IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3575 OF 2023

Sanjay Kumar Agrawal
Aged about 59 years,
Occupation Service,
Residing at P-3, Shree Dham,
B 21/87-88, Kamachha Lane,
Bhelupura, Varanasi-221010. …Petitioner

Versus

1. Union of India
Through Satyabrat Kumar,
Additional Director,
Enforcement Directorate,
Government of India,
4th Floor, Kaiser-I-Hind Building,
Currimbhoy Road,
Ballard Pier, Zone 1,
Mumbai-400001
vide their C.R. No.ECIR/MBZO-1/08-19.

...Respondents
2. The State of Maharashtra (Ori. Complainant)

Mr. Rahul Arote a/w Mr. Anil Jadhav, for the Petitioner.

Mr. Shreeram Shirsat a/w Ms. Tanvi Mate and Ms. Karishma R., for the Respondent No.1-ED.

Ms. P. S. Rane, A.P.P for the Respondent No.2 – State.

CORAM : REVATI MOHITE DERE &
MANJUSHA DESHPANDE, JJ.

DATE : 17th 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. Shirsat, waives notice on behalf of the respondent No.1. Learned A.P.P waives notice on behalf of the respondent No.2–State.

3. By this petition, the petitioner seeks quashing and setting aside of the Look Out Circular ('LOC') issued at the behest of the respondent No.1-Enforcement Directorate ('ED').

4. Learned counsel for the petitioner submits that the petitioner has not been arraigned as an accused in the Prevention of Money Laundering Act ('PMLA') case, which was registered by the

respondent No.1-ED in August 2019. He submits that the petitioner after completion of his education and after completing Chartered Accountancy in 1995 went to Bahrain in 1996 and since 1996 has worked in several companies in the Gulf till 2020. He submits that the petitioner had joined Imperial Suites Hotel as a Group Financial Controller on 14th August 2012 and that he was not aware as to who were the owners of the said Imperial Suites Hotel, at the time of joining the said Hotel. He submits that the petitioner's nature of job was of supervision and working for the Hotel i.e. group of companies of Imperial Suites Hotel. He submits that the petitioner's job was not only of supervision of the work done by his subordinates but also to report the same to the Management. According to the learned counsel, the petitioner used to receive instructions from one Asif Memon and Junaid Memon. He submits that the petitioner had no knowledge about the personal dealings of Iqbal Memon or any of his family members and that the petitioner has never met or spoken to Iqbal Memon. He submits that the petitioner received summons via email on 16th July 2020 issued by the ED with respect to the PMLA case registered by them on 1st August 2019. He submits that the petitioner replied to the requirements as sought for, in the summons in July, August and October 2020, as the petitioner could not personally remain present due to Covid-19. According to the learned counsel for the petitioner, the petitioner's only daughter's marriage was fixed in November 2020 in India and hence, the petitioner informed the ED and submitted the itinerary attached with the return ticket between Sharjah (UAE) and Varanasi. He submits that when the petitioner arrived on 14th November 2020, the ED officer detained and enquired with the petitioner and released him for undergoing the quarantine period and for solemnizing his daughter's wedding. Learned counsel further submits that thereafter, the ED issued summons to the petitioner asking him to appear before the authorities on 10th December 2020, pursuant to which the petitioner appeared before the respondent No.1-ED on seven occasions commencing from 22nd December 2020. He submits that the petitioner's passport was impounded by the ED apprehending that the petitioner may escape during enquiry, however, the same was subsequently returned to the petitioner. He submits that the petitioner's mobile which was seized was also released by the ED. According to the learned counsel for the petitioner, the petitioner had worked throughout in Bahrain and Dubai (UAE) and has no source of income, since, he has arrived in India in November 2020 and presently due to his long stay in India, the petitioner has even lost his job and would now be required to find a new job.

5. Learned counsel for the petitioner has also tendered an undertaking-cum-affidavit as directed by us vide order dated 4th April 2024. In the said undertaking-cum-affidavit, the petitioner has stated his current residence address which is jointly owned by him and his wife-Shruti Agrawal. He has also stated that his wife owns two plots at Rampura, Kerala and that his wife holds an Indian passport and so also his daughter. In para 6 of the undertaking-cum-affidavit, the petitioner has undertaken to co-operate with the investigation and to attend the office of the ED, as and when required. The petitioner has also undertaken in para 7 to disclose his place of residence and contact

number, whilst abroad to the Investigating Officer.

6. Mr. Shirsat, learned Special Public Prosecutor, appearing on behalf of the respondent No.1 has tendered a copy of the LOC issued against the petitioner on 17th January 2020. No renewals have been placed on record by Mr. Shirsat to show that the said LOC was renewed by the authorities from time to time, as required under the guidelines issued by the Ministry of Home Affairs ('MHA'). Infact, according to Mr. Shirsat, till date, no material is found against the petitioner. He also does not dispute the fact, that the petitioner is not an accused and nor has the ED collected any material till date, to show the petitioner's complicity in the PMLA case registered by them in August 2019. According to Mr. Shirsat, the petitioner is not co-operating with the investigation.

7. Perused the petition. It appears that the petitioner after completing his education moved to Bahrain and has been working in Bahrain, since then. It also appears that the petitioner was issued

summons by the respondent No.1-ED, pursuant to which, he replied to the said summons, however, he could not come to India due to Covid-19 pandemic. It is also not in dispute that subsequently, in November 2020 the petitioner came to India and that he had informed the ED office of his return to India. It is also not in dispute that the petitioner appeared before the respondent No.1-ED on seven occasions commencing from 22nd December 2020. The petitioner was last summoned by the ED on 21st February 2023. It appears that thereafter, the petitioner has not been summoned by the respondent No.1-ED.

8. Although, Mr. Shirsat alleges non-cooperation, it is well settled that a person cannot be detained merely because he is not co-operating. Non-cooperation also can be a result of a person not having any information with respect to the case in question and as such there is no merit in the said submission. The ED has been investigating the case since 2019 and till date, despite the petitioner having appeared before the ED, the ED has not found any material *qua*

the petitioner. The petitioner has been deprived of his livelihood since December 2020. The petitioner has been working in the Middle East for more than two decades, and as such, having regard to the fact, that the respondent No.1-ED has not found any material, *qua* the petitioner till date, it would not be appropriate to detain the petitioner any further. The petitioner has also undertaken to appear before the ED, as and when directed. Even otherwise, after the first LOC was issued on 17th January 2020, no extension has been placed on record before us, to show that the LOC has been continued, considering that as per the guidelines issued by the MHA, the LOC is to be renewed quarterly or atleast yearly.

9. Considering the aforesaid, the petition is allowed on the following terms and conditions:-

ORDER

(i) The impugned LOC issued as against the petitioner on 17th January 2020 by the respondent No.1-ED, is quashed and set aside;

(ii) The petitioner to abide by his undertaking given to this Court dated 4th April 2024;

(iii) The petitioner be given minimum seven days notice to appear before the respondent No.1-ED as and when summoned.

(iv) The petitioner to also inform the address, contact numbers and other details where he would stay to the respondent-ED, forthwith and in any event within two weeks of his going abroad;

(v) Change of residence/telephone numbers be informed to the respondent No.1-ED, by the petitioner, from time to time;

(vi) The petitioner shall not contact the accused in the said case either telephonically or otherwise;

(vii) Needless to state, that it is always open for the respondent No.1-ED to issue a fresh LOC, if the occasion so arises in future.

10. The Petition is allowed in the aforesaid terms and is accordingly disposed of. Rule is made absolute on the aforesaid terms.

All concerned to act on the authenticated copy of this judgment.

MANJUSHA DESHPANDE, J. ***REVATI MOHITE DERE, J.***