sup>st</sup> April, 2024 directed that no coercive action be initiated against the petitioners.

6. According to Mr. Ponda, the petitioner on learning that the preliminary inquiry had been initiated, flew down to India and appeared before the officer of EOW, Mumbai, pursuant to the 41(A) notice issued to the petitioners. He submits that the petitioners have roots in India, more particularly, in Mumbai inasmuch as, the petitioner No.1's family resides in Mumbai.

7. Mr. Venegavkar, learned P.P. opposes the petition. He

submits that there is an apprehension that the petitioner No.1 will not return to India. Mr. Venegavkar has tendered a copy of the LOC issued against the petitioners on 20<sup>th</sup> February, 2024.

8. Perused the papers. It appears that C.R.No. 34 of 2018 is registered against the petitioner No.1 and C.R.No.15 of 2024 is registered against both the petitioners. It is not in dispute that in C.R.No.34 of 2018, the petitioner No.1 was never arrested, but he appeared pursuant to the summons, after which, chargesheet was filed against the petitioner No.1. Admittedly, LOC was not issued in the said case against the petitioner No.1. As far as C.R.No. 15 of 2024 is concerned, the LOC has been issued at the behest of EOW, Mumbai against both the petitioners. We have perused the LOC tendered by Mr. Venegavkar, learned P.P. From a perusal of the LOC, it appears that the only reason for opening an LOC is registration of an FIR. We have in the case of *Showik Indrajit Chakraborty v/s Addl.Superintendent of Police and Anr.*<sup>1</sup>, observed that mere registration of an FIR cannot

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be a ground for issuance of LOC and what is required is the apprehension of the investigating agency that the person is likely to evade arrest or will not be available for trial/investigation or any other reason. Admittedly, none of the aforesaid is mentioned in the LOC.

9. It appears from the chart tendered by Mr. Ponda that the petitioner No.1 has travelled overseas on 11 occasions between the period from 2022 to 2024 and on two occasions in the year 2021-2022. It appears that the petitioner No.1 is an NRI and as such, is required to stay overseas for 182 days to maintain his NRI status. As far as, petitioner No.2 is concerned, he is an Indian Citizen residing in Mumbai with his family i.e. wife and two children who are studying in a school in Mumbai. Petitioner No.1's wife is also an Indian Citizen residing in Mumbai. The petitioner has appeared before the Investigating Agency pursuant to the 41(A) notice issued by them. Mr. Venegavkar, on instructions of the officer, does not dispute the

fact, that the petitioners have co-operated with the investigation.

10. Infact, the petitioner No.1 has also travelled overseas pending the LOC pursuant to an order passed by this Court on 7<sup>th</sup> March, 2024. It is not in dispute that the petitioner No.1 has complied with the terms and conditions set out in the said order dated 7<sup>th</sup> March, 2024. It is also not in dispute, that the petitioners have filed Criminal Writ Petition No. 963 of 2024 before the Co-Ordinate Bench of this Court seeking quashing of C.R.No.148 of 2024, subsequently, re-numbered as C.R.No. 15 of 2024. In the said petition, this Court in paras 4 and 5 has observed as under :

*“4. Learned A.PP. on instructions from the officer, who is present in the Court confirmed that the notice under Section 41(A) of Cr.PC. is issued to the Petitioner No.1 & 2 and presently they do not intend to arrest them.*

*5. Considering these circumstances, till the next date, no coercive action shall be initiated against the Petitioners.”*

11. Learned Senior Counsel for the petitioners has also

filed affidavit-cum-undertaking of the petitioners dated 17<sup>th</sup> April, 2024. In the said affidavit-cum-undertaking, the petitioners have undertaken to co-operate with the investigation. Paras 10 and 11 read as under :

*“10. We undertake that we shall remain present before the investigating authority and/or the Ld. Trial court (if a chargesheet is filed by Respondent No. 3), as and when required and called upon to do so. We further undertake to continue to provide all cooperation and assistance to Respondent No.3 and any other authority, as and when called upon to do so, so as to assist in the investigation.*

*11. We further undertake that in the event we are travelling abroad, and if our presence is required by Respondent No.3 with respect to the investigation under the said FIR, we undertake to return to India in the time as may be agreed by Respondent No. 3 or within ten (10) days of receipt of such notice, and duly appear before Respondent No. 3.”*

12. In view of what is stated aforesaid, the petition is allowed on the following terms and conditions :

### **ORDER**

(i) The LOC issued as against the petitioners, at

the behest of the respondent No.3 – EOW, Mumbai, is quashed and set aside;

(ii) The petitioners before their departure overseas, shall inform the concerned officer of the EOW, Mumbai of their itinerary i.e. addresses where they would be residing, during their overseas travel and contact numbers during their overseas stay, on which, they can be contacted. The same to be done atleast 24 hours before departure, via e-mail/fax or any other electronic mode;

(iii) The petitioners, on their return to India, within 48 hours, shall inform the EOW, Mumbai, of their return via e-mail/fax or any other electronic mode;

(iv) Needless to state that in the event, the EOW, Mumbai intends to call the petitioners, notice be

issued to the petitioners giving them 10 days clear notice to report to the officer, in the event the petitioners are overseas, so as to enable the petitioners to make arrangements for their travel;

(v) The aforesaid arrangement i.e. clauses (ii) and (iii) of informing the officer of the EOW, Mumbai will be valid for a period of 12 months from today;

(vi) The Immigration Authorities, on all points of departure, will permit the petitioner to pass through immigration and to board his flight or flights, irrespective of whether the immigration system has been updated and whether the EOW, Thane, has informed the Immigration Authorities or not;

(vii) The Respondent – EOW, Mumbai shall inform the Immigration Authorities of the order passed today,

at the earliest and in any event, within 48 hours of this order being uploaded;

(viii) Needless to state that it is always open for the Respondent No.3 - EOW, Mumbai to issue a fresh LOC against the petitioners, if the occasion so arises in future.

13. Rule is made absolute on the aforesaid terms. Petition is allowed and accordingly disposed of.

14. In view of the disposal of the writ petition, nothing survives for consideration in the aforesaid interim application being Interim Application No. 8268 of 2024. The same stands disposed of accordingly.

15. All concerned to act on the authenticated copy of this order.

**MANJUSHA DESHPANDE, J.**

**REVATI MOHITE DERE, J.**