

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL WRIT PETITION NO. 3135 OF 2023

Showik Indrajit Chakraborty,
Aged : 27 years, R/o : Flat No. 501,
Gabanna House Apartments,
15th Road, Khar West,
Mumbai 400 052

... Petitioner

Versus

1. The Addl. Superintendent of Police,
Central Bureau of Investigation,
5B, 5th Floor, CBI Building,
CGO Complex, Lodhi Road,
New Delhi.

2. The State of Maharashtra

... Respondents

***WITH
CRIMINAL WRIT PETITION NO. 3160 OF 2023***

1. Lt. Colonel Indrajit Chakraborty
(Veteran), Aged: 57 years,

2. Sandhya Indrajit Chakraborty,
Aged : 57 years

Both R/o : Flat No. 501,
Gabanna House Apartments,
15th Road, Khar West,
Mumbai 400 052

... Petitioners

Versus

1. Union of India
(Central Bureau of Investigation)
2. The State of Maharashtra ... Respondents

WITH
CRIMINAL WRIT PETITION NO. 3885 OF 2023

Rhea Chakraborty,
Age : 31 years, Occ: Actress,
Residing at 501,
Gabanna Apartments,
15th Road, Khar (West),
Mumbai 400 052 ... Petitioners

Versus

1. Union of India
(At the instance of Addl.
Superintendent of Police,
Central Bureau of Investigation,
5B, 5th Floor, CBI Building,
CGO Complex, Lodhi Road,
New Delhi
Email: hobac3del@cbi.gov.in
2. Bureau of Immigration,
Ministry of Home Affairs,
Government of India,
Through Commissioner (Immigration),
East Block-VIII, Level V, Sector-1,

R. K. Puram, New Delhi 110 066
Email: support-boi@mha.gov.in

3. The State of Maharashtra ... Respondents

Mr. Ayaz Khan a/w Ms. Zahra Charania for the Petitioner in
WP/3135/2023 and WP/3160/2023

Dr. Abhinav Chandrachud a/ Mr. Prasanna Bhangale and
Mr. Janay Jain for the Peititoner in WP/3885/2023

Mr. Kuldeep Patil, Spl. P.P for the Respondent No.1-CBI in
WP/3135/2023

Mr. Shreeram Shirsat, Spl. P.P a/w Ms. Tanvi Mate, Mr. Tanveer
Khan, Mr. Shekhar Mane and Ms. Karishma Rajesh for the
Respondent No.1-CBI in WP/3160/2023 and WP/3885/2023

Ms. P. P. Shinde, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE &
MANJUSHA DESHPANDE, JJ.
RESERVED ON : 08/02/2024
PRONOUNCED ON : 22/02/2024

JUDGMENT (Per Revati Mohite Dere, J.) :

1 By the aforesaid petitions, the petitioners seek
quashing and setting aside/withdrawal of the Look Out Circulars
(`LOCs') issued as against them, by the respondent No.1-CBI.

2 The petitioners i.e. Lt. Colonel Indrajit Chakraborty and his wife-Sandhya Indrajit Chakraborty i.e. petitioner No.2 in Writ Petition No. 3160/2023 are the parents of petitioners in Writ Petition Nos. 3135/2023 and 3885/2023.

 The petitioner No.1 in Writ Petition No. 3160/23 is a retired Army Officer, having retired from the Indian Army as a Lt. Colonel. Post retirement, the petitioner No.1 has settled in Mumbai. The petitioner No.2 in the said petition, is the wife of the petitioner No.1, who was working as a teacher in various Army Schools.

 It appears that the petitioner-Showik in Writ Petition No. 3135/2023 got employment with Jann Projects Pvt. Ltd., as an Executive, after he was released on bail in an NDPS case. The said Jann Projects Pvt. Ltd. is stated to be a sister concern of The Global Education and Leadership Foundation (‘GELF’). According to the petitioner, he is presently working as a Senior Manager for entrepreneurship at the GELF and as such, is

required to play an active role in developing partnerships as well as in expanding the vision of the GELF to as many countries as possible. According to the petitioner, he has closely worked with the Ministry of Electronics and Information Technology, Startup Hub, in executing the G20 DIA Mega Summit. It is the petitioner's case, that considering the nature of his work, he is required to travel abroad.

The petitioner in Writ Petition No.3855/2023 is an actress appearing in Hindi films. According to the petitioner, she has hosted several television shows, endorsements and a number of brands.

3 On 14th June 2020, Sushant Singh Rajput committed suicide at his residence at Bandra. Pursuant thereto, the Mumbai Police registered an Accidental Death Report (ADR) and commenced inquiry under Sections 174 of the Code of Criminal Procedure (`Cr.P.C'), to ascertain the cause of death.

4 It appears that during the course of inquiry, the Mumbai Police recorded the statements of several persons. It appears that during the pendency of the said inquiry, conducted by the Mumbai Police, Sushant Singh Rajput's father-Krishna Kishore Singh lodged an FIR with the Rajeev Nagar Police Station, Patna, which was registered vide C.R. No. 241/2020 as against the aforesaid petitioners and others under Sections 341, 342, 380, 406, 420, 306, 506 and 122 of the Indian Penal Code ('IPC'). Considering that even the Mumbai Police were conducting an inquiry and since an FIR was registered in Patna, though the cause of action had arisen in Mumbai, the petitioner-Rhea Chakraborty filed a transfer petition being Transfer Petition (Cri.) No. 225/2020 in the Supreme Court. In the interregnum, pending the Transfer Petition before the Supreme Court, the State of Bihar handed over the investigation of C.R. No. 241/2020 to the Central Bureau of Investigation ('CBI'), to investigate the death of Sushant Singh Rajput. The Transfer Petition (Cri.) No. 225/2020 preferred by the petitioner-Rhea Chakraborty before

the Supreme Court was decided on 19th August 2020. The Apex Court directed the CBI to investigate the case i.e. into the death of Sushant Singh Rajput. During the course of investigation, the CBI summoned several persons including the petitioners, against whom an FIR was registered and recorded their statements during the course of investigation. The petitioners were last called/summoned by the CBI sometime in September 2021.

5 The petitioner-Rhea Chakraborty came to be arrested by the Narcotics Control Bureau (`NCB'), Mumbai, on 8th September 2020, in connection with an NDPS Case. Petitioner-Showik Chakraborty also came to be arrested in the said NDPS case on 4th September 2020. The charges alleged as against Rhea Chakraborty and Showik Chakraborty were in contravention of Sections 8(c) r/w 20(b)(ii)(A), 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act (`NDPS Act'). Admittedly, after investigation, charge-sheet came to be filed in the said NDPS case and both the petitioners i.e. Rhea Chakraborty and Showik

Chakraborty came to be enlarged on bail. One of the conditions whilst enlarging the said petitioners i.e. Rhea and Showik on bail was that they will not leave the country without the prior permission of the trial Court. It is not in dispute that no case was registered as against both the the petitioners in Writ Petition No. 3160/2023 i.e. Lt. Colonel Indrajit Chakraborty and his wife-Sandhya Chakraborty, in the NDPS case. It appears that since Rhea Chakraborty was to travel for her professional work overseas, she sought permission from the trial Court to travel abroad, as it was one of the conditions stipulated in the bail order passed in the NDPS Case. It was only then that the petitioner-Rhea learnt that LOCs were issued against her and her family. Pursuant thereto, the petitioner-Rhea and the other petitioners filed the aforesaid petitions, seeking quashing of the LOC issued as against them.

6 Dr. Chandrachud and Mr. Ayaz Khan appearing for the respective petitioners, questioned the issuance of the LOCs

and the continuation thereof indefinitely. It was submitted that although the CBI had taken over the investigation in August 2020, there is no progress in the investigation, despite more than 3½ years having lapsed. It is submitted that all the petitioners have cooperated with the investigation conducted by the CBI and as such, the question of keeping the LOC pending, does not arise. It is submitted that LOCs cannot be issued indefinitely and as such keeping the LOCs pending for more than 3½ years, has infringed the petitioner's right to travel abroad, thereby violating Article 21 of the Constitution i.e. the fundamental right and liberty to travel freely. It is submitted that all petitioners have roots in the society and as such, the question of the petitioners absconding or evading arrest, does not arise.

7 Learned counsel appearing for the respective petitioners relied on the judgments of the Apex Court in the cases of *Navinchandra N. Majithia v. State of Maharashtra & Ors.*¹ and

1 (2000) 7 SCC 640

*Kusum Ingots & Alloys Ltd. v. Union of India & Anr.*² on the point of jurisdiction. The said judgments were relied upon to show that the aforesaid petitions are maintainable before this Court, inasmuch as, the whole or part of action has arisen within Mumbai and in particular, since the alleged offence in question, if any, had taken place in Mumbai. It is submitted that the fundamental right to travel, cannot be taken away, except by due procedure established by law. In this connection, reliance was also placed on the judgment of the Supreme Court in *Maneka Gandhi v. Union of India & Anr.*³.

8 An affidavit dated 15th December 2023 has been filed on behalf of the respondent No. 1-Union of India, in Writ Petition No. 3885/2023. Mr. Patil and Mr. Shirsat, learned Spl. PPs opposed the petitions. They submitted that this Court has no jurisdiction to entertain the petitions, seeking quashing of the LOCs. It is also submitted that investigation is ongoing and as

2 (2004) 6 SCC 254

3 (1978) 1 SCC 248

such, it is open for the petitioners to seek permission of the Court to travel abroad as and when they propose to travel, instead of quashing the LOCs. Both learned Spl. PPs, Mr. Shirsat and Mr. Patil do not dispute the fact, that the petitioners have appeared before the agency i.e. CBI and that they were last called in September 2021 and that they have not been summoned thereafter. They submitted that it is always open for the petitioners to resort to the alternative remedy, by filing appropriate proceeding before the Patna Court, for withdrawal of the LOCs.

9 Heard learned counsel for the parties and perused the papers and the LOCs issued as against the petitioners which were tendered to us in a sealed envelope as well as the judgments relied upon by the learned counsel for the respective parties.

10 At the outset, at the cost of repetition, we may note a few dates.

On **14th June 2020**, Sushant Singh Rajput committed suicide at his residence at Bandra, Mumbai. The Mumbai Police registered an ADR and commenced inquiry under Section 174 of the Cr.P.C, to ascertain the cause of death of Sushant Singh Rajput. During the course of inquiry, statements of several persons came to be recorded.

On **25th July 2020**, Krishna Kishore Singh (father of Sushant Singh Rajput) lodged an FIR with the Rajeev Nagar Police Station, Patna, which was registered vide C.R. No. 241/2020 for various offences under the IPC as against the petitioners and others, alleging several offences.

One of the petitioner i.e Rhea Chakraborty filed a transfer petition in the Supreme Court, seeking transfer of the case registered at Patna, to Mumbai. During the pendency of the said petition, the State of Bihar handed over the investigation of the said case registered at Rajeev Nagar Police Station to the CBI,

to investigate into the death of Sushant Singh Rajput. Accordingly, CBI registered an FIR i.e. RC2242020S0001 on **6th August 2020 at AC-VI Police Station, Delhi**. The said FIR registered by CBI is annexed to the petition.

From a perusal of the said FIR registered by CBI, in the column of 'place of occurrence' it is stated as '***Mumbai, Patna and other places***'. The said FIR was registered as against the aforesaid four petitioners, Samuel Miranda, Shruti Modi and unknown persons. When the transfer petition came up on 19th August 2020 before the Apex Court, the Apex Court issued directions to the CBI to investigate the death of Sushant Singh Rajput. Accordingly, a special team was formed to investigate the said case. The petitioners and others were summoned by the CBI and were interrogated in Mumbai. The petitioners were last summoned by the CBI in September 2021. Admittedly, thereafter, none of the petitioners have been summoned by the CBI. Although, the petitioners-Showik and Rhea were arrested

in an NDPS case, both were subsequently released on bail. It is not in dispute, that no case was registered as against the petitioners-Lt.Colonel Indrajit Chakraborty and Sandhya Chakraborty, under the NDPS Act.

11 When questioned, Mr. Shirsat as well as Mr. Patil, learned Spl. PPs. appearing for CBI, do not dispute the fact, that the petitioners have cooperated with the investigation and attended the office of the CBI, whenever called, in connection with the case registered by the CBI. They also admitted that post September 2021, none of the petitioners have been summoned. Thus, it is evident from the aforesaid that it is not a case where the petitioners have not cooperated with the CBI or have attempted to evade summons/arrest.

12 It is also pertinent to note, that petitioners-Rhea and Showik were arrested in an NDPS case, sometime in September 2020. Both were granted bail by separate orders. The

petitioner-Rhea was granted bail vide order dated 7th October 2020 by the High Court, whereas, Showik was granted bail by the trial Court on 2nd December 2020. One of the conditions in both the bail orders is that the petitioners, Showik and Rhea will not leave the country without the prior permission of the trial Court.

13 Admittedly, CBI, despite having registered an FIR in 2020, has not filed any report i.e. either a charge-sheet or a closure report, till date. According to the learned Spl. PPs, investigation is still in progress. It is not in dispute that in the interregnum, pursuant to the issuance of LOCs, the petitioners-Showik and Rhea filed applications seeking suspension of the LOCs for a short period, as they wished to travel abroad. The said applications were allowed by this Court, on certain terms and conditions stipulated in the said orders. Although, the applications for suspension of the LOCs and permission to travel abroad preferred by the petitioners-Showik and Rhea were

opposed by the prosecution, on the ground of jurisdiction, this Court allowed the interim applications filed in the aforesaid petitions and as such, permitted petitioners-Rhea and Showik to travel abroad for the period mentioned in the interim applications and accordingly, suspended the LOCs during the said period.

14 Even today, learned Spl. P.Ps raised the question of jurisdiction. It is pertinent to note, that in the FIR registered by the respondent-CBI, in the Column 'Place of Occurrence', the places mentioned are '*Mumbai, Patna and other places*'. It is not in dispute that the alleged offence which is being investigated by CBI has taken place in Mumbai and definitely a great part of the cause of action has arisen in Mumbai. We, having considered the judgment of the Apex Court rendered in the case of *Navinchandra Majithia (Supra)*, in particular paras 22, 27, 37 and 38 and *Kusum Ingots & Alloys Ltd. (Supra)*, in particular paras 10 and 11, do not find any merit in the objection raised by the learned Spl. P.Ps, that the aforesaid petitions should be dismissed

for want of jurisdiction. We hold that the petitions are maintainable before us, in Mumbai.

15 As noted above, the interim applications filed by petitioners-Rhea and Showik in their aforesaid petitions seeking suspension of the LOCs for a short period till they travel abroad, were allowed by this Court, despite objection of jurisdiction raised by the Spl. P.Ps. Admittedly, both the said orders have not been challenged by the CBI.

16 As noted above, by these petitions, all the petitioners are seeking quashing of the LOCs issued as against them. Considering quashing of the LOCs is sought, we had asked the learned Spl. P.Ps to produce the LOCs before us as well as the memorandum/circulars issued by the Ministry vis-a-vis issuance of LOCs. Pursuant thereto, Mr. Shirsat and Mr. Patil have produced the LOCs issued as against the petitioners in a sealed envelope alongwith the office memorandum dated **22nd February 2021**

incorporating the Consolidated Guidelines therein (`hereinafter referred to as `the said Consolidated Guidelines’). Mr. Shirsat and Mr. Patil placed great emphasis on Clause (H) of the said Consolidated Guidelines, which reads thus :

*"(H) Recourse to LOC is to be taken in cognizable offences under IPC or other penal laws. **The details in column IV in the enclosed Proforma regarding 'reason for opening LOC must invariably be provided without which the subject of an LOC will not be arrested/detained.'**"*

(emphasis supplied)

17 We have perused Column-IV of the LOCs issued as against all the four petitioners and find that `no reason’ for opening the LOCs has been disclosed, though mandated under Clause (H) of the Consolidated Guidelines. All that is stated in Column-IV, is the FIR number and the gist of the FIR. It is pertinent to note that as per Clause (H), in the said Column “reason for opening LOCs” the reason for issuing LOC has to be spelt out i.e. the apprehension of the Agency, needs to be spelt out. Mere mentioning of an FIR or mentioning the gist of the FIR is not sufficient and can never be a reason for issuing an

LOC. When we questioned the learned Spl. P.Ps, whether in every CBI case, on registration of an FIR, an LOC is issued, the answer was in the negative. It is thus clear that clause (H) which mentions “reasons for opening LOC” means recording of the satisfaction of the authority for issuing LOCs. It is pertinent to note, that LOC is issued where the accused/person is deliberately evading arrest or not appearing in the trial Court despite non-bailable warrants and other coercive measures or there is a likelihood of the accused/person leaving the country to evade trial/ prosecution/arrest or for any other reason, as stipulated in the Consolidated Guidelines. Thus, having perused the four LOCs issued against the petitioners by the CBI, we find that in neither of the four LOCs, any satisfaction is recorded, vis-a-vis any apprehension or any other reason, to issue an LOC. We find there is absolutely no reason disclosed for opening of the LOCs, except mentioning the registration of an FIR and giving the gist of the FIR. Even otherwise, as per Clause (J) of the said Consolidated Guidelines, the LOC opened shall remain in force

until and unless a deletion request is received by the Bureau of Immigration, from the originator itself. Clause (J) reads thus :

*“(J) The LOC opened shall remain in force until and unless a deletion request is received by Bol from the Originator itself. No LOC shall be deleted automatically. **Originating Agency must keep reviewing the LOCs opened at its behest on quarterly and annual basis and submit the proposals to delete the LOC, if any, immediately after such a review. The BOI should contact the LOC Originators through normal channels as well as through the online portal. In all cases where the person against whom LOC has been opened is no longer wanted by the Originating Agency or by Competent Court, the LOC deletion request must be conveyed to Bol immediately so that liberty of the individual is not jeopardized.**”*
(emphasis supplied)

18 It is thus specifically stated in the said clause (J), that no LOC shall be deleted automatically. It is further stated in Clause (J) that the originating agency (in the present case, CBI) must keep reviewing the LOCs opened at its behest on quarterly and annual basis and submit the proposals to delete the LOC, if any, immediately after such a review. It is further stated that in all cases, where the person against whom LOC has been opened is

no longer wanted by the originating agency or by a competent Court, the LOC deletion request must be conveyed to the Bureau of Immigration (BOI) immediately, so that the liberty of an individual is not jeopardized. Thus, the Consolidated Guidelines issued are conscious of the fact, that when an LOC is issued, liberty of an individual stands jeopardized.

19 In the present case, neither is it pointed out by the learned Spl. PPs that the said LOCs which were issued have been reviewed periodically nor is there any mention of the same in the affidavit. Even otherwise, it is well settled that the reasons for issuance of LOCs or continuation of the same, cannot be supplanted by an affidavit.

20 In *Karti P. Chidambaram v. Bureau of Immigration*⁴, the Madras High Court held that the mandate of the office memorandum dated 27th October 2010, that a request for issuance of an LOC would necessarily have to contain reasons for

4 (2018) SCC OnLine Mad 2229

such request. Thus, the condition precedent for issuance of an LOC is, therefore, the existence of reasons, which should be disclosed in the request for issuance of the LOC.

21 Although the said office memorandum is of 2010 and although in *Karti P. Chidambaram (supra)*, the Madras High Court was dealing with the office memorandum of 2010, the Consolidated Guidelines, in particular, Clause (H) clearly speaks about `reasons' for issuing LOC. The LOC will always have to be considered, having regard to the circumstances prevailing on the date on which the request for issuance of the LOC was made.

22 As noted above, in the facts of the present case, LOCs were issued at the behest of the respondent-CBI, way back in August 2020 with respect to a case registered on 6th August 2020, by CBI. Nothing was brought to our notice in the LOC, reflecting the `reason' for issuing of LOCs, except registration of an FIR and setting out the gist of the FIR, or for the continuance

of the LOCs. As noted above, till date, no report has been filed by the CBI i.e. either charge-sheet or closure report. It is not in dispute that the petitioners have joined the investigation and have cooperated with the same. Thus, the submission of the learned Spl. PPs, that the LOCs issued at the behest of the CBI can be kept pending and that it is always open for the petitioners to file applications for suspension of the LOCs, when they wish to travel abroad, cannot, in the facts, be entertained.

23 LOCs cannot be issued as a matter of course, but only when there is/are reason/(s) to issue the same i.e. when a person deliberately evades arrest or does not appear in the trial Court or for any other reason. An LOC is a coercive measure to make the person surrender and as such interferes with the person's right of personal liberty and free movement and curtails the fundamental right of an individual to travel, guaranteed under Article 21 of the Constitution.

24 In *Maneka Gandhi (Supra)*, it was held in para 38 as under :

*“38. We may observe that if the impugned Order impounding the passport of the petitioner were violative of her right to freedom of speech and expression or her right to carry on her profession as a journalist, it would not be saved by Article 19(2) or Article 19(6), because the impounding of the passport for an indefinite length of time would clearly constitute an unreasonable restriction.
..... (emphasis supplied)*

25 According to the affidavit filed by the CBI in Writ Petition No. 3885/2023, LOC was issued against the petitioner-Rhea, on a reasonable apprehension of her fleeing away and not joining the investigation/trial. As noted above, this reason was not mentioned in the Column-IV i.e. Form issuing LOC, which only mentions the FIR and contents of the FIR. Reason is mentioned by the CBI in the affidavit. As noted earlier, ‘reason for issuance of LOC’ has to be disclosed in Column-IV and cannot be supplanted in an affidavit. As noted earlier, LOCs were issued in August 2020 against all the petitioners, with no reasons disclosed. Nothing has been pointed out to us, to show that there

has been any review of the same as required in Clause (J) of the Consolidated Guidelines.

26 Be that as it may, it is not in dispute that all the petitioners have participated in the investigation and as such, have cooperated with the investigation. The petitioners were last called in September 2021.

27 It is not in dispute that all the petitioners have roots in the society. The right to travel is a fundamental right and cannot be curtailed except according to due procedure established by law. Under the Format for issuance of LOC itself, 'reasons' must be given. Even under the said Consolidated Guidelines, the LOC is expected to be periodically reviewed, as to whether grounds exists to continue the same. No reason has been mentioned in the LOCs, as to why issuance of LOCs was warranted, except for mentioning the FIR and giving the gist of

the FIR. Nor is there anything to show that the LOC issued has been reviewed after 2020. It is pertinent to note that it is not a case of the respondent-CBI that the petitioners, except Rhea is a flight risk. All the petitioners have roots in India. All the petitioners including petitioner-Rhea have cooperated with the investigation. The only submission is that investigation is ongoing and that permission can be sought as and when the petitioners intend to travel abroad, for suspension of the LOC, during the said period. This submission, we are afraid, cannot be accepted or acceded to, and as such we reject the same. The LOC cannot be kept pending indefinitely, in this case for more than 3½ years, though the petitioners have cooperated with the investigation, which fact has not been disputed. As noted earlier, there is already a condition imposed on the petitioners-Showik and Rhea, in an NDPS case, not to leave the country, without the permission of the Court.

28 Thus, for the reasons stated aforesaid, we allow all
the aforesaid petitions and as such, quash and set-aside the LOCs
issued as against the petitioners.

29 Needless to state that it is always open for the
authorities to issue LOC against the petitioners, if the occasion so
arises in future.

30 The aforesaid petitions stand disposed of accordingly.

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

MANJUSHA DESHPANDE, J. REVATI MOHITE DERE, J.

32 After the judgment was pronounced, Mr. Shirsat and
Mr. Patil, learned Special PPs. sought stay of the above judgment.

33 For the reasons that we have set-out in the judgment,
request for stay is rejected.

MANJUSHA DESHPANDE, J. REVATI MOHITE DERE, J.