



Crl.OP.No.17698 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Crl.O.P.(MD)No.17698 of 2024

Abdul Ijak

.. Petitioner

Vs.

1.The Superintendent of Police,
Thanjavur,
Thanjavur Distirct.

2.The State rep., by,
The Inspector of Police,
Thanjavur Medical College Police Station,
Thanjavur City,
Thanjavur District.
(Crime No.386 of 2009)

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to direct the respondents to withdraw the Look Out Circular (LOC) issued against the petitioner in connection with Crime No.386 of 2009 on the file of the 2nd respondent Police Station.

For Petitioner : Mr.M.Ajmalkhan,
Sr.Counsel

For Respondent : Mr.K.Sanjai Gandhi
Government Advocate (Crl.Side)



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ORDER

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This Criminal Original Petition has been filed seeking a direction, to direct the respondents to withdraw the Look Out Circular (LOC) issued against the petitioner in connection with Crime No.386 of 2009, on the file of the 2nd respondent Police Station.

2. The petitioner is the accused in Crime No.386 of 2009 along with four others, for the offence under Sections 147, 148, 153(A)(b), 336, 324, 326, 307, 120(b) r/w 34 IPC. On conclusion of the investigation, charge sheet filed in P.R.C.No.5 of 2017, pending before the learned Judicial Magistrate No.II, Thanjavur. The petitioner was not allowed to travel to Saudi Arabia from Chennai Airport on 28.09.2024, since Look Out Circular said to have been issued against the petitioner by the Immigration Authorities, on the request and recommendation of the respondents. Hence, the petitioner filed the above petition, directing the respondents to withdraw the Look Out Circular issued against the petitioner in connection with Crime No.386 of 2009, on the file of the 2nd respondent Police.

3. The case against the petitioner is that one Dharamaraj had lodged a complaint against the petitioner and others on 03.09.2009, complaining that while he was travelling in Government bus, he was attacked by the petitioner and others due to religious divide and



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abused and assaulted using weapons. This was primarily to create enmity between the religious groups. The said Dharmaraj admitted in the hospital and lodged the complaint. The 2nd respondent, based on the complaint, registered the case in Crime No.386 of 2009, against the petitioners and others, conducted the investigation and filed the charge sheet on 14.01.2016 and the same was taken on file in P.R.C.No.5 of 2017, which is still pending committal, since one or the other accused not appearing before the court and the case is kept at that stage.

4.Mr.M.Ajmalkhan, learned Senior Counsel appearing for the petitioner would submit that the petitioner has been falsely implicated in this case. He was running eatering and there was some dispute in the eatering with regard to customers not paying money, which was questioned and there was a scuffle, which has been exaggerated and false complaint has been lodged projecting it as a communal hatred attack, since the petitioner belongs to different religion. Further, the petitioner had obtained anticipatory bail before this Court in Crl.O.P. (MD)No.7783 of 2009 and thereafter, he had been pursuing his case. Since the petitioner had gone for his employment in Saudi Arabia, he was not available in his native, but the other family members are very much available. The respondent police, for the reasons best known to them, have not contacted the petitioner through his family members.



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5. The learned Senior Counsel further submitted that a summon, dated 31.07.2024 was served at his residence at Thanjavur, calling upon the petitioner to appear before the learned Judicial Magistrate No.II, Thanjavur, on 24.09.2024. On coming to know about the same, the petitioner obtained a temporary Visa, took short leave from work and came to India from Saudi Arabia and appeared before the learned Judicial Magistrate No.II, Thanjavur on 24.09.2024. Hence, the petitioner is co-operating with the case is proved. The petitioner is employed in Saudi Arabia and continue his employment, which is his livelihood. He had his return flight to Saudi Arabia from Chennai Airport on 28.09.2024 and when he was about to board the flight after luggage clearance, he was detained by the immigration Authority and was not allowed to board the flight informing that Look Out Circular is pending against him.

6. The learned Senior Counsel further submitted that the trial Court has not issued any Look Out Circular terming the petitioner as absconded, on the other hand the petitioner present before the trial Court on 24.09.2024 and the same was recorded and the case was adjourned for appearance of the other accused. The petitioner has been represented by his counsel and the petitioner is not the cause of the delay. Further, once the charge sheet filed, the respondent police



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has no authority to issue LOC, and the power to issue LOC is till filing of the charge sheet before the concerned Court and thereafter, it is for the Court to decide in the event of abscondence of the accused to produce him by issuance of LOC. In support of his contention, the learned counsel relied upon the Judgment of the Delhi High Court in ***Rana Ayyub Vs. Union of India & Anr*** reported in 2022 SCC OnLine Del 961, wherein it has held that if the petitioner is ready to attend the proceedings whenever required before the investigation agency, no case is made out for issuing the impugned LOC. The petitioner, on appearance before the Court on 24.09.2024, he was not allowed to travel on 28.09.2024 he had appeared before the lower Court on 04.11.2024 and thereafter, the case was posted to 18.11.2024. The petitioner was informed that no travel restrain was issued by the lower Court. The petitioner since had obtained temporary visa and took short leave from work and he has to travel back to Saudi Arabia on or before November 15, 2024, otherwise, there is every likelihood his visa would be cancelled and he would be denied of his employment. In view of the above LOC, the petitioner is deprived of his personal liberty guaranteed under Articles 19 and 21 of the Constitution of India. Hence, the learned Senior Counsel prayed to quash the LOC issued by the respondent police without any authority.



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7. Mr.K.Sanjai Gandhi, the learned Government Advocate (crl.side) filed a counter of the respondents and submitted that on 03.09.2009, on the complaint of one Dharmaraj, a case has been registered in Crime No.386 of 2009, for the offence under Sections 147, 148, 153(A)(b), 336, 324, 326, 307, 120(b) r/w 34 IPC., against the petitioner and 5 others. The petitioner and others with deadly weapons had attacked the defacto complainant in the New Bus Stand, Thanjavur, while the defacto complainant returning from Vinayagar Chathurthi Festival Procession with a view to promote enmity between Hindu and Muslim Communities. On registration of the case, the petitioner has approached this Court by filing Crl.O.P.(MD)No. 7783 of 2009, and obtained an order of anticipatory bail with certain conditions that the petitioner and A2 to sign before the respondent on every day at 10.30 a.m., but the petitioner not complied with the said order of this Court. The investigation in this case completed, after getting sanction, charge sheet filed on 20.01.2016 and the same was taken on file in P.R.C.No.5 of 2017, summons were issued to the petitioner and other accused. Since the petitioner absconded and other accused unable to be traced, the case periodically adjourned for a years.



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8. The learned Counsel Advocate (crl.side) further submitted that the respondent police, with great difficulties, found the address of the petitioner, served summons at his residence to the family members and thereafter only, the petitioner appeared before the lower Court. Since the petitioner is in the habit of absconding, the 2nd respondent had requested the first respondent to issue LOC as a precautionary measure and issued a Look Out Circular on 27.09.2024, to ensure the presence of the petitioner for carrying out further investigation in the matter and hence, the petitioner was detained by the Immigration Authorities at Chennai Airport, while the petitioner was trying to Board to Saudi Arabia. The petitioner, if permitted to leave India, he would again abscond himself and become untraceable and the proceedings in P.R.C.No.5 of 2017 would further get delayed. Hence, strongly oppose the petitioner's prayer.

9. Considering the submissions and perusal of the materials it is seen that there is no iota of materials to show that there is any steps taken for further investigation in this matter. According to the respondents, the investigation was completed on 14.01.2016 and charge sheet was filed and it was taken on file as P.R.C.No.5 of 2017. In view of the same, ensuring the presence of the petitioner to carry out further investigation in the matter is without any material, cannot



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be substantiated. Further, the other contention of the respondent that the petitioner not complied with the order of this Court in Crl.O.P. (MD)No.7783 of 2019 is not sustainable, since no action has been taken and no orders have been obtained against the petitioner in the said petition.

10. It is not in dispute that the family members of the petitioner were served with summons for the hearing date on 24.09.2024. On coming to know about the same, the petitioner had come back from Saudi Arabia, appeared before the Judicial Magistrate No.II, Thanjavur on 24.09.2024, his appearance was recorded and the court had adjourned the case and petitioner had also appeared on a subsequent hearing date. Further, the lower Court not issued any prohibitory order to travel against the petitioner. In such circumstances, in initiating of LOC on 27.09.2024 by the respondent and addressing the Immigration Authorities, Chennai, and detained the petitioner while he was about the fly back to Saudi to continue with his employment on 28.09.2024, is not proper. The petitioner has got a right to liberty, right to travel and right to employment, which cannot be takeaway merely on an executive action, without material and sanction of law.



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11. In view of the same, this Court hereby directs the first respondent to forthwith address the Chief Immigration Authority, Shastri Bhavan, Bureau of Immigration, No.26, Haddows Road, Nungambakkam, Chennai, to withdraw the LOC issued against the petitioner. On such request, the Chief Immigration Authority, to withdraw the travel restrain and permit the petitioner to have access of travel. The prohibitory order issued against the petitioner, restraining the petitioner's Passport bearing No.N0355836 is hereby revoked. The petitioner not to be a cause for any further delay in P.R.C.No.5 of 2017. This Court directs the petitioner to file an affidavit before the lower Court giving details about his permanent address in India, address in Saudi Arabia and his place of employment in abroad, his contact details, including Email and Mobile Numbers. Further, this Court directs the petitioner to appear before the Court below on the date when his presence is absolutely necessary and to engage an advocate to represent before the Court below.

12. With the above direction, this Criminal Original Petition is allowed.

13.11.2024

smn/mpk

Note : Issue order copy on 13.11.2024



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To

- 1.The Superintendent of Police,
Thanjavur,
Thanjavur Distirct.
- 2.The State rep., by,
The Inspector of Police,
Thanjavur Medical College Police Station,
Thanjavur City,
Thanjavur District.
- 3.The Chief Immigration Authority,
Shastri Bhavan,
Bureau of Immigration,
No.26, Haddows Road,
Nungambakkam,
Chennai.
- 4.The Addl.Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.NIRMAL KUMAR , J.

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