IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.6245 OF 2021

Burzin Manek Daver
Having address at 401,
Pacific Heights, Sherly Rajan Road
Bandra (West), Mumbai-400 050
Mumbai. ...Petitioner

Versus

1. Union of India
(Through Central Bureau of
Investigation (C.B.I.)
Banking Securities and Fraud Cell,
Plot No.C-5A, G Block
Bandra-Kurla Complex (BKC)
Near MTNL Exchange, Bandra (East)
Mumbai.

2. State of Maharashtra ...Respondents

Mr. Karan Kadam a/w Mr. Himanshu V. Pradhan, Mr. Vinayak Palande and Ms. Ragini Jaitha i/b M/s. Crawford Bayley & Co., for the Petitioner.

Mr. Shreeram Shirsat, Special Public Prosecutor a/w Mr. Nishad Mokashi and Ms. Tanvi Mate, for the Respondent No.1-CBI.

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

CORAM : REVATI MOHITE DERE &
MANJUSHA DESHPANDE, JJ.

DATE : 30th APRIL 2024

ORAL JUDGMENT (Per Revati Mohite Dere, J.) :

1. At the outset, learned counsel for the petitioner seeks leave to amend the prayer clause. Leave granted. Amendment to be carried out forthwith.

2. Heard learned counsel for the parties.

3. 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-CBI. Learned APP waives notice on behalf of the respondent No.2-State.

4. By this petition, preferred under Article 226 of the Constitution of India and under Section 482 of the Code of Criminal Procedure, the petitioner seeks quashing and setting aside of the Look

Out Circular ('LOC') issued by the respondent No.1, in connection with FIR bearing C.R. No.RCBSM2019E0011, registered with the CBI, Banking Securities Fraud Branch, Mumbai, (transferred from CBI, Banking Securities Fraud Branch, Kolkata), at the instance of First Informant-Prabhakar Hemant Kumar Pammi.

5. Mr. Kadam, learned counsel for the petitioner submits that there was no justification for the respondent No.1-CBI to issue an LOC, more particularly when the petitioner has co-operated and is co-operating with the investigation. He submits that infact, the petitioner had settled the Company's dues with the State Bank of India ('SBI'), pursuant to a one time settlement, after which SBI issued a 'No Dues Certificate', way back in July 2021. Mr. Kadam submits that the petitioner made a representation to the Investigating Officer of the CBI for withdrawal of the LOC, however, the said request has been rejected by the Officer of the CBI on 24th April 2024. Mr. Kadam, learned counsel for the petitioner has placed on record a photocopy of the said reply received from the concerned Officer dated 24th April

2024. A photo-coy of the same is taken on record.

6. Mr. Shirsat, learned Special Public Prosecutor appearing on behalf of the respondent No.1-CBI has produced the LOC issued at the behest of the respondent No.1-CBI against the petitioner. He submits that merely because the petitioner has settled with the SBI, cannot be a ground for not investigating the C.R. registered at the behest of the respondent No.1-CBI. He submits that investigation is still on-going and that although the C.R. was registered in 2019, in view of the status-quo order, which was in operation till 2023, the investigation could not progress, as desired.

7. Perused the papers. It appears that an FIR bearing C.R. No.RCBSM2019E0011 was registered by the CBI, Banking Securities Fraud Branch, Mumbai, at the instance of SBI, alleging offences punishable under Sections 420, 465, 468, 471, 120B of the Indian Penal Code ('IPC') and under Sections 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, on 28th August 2019. The said FIR was

registered not only against the petitioner but also against Livewel Airteam Private Limited ('LATPL') and other persons, for allegedly defrauding SBI for an amount of Rs.61 crores. It appears that during the course of investigation i.e. on 6th September 2019, the CBI seized several documents and articles. It appears that subsequently i.e. on 26th July 2021, LATPL and SBI entered into a one time settlement, pursuant to which the SBI issued a 'No Dues Certificate' to LATPL, against whom the CBI had registered a case in 2019. It appears that the petitioner learnt of issuance of an LOC when he was at the Mumbai International Airport on his way for a business tour on 20th October 2021. It appears that thereafter, the respondent No.1-CBI issued two notices to the petitioner, one under Section 41A and another under Section 91 of the Code of Criminal Procedure (Cr.PC). The said notices were challenged by the petitioner by way of a writ petition in this Court in October 2021, pursuant to which, this Court vide order dated 12th November 2021 passed an order directing all the parties to maintain status-quo. It appears that pursuant to the LOC issued against the petitioner, the petitioner approached this Court and filed an interim application, pursuant to which the petitioner was permitted to travel abroad for business purposes on certain terms and conditions on three different occasions. It appears that in February 2023, the petition filed by the petitioner was withdrawn in view of the affidavit filed by the respondent-CBI that the investigation would take place in Mumbai and not in Kolkata. Accordingly, liberty was granted to the petitioner to file a substantive petition for quashing of the FIR. It appears that pursuant to said liberty, the petitioner has filed a writ petition in this Court, being Criminal Writ Petition No.678 of 2023 seeking quashing of the FIR. This Court vide order dated 2nd March 2023 directed the CBI to continue with the investigation and recorded the assurance given by the petitioner's advocate that the petitioner will co-operate in the investigation by attending the investigating officer as and when called for. This Court also directed that if any coercive steps were warranted, the petitioner should be issued 72 hours notice. It is not in dispute that after March 2023, the petitioner has not been summoned by the respondent No.1-CBI.

8. We have perused a copy of the LOC issued as against the petitioner. The said LOC was issued on 6th September 2019. The reason for issuance of LOC is registration of the aforesaid FIR. In column IV (d) the period of LOC retention was mentioned as '12 months.' Mr. Shirsat has not placed on record any extension to show that the said LOC was continued after the expiry of 12 months of the issuance of the first LOC on 6th September 2019. We have in the case of ***Showik Indrajit Chakraborty v/s Addl. Superintendent of Police and Anr.***[1], observed that mere registration of an FIR cannot be a ground for issuance of LOC. In the 'reason' column (Reason for opening LOC), there is no mention of any apprehension of the petitioner fleeing away and not joining the investigation/trial. Mr. Shirsat has also not placed before us any document to show that the validity of the LOC which was for 12 months, extension was sought.

9. The petitioner has filed an affidavit dated 19th April 2024. In the said affidavit, the petitioner has stated that he has roots in India and that he lives with his family in Mumbai. He has further in his

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affidavit stated that he and his family are dependent on the petitioner's business in India for their livelihood and that he has no income from any other source or support. He has further stated in para 8 of the affidavit that one LOC, which was issued at the behest of the SBI was withdrawn by the SBI, when the petitioner made one time settlement to the SBI and the SBI issued 'No Dues Certificate' in favour of the petitioner's company in 2021. From the said affidavit, it appears that the petitioner is required to travel overseas frequently in connection with his business. He has further listed the two immovable properties, one standing in his and the other, in his wife's name, in Mumbai and has further undertaken to remain present as and when called for the purpose of investigation in the present case.

10. Considering what is stated aforesaid, and also the affidavit of the petitioner, the petition is allowed, on the following terms and conditions:-

ORDER

(i) The LOC issued as against the petitioner, at the behest of the respondent No.1-CBI, in connection with FIR bearing C.R. No.RCBSM2019E0011, registered with the CBI, Banking Securities Fraud Branch, Mumbai, is quashed and set aside;

(ii) The petitioner to inform the respondent No.1-CBI whenever he travel overseas i.e. the petitioner, before his departure, shall furnish the full itinerary of his overseas travel with all details, including the address where he would stay, telephone/mobile/contact numbers, on which he can be contacted during the said period, to the respondent No.1-CBI via e-mail/fax or any other electronic mode;

(iii) The petitioner on his return to India, within 48 hours, to also inform the respondent No.1-CBI, of his return via e-mail/fax or any other electronic mode;

(iv) The aforesaid conditions i.e. clauses (ii) and (iii) will be valid for a period of 12 months from today;

(v) 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 CBI has informed the Immigration Authorities or not;

(vi) The respondent No.1-CBI 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;

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

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

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

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