



W.P.Nos.27686 & 28518 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Pronounced on : 06.12.2024

CORAM : JUSTICE N.SESHASAYEE

W.P.Nos.27686 & 28518 of 2024  
and WMP.Nos.30208, 30211 & 31088 of 2024

**W.P.No.27686 of 2024 :**

Pathan Apser Hussien

... Petitioner

Vs.

1.Bureau of Immigration  
Ministry of Home Affairs  
Government of India  
Represented by its Commissioner (Immigration)  
East Block - VIII, Level V, Sector 1  
R.K.Puram, New Delhi.

2.Central Bureau of Investigation  
BS & FC Bangalore  
Represented by its Superintendent of Police.

3.Union of India  
Bureau of Immigration  
Ministry of Home Affairs  
Represented by its Commissioner  
Shamshabad, Hyderabad.

**Prayer in W.P.No.27686 of 2024 :** Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to declare that the action of the respondents in issuing LOC against the petitioner as illegal



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and contrary to law as an abuse of authority and process of law and direct the respondents to withdraw the LOC issued against the petitioner and pass such further or other orders as this Court may deem fit in the facts and circumstances of the case.

**W.P.No.28518 of 2024 :**

Jeevanandam Rajesh @ Saravanan

... Petitioner

Vs.

1.Union of India

Represented by the Ministry of Home Affairs  
Foreign Department, Immigrations Office  
North Block, New Delhi - 110 001.

2.Central Bureau of Investigation (CBI)

Anti-Corruption Branch  
Shastri Bhavan Annexe  
Haddows Road, Nungambakkam  
Chennai - 600 006.

**Prayer in W.P.No.28518 of 2024 :** Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents herein to remove the name of the petitioner from the impugned Look Out Circular issued by the respondents against the petitioner, as it infringes upon the petitioner's constitutional right to travel abroad and pass such further orders and necessary relief as this Court may deem fit and proper in the circumstances of the case.



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**In W.P.No.27686 of 2024 :**  
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For Petitioner : Mr.R.Sankaranarayanan  
Senior Counsel  
Assisted by Mr.G.Mani Prabhu

For Respondent : Mr.S.N.Parthasarathi  
Sr. Central Government Standing Counsel  
for R1 & R3

Mr.K.Srinivasan  
Special Public Prosecutor (CBI) for R2

**In W.P.No.28518 of 2024 :**

For Petitioner : Mr.R.Sankaranarayanan  
Senior Counsel  
Assisted by Mr.Dinu Prashanth

For Respondent : Mr.ARL. Sundaresan  
Assisted by Mr.K.Srinivasa Murthy  
Senior Panel Counsel for Central Govt [R1]

Mr.K.Srinivasan  
Special Public Prosecutor (CBI) for R2



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### **COMMON ORDER**

*“Of old sat Freedom on the heights,  
The thunders breaking at her feet:  
Above her shook the starry lights:  
She heard the torrents meet.*

*That her fair form may stand and shine,  
Make bright our days and light our dreams,  
Turning to scorn with lips divine  
The falsehood of extremes!”*

*- Alfred Tennyson*

#### **Introductory:**

1.This batch of cases involves a common prayer: “Please let us travel abroad.” The land of their intended destination does not unwelcome them, but the land of their birth would not let them go. Are they so precious that the Executive Government, whose face in this litigation goes by the name the CBI, considers that the country cannot lose them? They surely are precious, for every life in this land is, but the restraint on them from travelling abroad has little to do with the value they may add as citizens of this country. It is the apprehension of the CBI, nay, almost its petrifying fear of once bitten eternally shy variety, that appears to have engulfed and gripped its psyche that it fears that these petitioners might flee the country, never to return.



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2. The CBI wants them here. It has either completed its investigation or it may be underway. That is more on facts. It wants not just the petitioners, but many, almost everyone who have come under its scanner, to stay in India, because it needs their corpus to prosecute. But should prosecution involve persecution of one's fundamental right to travel abroad?

3. This batch of cases is not the first of its kind, but one in the infinite sequence since the dawn of independent India. There have been incessant lectures by the Courts in this country to the Executive, but like a bad student, it comes before the court yet again for another lecture. The Constitution has enjoined the Courts with the unenviable responsibility of guarding the fundamental right to life and liberty of every person. The Courts are therefore, accustomed to lecture like pastors in the pulpit, irrespective of anyone listening them. Otherwise, how does one justify repeated pronouncements on the same genre on the same Constitutional philosophy? To lecture, therefore has become Courts' job, and here is yet another lecture on right to travel abroad and its contours. After all, it helps atleast in the sustenance of the Courts' confidence and hope that attitudinal correctives may still happen within the Executive. The larger object is that an avoidable



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litigation should be avoided, and here the Executive and its arm in the bureaucracy have a major role to play. Let it now get ready for one more lecture.

## Facts

4. The facts involved in these cases may not have great relevance in the context of the right involved in them, yet, a contextual setting for the cases will be enabled only if the minimum facts atleast are introduced. They are tabulated below :

| <b>W.P. No. 27686 of 2024</b><br><b><i>Petitioner's name: Pathan Apser Hussen</i></b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|---------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Petitioner's case</b>                                                              | <ul style="list-style-type: none"><li>● The petitioner, a 62-year-old practicing company secretary as per the laws in India and in the United Kingdom, presently, offers consultancy services to foreign companies looking to invest in India and Indian companies contemplating overseas investments.</li><li>● On 19<sup>th</sup> and 20<sup>th</sup> November 2020, the petitioner appeared before the CBI in connection with a case registered against M/s Best and Crompton Engineering Projects Limited, Chennai. Later, he was arrayed as an accused (A-8) in SPL CC No. 13/2023 on the file of the Court of IX Additional Special Judge for CBI Cases for allegedly helping the aforesaid corporate concern to create fictitious companies. He was granted bail on 14.12.2021 and has been regularly attending court proceedings since then.</li><li>● On 12.06.2024, one UAE-based company by the name of Neo Global Resources Plastic Industries</li></ul> |



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**Petitioner's name: Pathan Apser Hussen**

sought the professional assistance of the Petitioner and requested him to visit Dubai and Abu Dhabi to meet its top-level management.

- The petitioner moved the Special Court in CrI.M.P.No:5197 of 2024 seeking leave to travel abroad. On 05.07.2024, the IX Additional Special Judge granted permission travel to Dubai and Abu Dhabi between 05.07.2024 and 31.07.2024.
- On 22.07.2024, when the petitioner reached Hyderabad Airport, he was informed about the LOC issued against him by the CBI. Hence he could not undertake his intended travel.
- The LOC has not only breached the petitioner's right to travel abroad but has also impaired the petitioner's freedom to carry on business of his choice and his right to privacy.

**Counter  
filed by the  
CBI**

- On 03.02.2017, a case was registered against M/s. Best and Crompton Engineering Project Limited and its directors by CBI, Bangalore based on a complaint preferred by the Zonal Manager, Andhra Bank, Chennai alleging fraud by the accused persons to a tune of Rs. 71.46 crores. The petitioner herein was actively aiding the accused company by floating bogus/shell companies and circular trading.
- Owing to the same, a LOC was issued against the petitioner in 2019. The petitioner should not be allowed to travel outside India especially when the investigation is in the final stage and his presence is indispensable in concluding the investigation. If the LOC is directed to be withdrawn or suspended, then there is an apprehension that the petitioner may flee the country to escape the investigation and trial.



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| <b>W.P. No. 28518 of 2024</b><br><b><i>Petitioner's name: Jeevanandam Rajesh @ Saravanan</i></b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|--------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Petitioner's case</b>                                                                         | <ul style="list-style-type: none"><li>● The petitioner is a 41-year-old businessman who is before the Court seeking deletion of his name from the LOC issued against him. He runs several businesses that are engaged in a wide range of civil works, including the construction and development of airport runways. The professional and personal commitments of the petitioner had always made him a frequent flyer.</li><li>● On 11.07.2018, the petitioner was arraigned as an accused in a case investigated by the CBI, Bangalore in crime number RC-13(E)/2018-CBI/BS&amp;FC/BLR. He was granted anticipatory bail on 10.09.2018 by the Karnataka High Court and on 25.03.2019 by the Madras High Court, when the matter was transferred to Chennai.</li><li>● In 2020, the petitioner was set to travel abroad, but he was not able to do so due to an LOC issued against him. The issuance of the LOC is arbitrary and without any lawful basis, considering that the petitioner has been duly cooperating with the investigation for the last 5 years and has never made any attempt to evade or slacken the efforts of the CBI or the judiciary. The LOC has not only breached the petitioner's right to travel abroad but has also impaired the petitioner's freedom to carry on a business of his choice and his right to privacy.</li></ul> |
| <b>Counter by the CBI</b>                                                                        | <ul style="list-style-type: none"><li>● On 11.07.2018, the petitioner was arraigned as an accused in a case investigated by the CBI, Bangalore in crime number RC-13(E)/2018-CBI/BS&amp;FC/BLR based on a complaint preferred by the General Manager, State Bank of India, Chennai. Subsequently, a final report was filed wherein the petitioner was named as an accused. However, on 04.05.2023, the Magistrate returned the final report for making certain rectifications and transcription.</li></ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |



| <b>W.P. No. 28518 of 2024</b><br><b><i>Petitioner's name: Jeevanandam Rajesh @ Saravanan</i></b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|--------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                  | <ul style="list-style-type: none"> <li>In furtherance of the ongoing case, a LOC bearing number 1845352 was opened against the petitioner vide letter No. 1/SIC/ACK/LOC/2018-9044 dated 22.08.2022 after the expiry of the previous LOC. The allegations levelled against the petitioner are serious in nature and if the LOC is revoked, there is a good chance that the petitioner may flee the country and its justice system for eternity.</li> </ul> |

5. As outlined earlier, the petitioners are restrained by the LOC issued against them from travelling abroad atleast for about five years now. The sustainability and legality of the LOC was the theme of the arguments advanced on either side. While the petitioners' counsel took an extreme position, as to be expected, the prosecution has clung to the other extreme. This Court could gather from the tenor of the arguments advanced that the prosecution apparently is still in a deep state of disturbance owing to certain bad experiences it had suffered in some other cases, a reference to which would be made later in this order. Over to the discussion.

### **On Right to foreign travel:**

6. The early torch bearers in this branch of jurisprudence in India is this

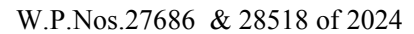


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Court in *V.G.Row Vs State of Madras* [AIR 1951 Madras 147], the Kerala High Court in *Francis Manjooran Vs Government of India* [AIR 1966 Kerala 20] and the High Court of Bombay in *Choithran Verhomal Jethawani Vs A.G.Kazi* [AIR 1966 Bombay 54] where Courts have treated right to travel abroad as a premium-fundamental right. In *Satwant Singh Vs D. Ramarathanam* [AIR 1967 SC 1836], the Supreme Court drew generous inspiration from the American jurisprudence where the US Supreme Court had championed the right to travel abroad as a facet of liberty, and endorsed it. This view finds regular re-enforcement from *Maneka Gandhi Vs Union of India* [AIR 1978 SC 597] to *Satish Chandra Verma Vs Union of India* [2019 SCC OnLine SC 2048]. While in *V.G.Row case* the First Bench of this Court decocted right to foreign travel from Article 19(1)(d) of the Constitution, the later decisions have most appropriately drawn justification from fundamental right to liberty in Article 21.

### **Right to Life Vs Right to Grow Vs Right to travel abroad:**

7. Is the right to travel abroad derivable only from fundamental right to liberty? In its deeper layers, its inter-connect to right to life is also seen well established. It is explained.



9. Has ever a child born free? Absolute freedom associates itself only with the child to be born, and with the man who has already bid his farewell. A child grows in the safety of its mother's womb with no cultural, civilisational or national identity or barriers, but the moment it is born, before the mother kisses the child, law and morality embraces it. Law will soon inform the little mind that it will not be living in a world not "*broken into fragments by narrow domestic walls.*" There its existential challenges commence. The child will be soon on its journey, negotiating its challenges in the wilderness



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of law and morality. No child that aspires to reach the sky in its life can avoid it. And, here the Constitution assures the little child that its life is safe in this democracy with the buffet of opportunities for it to grow and prosper. Reach the sky, if you can, the Constitution motivates everyone in this country. Reach the Sky!

10. While the Constitution presents itself more as a document on the template developed by the positive law school, yet an understanding of right to life and liberty that it advocates may not be confined to it. Indeed, unlike Article 14 (read alongside Articles 15 and 16), Articles 20 or 22, which have fundamental rights of political character, the fundamental rights recognized by Article 21 and Article 19 are inherent in the very nature of human being. In 1921, Dean Roscoe Pound, in his work titled '*The Spirit of the Common Law*', explained :

*“Natural rights mean simply interests which we think ought to be secured; demands which human beings may make which we think ought to be satisfied. It is perfectly true that neither law nor State creates them. But it is fatal to all sound thinking to treat them as legal conceptions. For legal rights, the devices which law employs to secure such of these interests as it is expedient to recognize, are the work of the law and in that sense the work of the State.”*



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While the positive structure of the Constitution may have declared the fundamental right to life and liberty, it is the natural law content of life that details its significance in Article 21. However, the vanity driven positivists often rule to ruin anything which their power of codification (which Jeremy Bentham had very painfully attempted) cannot achieve. What the elasticity of natural law can accommodate to achieve with ease, the legal positivist frown upon it as untouchables as being in the realm of uncertainty and arbitrariness. In *Anarchical Fallacies* (1796), Bentham calls the tenets of natural law as ‘*nonsense on stilts*’. He would argue that the rights recognized by state law are granted by the government, guaranteed by the judiciary, and enforced by the Government’s control of the armed forces and police. There would, said Bentham, be anarchy if the advocates of natural rights were to succeed in challenging those conferred legally by the state. For Bentham and his schoolmates, the fear which accompanies the consequence of non-compliance of positive law is an imperative precondition for the sustenance of their faith in their philosophy. And their excessive attachment to the logicity of this thought process has denied them an opportunity to appreciate that without the moral support for its abidance through respect for law, effectiveness of positive law can be blunted. Classic



example is the inability of death sentence for rape in preventing rape. They ought to understand that fear of non-compliance is a contra-indicator to experiential freedom in a democracy, which respectful, voluntary abidance can protect and promote with least challenges. Is it not an insult to equate a law abider to a law evader? Take away the fear element from Bentham's menu, positive law will more likely to be on crutches for its effectiveness. However, Courts' sense of neutrality and existential purposes are unfettered by the fidelity to any schools of thought as they have the freedom to amalgamate the best features of both - a fine cocktail of Bentham and Pound, which Hart brewed<sup>1</sup>. (And, hidden in this thought process is the seed of constitutional morality which George Grote philosophized and Dr. Ambedkar advocated).

11. The fascination for legal positivism in its pure form has influenced our Courts in *A.K Gopalan Vs State of Madras* [AIR 1950 SC 27] and *Keshava Madhava Menon Vs State of Bombay* [AIR 1951 SC 128], where the

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<sup>1</sup> See H.L.A Hart, Concept of Law, Clarendon (1970), Chapter VIII 'Justice and Morality'. He writes : "the law of every modern state shows at a thousand points the influence of both the accepted social morality and wider moral ideals. These influences enter into law either abruptly and avowedly through legislation, or silently and piecemeal through the judicial process. .... the further ways in which law mirrors morality are myriad, and still insufficiently studied: statutes may be a mere legal shell and demand by the expressed terms to be filled out with the aid of moral principles; .... No 'positivist' could deny that these are facts, or that the stability of legal system depends in part upon such types of correspondence with morals. If this is what is meant by the necessary connection of law and morals, its existence should be conceded."



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Supreme Court has observed that there were no fundamental rights prior to the commencement of the Constitution. Theoretically there is partial truth in this observation as for instance, those in Articles 14, 20 or 22 were not fundamental rights prior to the Constitution, but rights recognized by Articles 19 and 21, have inhered in every human being since the days of *homo sapiens*, which the political governments at different times in the history of the world have either regulated or crushed. It is hence the later decisions of the Supreme Court reflect the realisation that fundamental rights essentially embody a set of universal human values and this view has since come to stay. In ***Kesavananda Bharati Vs State of Kerala*** [(1973) 4 SCC 225], Chief Justice Sikri points out:

*“108. There can be no doubt that the people of India have, in exercise of their sovereign will as expressed in the Preamble, adopted the democratic ideal which assures to the citizen the dignity of the individual and other cherished human values as a means to the full evolution and expression of his personality, and in delegating to the legislature, the executive and the judiciary their respective powers in the Constitution, reserved to themselves certain fundamental rights, so-called, I apprehend because they have been retained by the people and made paramount to the delegated powers, as in the American Model.”*



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In ***K.S. Puttaswamy Vs Union of India*** [(2017) 10 SCC 1], Chandrachud, J

(as the learned Chief Justice then was) observed:

*“42. The human element in life is impossible to conceive without the existence of natural rights. In 1690, John Locke had in his Second Treatise of Government observed that the lives, liberties and estates of individuals are as a matter of fundamental natural law, a private preserve. The idea of a private preserve was to create barriers from outside interference. In 1765, William Blackstone in his Commentaries on the Laws of England spoke of a “natural liberty”. There were, in his view, absolute rights which were vested in the individual by the immutable laws of nature. These absolute rights were divided into rights of personal security, personal liberty and property. The right of personal security involved a legal and uninterrupted enjoyment of life, limbs, body, health and reputation by an individual.*

*43. The notion that certain rights are inalienable was embodied in the American Declaration of Independence (1776) in the following terms:*

*“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness.””*



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The learned judge eventually went on to declare:

*“46. Natural rights are not bestowed by the State. They inhere in human beings because they are human. They exist equally in the individual irrespective of class or strata, gender or orientation.”*

In the same case (***Puttasamy case***) Dipak Misra, CJ explained the meaning of “life” occurring in Article 21 as below:

*“118. Life is precious in itself. But life is worth living because of the freedoms which enable each individual to live life as it should be lived. The best decisions on how life should be lived are entrusted to the individual. They are continuously shaped by the social milieu in which individuals exist. The duty of the State is to safeguard the ability to take decisions — the autonomy of the individual — and not to dictate those decisions. “Life” within the meaning of Article 21 is not confined to the integrity of the physical body. The right comprehends one's being in its fullest sense. That which facilitates the fulfilment of life is as much within the protection of the guarantee of life.”*

12. Life in the fullest sense is accomplished when the life is allowed to grow and prosper, and is let to halt only where one chooses to halt. In that sense, right to grow and prosper cannot be limited to material growth, but it extends to every aspect of life, from physical, mental, material, emotional and



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spiritual well-being. From holidaying to building relationship to professional engagement to pilgrimage and education, there can be endless human activities which can fall within this concept, and each of them may contribute to one's growth and prosperity. The choice rests with the one who holds the right. How one exercises one's right to life is not the concern of law as long as it is legitimate. In that sense the manner of its exercise is part of one's privacy, and that space belongs to the one who holds the right and exercises it. If so viewed, right to grow and prosper can also be seen as part of right to privacy. Eventually, whether it is considered as an independent species of right or as a limb of right to privacy, it still belongs to the family of right to life.

13. To accomplish it is not an elusive dream, if the search for the Constitutional spirit, its values and guarantees, is not limited to the printed text of the Constitution, but to the fairness of human conduct, in the compassion for co-existing citizens and respect for human dignity (It may not endear the legal positivists. For them, a neatly drawn up coaching manual is mandatory for graduating as a great cricketer, and the one who possesses it must necessarily have to become one). Anything which a human life strives to achieve in this country must be allowed to be achieved within the limited



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time it has. Deny a man his right to grow, his right to life will be devoid of its content and purpose.

14. There therefore, can be no brakes on the right to grow and prosper, except through a reasonable and fair procedure established by law, which is the job of the positive law. Reading Article 19 within Article 21 (indeed they have to be so read), displays an amalgam of natural law and positive law structures. While natural law tends to fix no upper limit for the right to life and liberty, positive law steps into regulate it. It is hence Courts advocate due process of the legal procedure which positive law creates, as they are keen to optimize the opportunities that life holds for it to grow and prosper within the Constitutional space.

15. Any procedure that law establishes to interfere with the right to life and liberty cannot therefore exceed the proportionality of the requirements it aims to achieve. Minimalism appeals. If the Constitutional promise ought to guide the conscience of the policy-makers, it should ensure that no one's life under the constitution should be allowed to '*waste its fragrance in the desert air*'<sup>2</sup>.

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2. Thomas Gray, 'Elegy written in the Country Churchyard' (1751).



16. We made the Constitution and hence We owe a duty to uphold its ideals.

Therefore, any procedure which operates disproportionately to the right to grow and prosper is anathema to the constitutional aspirations and an antithesis to constitutional values. If the Constitution cannot assure what it promises, that would be our collective betrayal of the Constitution. The Constitution can never fail unless we fail it.

17. If right to grow and prosper is a facet of right to life, then necessarily right to travel abroad can be read not just an aspect of liberty, but also as an integral right within the right to life itself. Liberty and life do not exist in mutual exclusivity, but they fuse to define the life and its quality under the Constitution. Having stated thus, it may have to be added that it is plainly immaterial whether right to travel abroad should be respected as an aspect of liberty or right to life. Semantics may fascinate a theoretician, but a functional Constitution considers worthy that which is eventually delivered to promote the aspirations of individuals to grow and prosper.

18. Despite geographical barriers dividing the nations, despite the political ideologies separating human minds, the world still offers a lot to exchange



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within its constituent countries for mutual growth and prosperity. There is no world state, but surely there is a global village. And, every person's right to life which the Constitution protects is part of this larger scheme. Opportunity to grow in the contemporary world is defined by the ability to see, seek and seize an opportunity, and where there is an opportunity to grow and prosper, there surely may arise a need to travel. Growth defies inertia and so does travel. After all, man is not a grazing cow to waste his life in the meadow of the neighbourhood.

19. While understanding the absoluteness of right to life, it is often argued that it can never be absolute, as it can be limited by the procedure established by law. While this argument is not without merit, it is equally unassailable that the power of the State from which flows the procedure to interfere with right to life and liberty is also not absolute either. The power to frame or establish any limiting procedure on right to life and liberty can never be arbitrary, excessive or disproportionate, and at all times shall conform to procedural or even substantive due process<sup>3</sup>. The traffic signals on the highway are not road blocks for they are not determinative of the extent of right which a road user has to use the road. There may be diversions on the

<sup>3</sup> See per R.F.Nariman, J., in *Mohd. Arif Vs Supreme Court of India* [(2014) 9 SCC 737 (para. 28)] and *K.S.Puttaswamy (Privacy-9J.) Vs Union of India* [(2017) 10 SCC 1 (para. 477)].



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way, as they are necessary at times. They do not drain the quest to travel, unless a choice is made to give up the journey. Compassionate considerations may leave upon one a duty to make way for an ambulance, but does it ever take away one's right and ability to move ahead? After all, the one who has the thirst to stay in the wicket, does not worry about the conditions of the pitch. He who sets himself on a motion to grow and prosper, does not count the hiccups on the way.

*“People of Orphalese, you can muffle the drum, and  
you can loosen the strings of the lyre, but who shall  
command the skylark not to sing?”*

– Kahlil Gibran, ‘The Prophet’

Therefore, perceptual re-engineering of Article 21 has now become a Constitutional imperative for re-orienting one's understanding that right to life should not be measured as a summation of the restrictions which any procedure established by law may impose, but in terms of the quality of life which is still assured despite such interferences by law. If viewed thus, right to life under Article 21 approximates relative absoluteness in its Constitutional sense, inspite of the State exercising its power to interfere with it. After all the space is intended for equal citizens, nay, can be even for equal persons, and hence there are bound to be regulations.



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## WEB COMMENTS **Right to Travel Abroad and the LOC**

20. The right to grow and prosper however, can be hamstrung when a person facing a criminal prosecution is issued with a Look Out Notice (LOC) by the investigating agency. The one against whom it is issued can walk up to the immigration office in the airport but cannot board the plane. Whither goes his right to travel abroad? Whither goes his right to grow and prosper? And, whither goes his right to life?

21. A LOC is a creation of the Executive through an Office Memorandum of the Union Home Ministry. Its objective is variously understood, from treating it as a device to monitor the movement of nationals and foreigners to a procedure for looking out for absconding accused persons<sup>4</sup>. Contextually, the following passage from ***Sumer Singh Salkan Vs Assistant Director and Others*** [ILR 2010 (6) Del 706] is significant:

*“11.A. Recourse to LOC can be taken by investigating agency in cognizable offences under IPC or other penal laws, where the accused was deliberately evading arrest or not appearing in*

<sup>4</sup> See: ***Viraj Chetan Shah Vs UOI & Others*** [W.P.No.719 of 2020, dated 23.04.2024]; ***Sumer Singh Salkan Vs Assistant Director and Others*** [ILR 2010 (6) Del 706]; ***Rahul Dilip Shah Vs Union of India and another*** [2024 SCC OnLine Del 51]; ***Noor Paul Vs Union of India and Others*** [2022 SCC OnLine P&H 3408]; ***Abhayjeet Singh and others Vs State of Rajasthan and others*** [Order of the Rajasthan High Court at Jodhpur in S.B.Criminal Misc (Pet.) No.4572/2023, dated 18.10.2024].



*the trial court despite NBWs and other coercive measures and there was likelihood of the accused leaving the country to evade trial/arrest...LOC is a coercive measure to make a person surrender to the investigating agency or Court of law."*

22. Until 2021, an Office Memorandum enabling the issuance of LOC has capped the upper time limit for restriction on right to travel abroad to one year, but the 2021 OM has taken it away, which paves way for imposition of LOC infinitely. This appears to have become a trend: either LOC is extended annually under the 2018 regime, or infinitely post 2021 OM.

23. The anxiety of the criminal justice administration is, and at all times can be, only to ensure that the person charged with the commission of crime and facing trial for the charges in this country, submits to the jurisdiction of our courts and participates in the trial. It is understandable. It is, and at all times it ought to be, least concerned with how an accused person lives his life and does his or her business. Our criminal justice administration, nay even the criminal justice system developed by law holds right to dignified life of even a convict supreme. In ***Sunil Batra Vs Delhi Administration*** [***Sunil Batra II***, (1980) 3 SCC 488], it was held that a convict only loses his freedom of movement, but not his right to live with dignity, which Article 21 of the



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Constitution recognises as inhering in every human being living in this country – both nationals and foreigners alike. The objective to secure the presence of an accused for his participation in the trial and to undergo any penal consequences in the eventuality of the Court upholding the charges, may not be construed as a license to enable any interference with the private life of an accused. After all, where the accused has already submitted to the process of the Court, must the accused still be strung on leash fastened to the judicial chair? *Criminal law is best administered when it leaves least inconvenience on the personal lives of the accused persons, lest the faith this country has on the Constitutional principles emanating from the judicial interpretation of Article 21 will be rendered farcical.* There can never be an insult to the Constitution and what it declares.

24. It could now be derived that right to travel abroad need not necessarily be need based. To reiterate, if the concern of the criminal justice administration is only to ensure the participation of the accused in a criminal proceeding, then law and its administration should focus only on that, and not on any other ancillary issues affecting the personal lives and privacy of accused persons. If not, we may end up converting the stay of an accused person into a kind of house arrest in this country. That may not be an ideal way to



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understand the Constitution. Hypothetically, if after a couple of decades, a person accused of committing a crime in India and restrained from travelling abroad and stripped of his opportunity to grow and prosper, is acquitted, will the legal system recompense him of all that he has lost?

25. An indiscriminate use of LOC need not necessarily ensure that a person accused of an offence in all circumstances will submit to law and participate in the trial. At least there are three circumstances, out of which two might not even be in the control of the accused, which indicate that issuance of LOC might not guarantee either the legal system or those who administer it that detaining an accused within the confines of our territorial waters will ensure his participation in the trial: (a) the LOC slapped accused absconding within the territory of India; (b) the accused contracting physical/mental incapacity of such a nature that he might not be able to participate in the trial; and (c) the accused dying. If LOC's efficacy is not absolute in achieving its intended purpose, is it not necessary that its issuance is balanced? Set in the context, the LOC which neither is a product of the Legislature nor possesses the character of an executive order comparable to a legislation cannot overreach its purpose to fetter an individual's right to grow and prosper in his lifetime.



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26. While in *Viraj Chetan Shah Vs Union of India and Others* [W.P.No. 719 of 2020, dated 23.04.2024], the Bombay High Court had held that an OM enabling the issuance of LOC is no more than an instruction without a basis in law, even if it is presumed that it falls within the term procedure established by law under Article 21 of the Constitution, yet to extend the LOC periodically or slap it infinitely freezing the right of a person to travel abroad will be excessive and arbitrary restriction on right to travel abroad. As would be discussed later, a LOC is not without its utility, yet to freeze a person's right to travel unlimited by time will be a crime against the Fundamental Rights guaranteed to an individual, as its effects transcend beyond to violate right to grow and prosper, and hence right to life, and consequently it breaches the values of human rights which the Constitution aspires to uphold. Indeed in *Rahul Dilip Shah Vs Union of India & another* [2024 SCC OnLine Del 51], the Delhi High Court has held that LOC cannot be extended endlessly as it seriously impedes the right of a person to travel abroad and has the effect of abridging the rights guaranteed under Article 21 of the Constitution of India. None can disagree with the said proposition. This Court records its agreement with the said proposition.



27. Driven perhaps by the fear psychosis that everyone who gets an opportunity to travel abroad will flee, if understood in the context of the discussion above, the fears of the prosecution will blur the neutrality of the vision with a strong dose of prejudice. To state it differently, when the law requires the Court to presume the innocence of the accused, the LOC requires the Court to believe his guilt. If it is otherwise, the focus of the Office Memorandum ought to have been not to stop a person accused of an offence from travelling abroad but to ensure that he would return back to participate in the trial. In other words, the foundation for LOC rests on a faulty pivot and it very seriously requires an attitudinal shift in appreciating the very issue.

28. When Shakespeare scripted Othello with the brush of Leonardo da Vinci (Act 5, Scene 2), he wrote,

*“When I have plucked (the) rose,  
I cannot give it vital growth again.  
It needs must wither. I'll smell it on the tree.”*

The Shakespearean monologue before *Desdemona* met her end is a poetic justification which *Othello* offered for murdering the one who had once ruled his soul. It is definitely not written for an investigating agency which devises



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a mechanism to arrest, pluck and cause to wither the right of a man to grow and prosper. The investigating agencies are reminded that the Courts in this country are Guardian Angels of Fundamental Rights, and they will not feel shy to inform them that where a person's right to grow and prosper is imperilled, it will not repeat the Shakespearean lines and tell him that your *"needs must wither"*.

29. There is therefore, a compelling need to convert our ability to expand the right to life from being a Constitutional theory into plain action. Be it our sense of appreciation or respect for application, we have one Constitution, and it must be respected. Therefore, more than deliberating on whether this Court should grant leave to the petitioner to leave the country temporarily or not, the question must be why the court should not grant leave to travel abroad. But should the court be approached often for its leave, if right to travel abroad is a fundamental right?

### **Balancing right to travel and LOC :**

30. When neither the right to life can be enjoyed unlimitedly, nor any procedure interfering with it can be absolute, there arises a need to strike an ideal balance between them when they are in conflict. As discussed in



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paragraph 19, despite any law sanctioning regulatory interferences with right to life, it still can approximate absoluteness, which implies that no legally enabled restriction, regulation or interference can be excessive, arbitrary, or disproportionate and destroy the content and purpose of right to life. If the legislature and/or the Executive consciously or unwittingly entertains any extravagant temptation to cross the line of moderate-regulation defined by its purpose, the Court's decree might have to show them where they ought to stop. Here in this case, the Court is faced with a conflict between right to travel (as an aspect of right to life) which inheres in an accused person and the power of the investigating agency to issue LOC without a time-cap. Now, should the Court quash and lift the LOC?

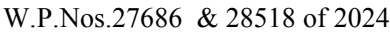
31. Therefore, even though this court has recorded its utter dissatisfaction over the arbitrary issuance of LOC, it must still be stated to the credit of LOC that it atleast enables to monitor whether the person, who is under a duty to submit to criminal law requirements, is within the country or not. Therefore, irrespective of the legal basis for issuance of LOC, this Court would advocate for LOC to continue. What however can be irksome is the expression LOC, and the shades of indignation it possesses, since it is being slapped against the law-abider and the law-evader alike, when its intended



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objective needs focus on absconders of law. However, till the Executive shapes and fashions an alternative mechanism with equal efficacy, LOC may have to continue but with a rider that it does not destroy right to travel abroad and kill right to grow and prosper perpetually.

32. As recorded elsewhere in this Order, the hall mark of a mature criminal justice administration is to leave least inconvenience upon the one whose presence is required in India, either during investigation, or to face a trial and to undergo the sentence, if convicted. These requirements are part of an accused's life and not his sole purpose. There, therefore, is no logic in chaining his right to travel abroad. Therefore, the focus must be not on how to stop an accused from travelling abroad, but how to ensure his return. This angle is grossly missed in the LOC regime now in vogue, and hence there is an urgent need for a paradigm shift in the way the Executive approaches the issue on LOC. The focus must therefore be on the kind of conditions – the strings that may be attached, when an accused exercises his fundamental right to travel abroad. This will ensure that a procedure established by law will be in place to impose just restrictions on an accused person's right to travel abroad. When neither right to travel nor the restrictions that could be imposed on it through a procedure established by law is or can be absolute,



unless an ideal balance is laid within the procedure itself, it might embarrass, not the accused person, nor the Executive, but the legal system.

33. Before embarking to provide suggestions towards balancing the need for LOC with right to travel abroad, this Court considers it necessary to underscore the need for attitudinal or conceptual shift within the Investigating Agency, the Court and the Executive:

a) This court is given to understand that the situation in this case and many others appears to be the result of a perceived public embarrassment which a premier investigating agency in this country has faced in certain cases, where it is still under enormous stress to have the accused persons of those cases extradited. But do couple of trees define the forest? Should bad experiences be allowed to develop into a kind of fear-psychosis that every accused should be suspected of fleeing the country? The investigators of this country may not fall a victim to their own fear-psychosis, and let it affect their sense of fairness and judgement, for eventually it may percolate into the system to affect the fundamental rights of any accused person to grow and prosper. To remind, an accused also has one life to grow and prosper; and he is entitled to be



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presumed innocent till his guilt is proved beyond reasonable doubt; and he can justly be optimistic about his acquittal till his guilt is so proved.

- b) Secondly to the courts. An adjunct aspect that may be stated is when a person accused of an offence has a fundamental right to travel abroad, and if he must be subjected to least inconvenience by the criminal justice administrative mechanism, then, why should he be forced to seek permission from the court for his travel abroad every time? Does not an intimation to the Court and the investigation agency about the proposed foreign travel suffice? Here LOC as a monitoring tool has a critical role to play. This apart, often Courts are invited to debate on the reasons for a foreign travel, but why should they concern the court, when its concern should be limited to ensuring the return of the accused person who travels abroad through ideal court imposed or executive devised conditions? Court may not decide how an accused should live his life, and why he should travel abroad. Plainly that is not Court's business. Its time our system and attitude evolved to make life truly least inconvenient to the accused person, lest it may unwittingly divide the Constitution into one which is theoretical (reserved for



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the lecture halls) and the other which is applied, when in reality there can be one Constitution- the one that speaks, and functions the way it speaks. It is underscored here, as much as the executive action, even the judicial process may not exceed to interfere with the right to life of an accused beyond the extent which the legal process of this country requires.

- c) Thirdly to the Executive. Has our legal system become clueless to balance the prosecutorial anxiety on the one hand, and the right of accused person to travel abroad? And is it the job of the Court or the Executive government to balance it? Has the Court become an extended arm of the Executive to deal with issues which the officials in immigration ought to do? When the docket explosion before the Courts in this country poses a passive danger to the sustenance of societal cohesiveness, is it not appropriate that the Executive manages these issues more effectively and efficiently?

### **The Balancing Act**

34. Now to the balancing act. The major premise is that an accused person though slapped with a LOC must be allowed to exercise his right to travel abroad liberally. The next aspect is that the nature of conditions required to



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be imposed for letting the accused exercise his right to travel abroad which would reasonably insure against any possible temptation to flee the country.

35. To accomplish the purpose, the following self-operational mechanism is hereby provided :

- a) In the first instance a petition should be filed before the trial Court for a direction to suspend the LOC, and to require the Court to set out the conditions for travel abroad. It may give reasons for travel, whose purpose is only to provide the setting for the Court.(Surely, this Court has all the powers to entertain a similar petition but except in cases of emergencies such as medical emergency or death; it would be advisable that petition for leave to travel is filed before the trial Court since the trial Court will have all the facts before it, which may have a bearing when it frames its conditions).
- b) Once the petition is filed, the Court may not look to the reasons for travel, but should focus on the nature of conditions that may be imposed for the return of the accused person to India. Here, the prosecution may have a right to make its statement to the Court.
- c) So far as the conditions that may be imposed are concerned, the Court may devise those, which are effective, which hold reasonable



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assurance that the accused may return to India, and are also workable. Some suggested conditions are:

- i. To require the accused person to provide any security either by depositing a stated sum in the Court, or any property whose value may be equivalent or approximates the said sum or in addition to the said sum;
- ii. To require any relative or a business associate of the accused person concerned who is a frequent traveller abroad with an active Indian passport, (the number of such foreign travel may vary from case to case, and the Court may have to satisfy itself based on each particular case) to provide surety for any stated value, and also to deposit the passport with the investigating agency (or even at the office nearer the home of the surety). Once the accused returns to India, the passport of the surety concerned should be returned to him or her. In all cases due acknowledgement must be issued by the investigating agency.
- iii. The condition (i) may either be given by the accused person himself or herself, or by any other person for the accused person, which may include sureties or any other.



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- d) Once the conditions imposed are complied, the Court may direct the suspension of LOC during the period of travel.
- e) After the first occasion, every time an accused proposes to travel abroad, he or she only needs to file a memo in the petition first filed, intimating the dates of proposed travel, and comply with the conditions originally set out. The prosecution may seek modification of any condition for any specific reasons, and the Court shall address the issue through a speaking order.
- f) Once the conditions are complied with, the Originating Authority shall suspend the LOC during the period of travel, and restore it on the accused person's return to India.  
  
This method can be replicated for every travel abroad.
- g) The conditions illustratively given in (c) can be substituted, if the accused person himself/herself gives anything which is equally efficacious.
- h) The conditions listed above are not mandatory if the investigation agency has reasons to believe that the accused will return to India, and conveys the same to the Court.



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## WEB COMMENTS **Conclusion**

36. Reverting to the specific cases at hand, each of the petitioners in these cases are professionals, and have come under the shadow of criminality, yet they are only accused of committing certain offences. And, in law they are still presumed to be innocent. As stated a few times earlier in this Order, barring their obligations to participate in the trial and to undergo any sentence that may be imposed on them, they have absolute freedom to exercise all their fundamental rights. And, the LOC which is slapped by the prosecution has restrained them from travelling abroad for over five years, and very evidently has interfered with their fundamental right to travel, and necessarily their right to grow and prosper, and consequently their right to life and liberty. This cannot be let to go on infinitely.

37. This Court therefore, allows both these petitions, and the petitioners in both the cases are allowed to travel abroad, but on the following conditions:

- (a) that the petitioners in both these cases are required to provide a fresh schedule of their travel plan to their respective trial Courts and the CBI;



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- (b) the petitioners shall execute a personal bond for Rs.10.0 lakhs and also required to produce two sureties for Rs.10.0 lakhs each before the respective trial courts where their cases are pending.
- (c) Of the two sureties, one surety must be a relative. The two sureties should also give separate undertaking through their affidavit before the Courts concerned that the petitioners will return back to India as per the schedule that they are required to provide;
- (d) One of the sureties (either a relative or the business associate of the petitioner) shall possess a valid Indian passport and should have travelled at least couple of times abroad. The said surety holding the above referred to Indian passport shall leave his/her passport with the CBI. On deposit of such passport, the CBI shall issue an acknowledgement of receiving that passport and hold the passport till the return of the petitioner back to India.
- (e) The LOC issued by the CBI against the petitioners shall stand suspended during the period when the petitioners travel abroad.
- (f) Once the conditions are complied for the first time, for future travels abroad, the petitioners are required to intimate only the trial court and the investigating agency, and should also comply with the conditions herein stated on each of the occasions. The conditions,



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it is clarified, can be modified by the trial court after hearing the prosecution.

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No costs. Connected Miscellaneous Petitions are closed.

06.12.2024

Index : Yes / No

Speaking order : Yes / No

Neutral Citation : Yes / No

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To:

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1. Bureau of Immigration  
Ministry of Home Affairs  
Government of India  
Represented by its Commissioner (Immigration)  
East Block - VIII, Level V, Sector 1  
R.K.Puram, New Delhi.
2. Central Bureau of Investigation  
BS & FC Bangalore  
Represented by its Superintendent of Police.
3. Union of India  
Bureau of Immigration  
Ministry of Home Affairs  
Represented by its Commissioner  
Shamshabad, Hyderabad.
4. Union of India  
Represented by the Ministry of Home Affairs  
Foreign Department, Immigrations Office  
North Block, New Delhi - 110 001.
5. Central Bureau of Investigation (CBI)  
Anti-Corruption Branch  
Shastri Bhavan Annexe  
Haddows Road, Nungambakkam  
Chennai - 600 006.



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N.SESHASAYEE.J.,

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Pre-delivery order in  
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06.12.2024