

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

***CRIMINAL WRIT PETITION NO. 4765 OF 2021
WITH
INTERIM APPLICATION NO. 4539 OF 2023***

Shikha Kapadia

.... Petitioner

Versus

1. State Of Maharashtra
2. Union of India
3. Bureau of Immigration
4. Serious Fraud Investigation Office

.... Respondents

Mr. Karl Tamboly a/w Mr. Sohil Shah, Mr. Anant Tripathi, Ms. Nidhi Chaudhary i/b Pioneer Legal, for the Petitioner.

Mrs. P. P. Shinde, A.P.P for the Respondent No.1 – State.

Mr. S. K. Halwasia, Special P.P. a/w Mr. Pradeep Yadav, Sr.P.P., for the Respondent No.4 – SFIO.

Mr. Gaurav Arya, Assistant Director, SFIO, is present.

***CORAM : REVATI MOHITE DERE &
MANJUSHA DESHPANDE, JJ.***

DATE : 12th 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 the writ petition is taken up for final disposal. All learned Counsel for the respective respondents waive notice on behalf of the respective respondents.

3. By this petition, preferred under Article 226 of the Constitution of India, the petitioner seeks quashing and setting aside of the Look Out Circular (“LOC”), issued as against her, at the behest of the respondent No.4 – SFIO.

4. Mr. Tamboly, learned Counsel for the petitioner submits that there was no justification for the respondent No.4 – SFIO, to issue the impugned LOC, against the petitioner. He submits that the petitioner has co-operated with the investigation, which was carried out by the SFIO, and has appeared before the said agency on four occasions, last being, sometime in July 2023, after which the petitioner has not been summoned. He submits that since the petitioner is presently working as a Senior General Manager - Legal at WNS Services Pvt. Ltd. a multinational company, the petitioner is required

to travel overseas, to attend board meetings of the company, and to carry out other works as part of her responsibility towards the said company. He submits that the petitioner was allowed to travel overseas by this Court, on almost seven occasions, on certain terms and conditions stipulated therein. He submits that the LOC cannot be kept pending indefinitely, since pendency of the LOC would affect the petitioner's life to travel overseas, as guaranteed under Article 21 of the Constitution of India. Learned Counsel for the petitioner relied on the Judgment of this Court in the case of *Showik Indrajit Chakraborty V/s. The Addl. Superintendent of Police, CBI And Anr.* passed in Criminal Writ Petition No. 3135 of 2023 and other connected petitions. He submits that the petitioner has roots in the society and mere mentioning of an FIR or mentioning the gist of the FIR cannot be a reason for issuance of an LOC.

5. Mr. Halwasia, learned Special P.P. appearing for the respondent No.4 – SFIO opposed the petition. On the last date, we had asked Mr. Halwasia, whether the LOC could be withdrawn, having regard to the facts. Pursuant thereto, Mr. Halwasia informed us

that the LOC has been downgraded, by the SFIO. Mr. Halwasia submitted that since the LOC has been downgraded, the petitioner will now not be detained at the airport, however, only her arrival and departure will be informed to the SFIO authority. When we asked Mr. Halwasia, whether there is any provision for downgrading of the LOC, as per any circular/guidelines issued by the MHA, Mr. Halwasia sought time. We also asked the concerned officer to remain present before us, either personally or through Video-Conferencing, so as to inform us, as to whether there is any provision for downgrading of LOC. Pursuant thereto, Mr. Gaurav Arya, Assistant Director, SFIO is present before us today.

6. Mr. Halwasia has tendered the Consolidated Guidelines for issuance of LOC, in respect of Indian Citizen and Foreigners, dated 22nd February 2021, issued by the Ministry of Home Affairs, Government of Maharashtra. Mr. Halwasia relied on clause (I) of the said guidelines. Mr. Halwasia fairly submitted that as of today the complicity of the petitioner is not seen in the case investigated by the SFIO. He also does not dispute the fact, that the petitioner was last

summoned in July 2023, and that she has co-operated in the investigation.

7. Perused the petition. It appears that on 21st August 2020, respondent No.4 – SFIO requested the respondent No.3 – Bureau of Investigation to open an LOC against the petitioner, since the SFIO had registered a case on 27th November 2019, pursuant to an Order passed by the Central Government. It appears that the State Bank of India had also filed a complaint alongwith 11 other banks with the CBI, in 2020. Admittedly, the petitioner is not an accused in the FIR, registered with the CBI. As far as the SFIO investigation is concerned, it appears that the petitioner was summoned on four occasions by the respondent No.4 – SFIO, the last being in July 2023. It is also not in dispute that after 31st July 2023, the petitioner has not been summoned by the respondent No.4 – SFIO. In fact, Mr. Halwasia fairly states that as of today, the petitioner's complicity is not seen in the SFIO Case. The investigation is pending with the SFIO since 2019. Till date, complaint has not been filed in the said case by the SFIO. The petitioner had sought permission of this Court on seven occasions

to travel abroad, since there was an LOC pending against her. This Court *vide* several Orders permitted the petitioner to travel overseas, on certain terms and conditions as stipulated in the said Orders. It is not in dispute that the petitioner has complied with the terms and conditions, as set out in the said Orders. The petitioner is presently working with WNS Global Services Pvt. Ltd. a multinational company, as a Senior General Manager - Legal. It appears that in connection with her job, the petitioner is required to travel overseas.

8. When the aforesaid petition came up before us on 6th March 2024, we directed Mr. Halwasia to produce the LOC before us and the matter was accordingly adjourned to 2nd April 2024. On 2nd April 2024, the said LOC was not produced before us, and instead Mr. Halwasia informed us that the respondent No.4 – SFIO had reviewed the requirement of the LOC issued *qua* the petitioner, and had downgraded the same, as such, there was no impediment now, in the petitioner travelling overseas. We asked Mr. Halwasia under which provision or circular/memorandum, downgrading of the LOC was done, however as he was unable to assist us, we adjourned the petition

to 12th April 2024. Accordingly, we directed the concerned officer of respondent No.4 – SFIO to appear before us, either personally or through Video-Conferencing on the next date i.e. today. We also asked Mr. Halwasia to produce a copy of the LOC before us. Pursuant thereto, Mr. Gaurav Arya, Assistant Director, SFIO is present before us. Mr. Halwasia has also produced a copy of the LOC issued as against the petitioner, as well as the e-mail sent by Mr. Arya to the respondent No. 3 – Bureau of Immigration. In the said email, it is stated that the LOC against the petitioner be permanently downgraded to the effect of informing the arrival/departure of the subject (No other action to be taken) and the petitioner must be allowed to travel outside India.

9. As far as the LOC is concerned, we have perused the LOC. The reason for issuing the LOC is only the registration of FIR i.e. FIR No. 01/116/2019-CL-II (WR), dated 6th November 2019. Mr. Halwasia places reliance on clause (I) of the Consolidated Guidelines dated 22nd February 2021, for downgrading of LOC. The said Clause (I) reads thus :

“(I) In cases where there is no cognizable offence under IPC and other penal laws, the LOC subject cannot be detained/arrested or prevented from leaving the country. The Originating Agency can only request that they be informed about the arrival/departure of the subject in such cases.”

10. It is pertinent to note that clause (I) deals with when recourse to LOC is to be taken i.e. where there is no cognizable offence under the IPC or other penal laws. It is further stated in the said clause that the LOC subject cannot be arrested/detained. Clause (H) of the very same guidelines deals with when recourse to LOC is to be taken in cognizable offences, under the IPC and other criminal laws. Thus, we do not see any merit in the submission made by Mr. Halwasia that clause (I) provides for downgrading of LOC.

11. As far as the reason for issuance of LOC is concerned, mere registration of an FIR cannot be a ground for issuance of LOC, more particularly when there is no apprehension of the person evading

arrest, or that the person is not likely to co-operate in the investigation or is a flight risk or any other reason. We have in detail considered the same in *Showik Indrajit Chakraborty* (supra).

12. It is also pertinent to note that the petitioner has co-operated with the investigation, and has responded to the summons issued by the respondent No.4 – SFIO, for recording of her statement. It is also not in dispute, that the petitioner was last summoned in July 2023, and that the petitioner attended the office of SFIO. In fact, Mr. Halwasia fairly stated that as of today, the role of the petitioner is not seen in the case in question. The petitioner has roots in the society.

13. The petitioner was required to approach this Court on almost seven occasions, by filing Interim Applications in the aforesaid petition, seeking permission to travel overseas. The right to travel is a fundamental right and cannot be curtailed except according to due procedure established by law.

14. Considering the aforesaid, we are of the opinion, in the

facts of the case, the LOC cannot be kept pending indefinitely, i.e. in the present case from 2019 till date, despite the fact that the petitioner has co-operated with the investigation, which fact has not been disputed by the respondent No.4 – SFIO.

15. Thus, for the reasons stated aforesaid, we allow the aforesaid petition and as such, quash and set-aside the LOC issued as against the petitioner.

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

17. Rule is made absolute on the aforesaid terms. Accordingly, the aforesaid petition stands disposed of.

18. The Order is passed in open Court, in the presence of Mr. Arya, Assistant Director SFIO, and as such Mr. Arya to communicate the quashing of the said LOC, to the Immigration Authorities forthwith, irrespective of whether the Order is uploaded or not.

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

MANJUSHA DESHPANDE, J.

REVATI MOHITE DERE, J.

Digitally
signed by
CHAITANYA
ASHOK
JADHAV
Date:
2024.04.23
13:47:55
+0530