

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

CRIMINAL APPLICATION (APL) NO. 1247 OF 2023

1. Aditya Ishwardas Rasiwasia
 2. Ishwardas Laxmichand Agarwal
- Applicants

Versus

1. State Of Maharashtra
 2. Central Bureau of Investigation
 3. Bureau of Immigration
- Respondents

Mr. Sanjog S. Parab, Senior Counsel a/w Mr. Mohan Rao, Ms. Sakshi Baadkar, Mr. Sanjiv Ahuja i/b Ms. Sulabha V. Rane, for the Applicants.

Ms. A. S. Goltad, A.P.P for the Respondent No.1 – State.

Mr. Kuldeep Patil, Special P.P. a/w Mr. Rohin Chauhan, for the Respondent No.2-CBI.

Mr. D. A. Dube a/w Mr. Rupesh Dubey, Mr. Sachidanand Singh, for the Respondent No.3.

Mr. A. D. More, Dy.S.P./C.B.I., is present.

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

DATE : 12th APRIL 2024

ORAL JUDGMENT (PER REVATI MOHITE DERE, J.)

1. At the outset, learned Counsel for the applicants seeks

leave to amend the prayer clause. Leave granted. Amendment to be carried out forthwith, during the course of the day.

2. Heard learned Counsel for the parties.

3. Rule. Rule is made returnable forthwith, with the consent of the parties and the application is taken up for final disposal. All learned Counsel for the respective respondents waive notice on behalf of the respective respondents.

4. By this application, preferred under Section 482 of the Code of Criminal Procedure, the applicants seek quashing and setting aside of the Look Out Circulars (“LOCs”), issued against them, at the behest of the respondent No.2 – CBI.

5. Mr. Parab, learned Senior Counsel for the applicants submits that the LOCs were issued against the applicants in March 2018, and that the same are kept pending by the respondent No.2 – CBI, despite the fact that the applicants have been discharged from the CBI Case. He submits that this Court on one occasion and the Ld.

Special Judge, CBI, Mumbai on almost 3 to 4 occasions had permitted the applicants to travel overseas, on certain terms and conditions, stipulated in the said orders. He submits that the right to travel is a fundamental right, guaranteed to the applicants under Article 21 of the Constitution of India, and that the same cannot be curtailed by keeping the LOCs pending, as done in the present case. Mr. Parab has tendered undertakings of both the applicants dated 12th April 2024. The said undertakings are taken on record.

6. Mr. Patil, learned Special P.P. appearing for the respondent No.2 – CBI opposes the application. Mr. Patil does not dispute the fact that the applicants have been discharged from the CBI Case, however he states that the said discharge Order passed by the Special Court, has been challenged by the CBI, and that the said challenge is pending before the learned Single Judge of this Court. He submits that in this view of the matter, the LOCs ought not to be quashed and set aside. Mr. Patil has tendered photocopies of the LOCs, issued as against the applicants on 16th March 2018, which were continued again on 21st May 2019 and again on 3rd March 2020. Mr. Patil is unable to state

whether thereafter, LOCs were continued or not, in terms of Consolidated Guidelines dated 22nd February 2022.

7. Perused the application. It appears that an FIR came to be registered at the behest of Punjab National Bank, as against the applicants and several others, by the respondent No.2 – CBI, alleging offences punishable under Sections 120-B read with Sections 201, 409, 420, 468 and 471 of the Indian Penal Code, and under Sections 3(1) (c) & (d) read with Section 13(ii) of the Prevention of Corruption Act. After investigation, charge-sheet was filed in the said case on 15th January, 2019 as against the applicants and others. During the course of the investigation, the applicants were arrested by the CBI, and subsequently granted bail by the learned Special Judge, CBI, Mumbai, on 16th January, 2019 and 11th January, 2019 respectively.

8. It appears that the applicants were permitted to travel overseas on different dates by this Court, as well as the learned Special Court CBI, by various Orders, during the period from 16th October 2019 till October 2022. It is not in dispute that the applicants had filed

a discharge application in CBI Case No. 2 of 2019, seeking their discharge from the said case. The said discharge application, filed by the applicants, was allowed by the learned Special Judge CBI, *vide* Judgment and Order dated 9th December 2022. It appears that the said Judgment and Order, discharging the applicants from the said case, has been challenged by the CBI, in this Court and that the said petition is pending.

9. As far as the LOCs are concerned, the LOCs were issued by the CBI on 16th March 2018 which was valid for a period of one year i.e. till 14th March 2019. It appears that again a renewal request was made by the CBI *vide* letter dated 20th May 2019, pursuant to which, the LOCs were in operation from 21st May 2019 to 19th May 2020. Thereafter, we are informed that a request was made for continuation of LOCs by the respondent No.2 – CBI, however no document has been placed on record before us by the respondent No.2 – CBI, to show that the said LOCs were thereafter, continued till date.

10. As per clause (J) of the MHA Consolidated Guidelines dated 22nd February 2021, for issuance of LOC, the LOC opened shall remain in force until and unless a deletion request is received by the originator itself. It appears that no LOC shall be deleted automatically, and that the originating agency must keep reviewing the LOC 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 respondent No.2 – CBI has not placed on record the continuation of the LOC atleast post 2021. Be that as it may, it is a matter of record, that the applicants were discharged from the CBI Case in December 2022, and that the CBI has challenged the said discharge in this Court.

11. As far as the apprehension expressed by Mr. Patil, learned Special P.P. for the CBI, that the applicants may abscond, the apprehension appears to be without any substance. It is not in dispute that the applicants have paid the complainant bank i.e. PNB Bank a sum of Rs.9 Crores on 27th June, 2018, post the registration of the FIR and prior to the due date of payment to the Bank. Be that as it may, we

are not concerned with the same. Suffice to the state that the apprehension of the respondent No.2 – CBI that the applicants will abscond, does not appear to have any substance. The applicants have roots in the society. In fact both the applicants have tendered their undertakings, which are taken on record by us. In the said undertakings, it is stated in para No.6 that in the event the challenge to the discharge application by the CBI is held against the applicants, they will continue to co-operate in the process of law, as well as with the learned trial Court.

12. Much water has flown after the 1st LOC was issued in 2018, in as much as the applicants were arrested in the said case, and subsequently granted bail. Charge-sheet was also filed against the applicants, and thereafter, the applicants came to be discharged from the said case.

13. Accordingly, the application is allowed and the LOCs issued as against the applicants at behalf of the respondent No.2 – CBI, are quashed and set aside.

14. Needless to state that it is always open for the respondent No.2 – CBI to issue a LOC as against the applicants, if the occasion so arises in future.

15. Rule is made absolute on the aforesaid terms. Accordingly, the application stands disposed of.

16. Since the present Order is passed in open Court, Mr. Patil to officially communicate the Order to the respondent No.2 – CBI, so as to enable the concerned officer to inform the respondent No.3 – Bureau of Immigration about quashing of the LOCs. The Officer from the respondent No. 3 – Bureau of Immigration is also present. Appropriate steps to be taken by him pursuant to the Order passed today.

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

MANJUSHA DESHPANDE, J.

REVATI MOHITE DERE, J.