2024:DHC:6382

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision:20th August, 2024*

\+ **W.P.(CRL) 129/2023**

SHASHI JINDAL .....Petitioner

Through: Mr. Vipul Chaudhary and Ms. Shrishti Panwar, Advocates.

versus

BANK OF BARODA & ORS. .....Respondents

Through: Mr. V.P.Singh and Mr. Rupesh Dutta, Advocates for R-1.
Mr. Ripu Daman Bhardwaj, CGSC/SPP with Mr. Kushagra Kumar and Mr. Abhinav Bhardwaj, Advocate for CBI.
Mr. Vedansh Anand, Government Pleader for R-2.

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\+ **W.P.(CRL) 140/2023**

RITU JINDAL .....Petitioner

Through: Mr. Vipul Chaudhary and Ms. Shrishti Panwar, Advocates.

versus

BANK OF BARODA & ORS. .....Respondents

Through: Mr. V.P.Singh and Mr. Rupesh Dutta, Advocates for R-1.
Mr. Vedansh Anand, Government Pleader for R-2.
Mr. Ripu Daman Bhardwaj, CGSC/SPP with Mr. Kushagra Kumar and Mr. Abhinav Bhardwaj, Advocate for CBI.

Mr. Anil Soni, CGSC with Mr. Devvrat Yadav, Advocate for UOI.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T *(oral)*

CRL.M.A.24758/2024 (Exemption) IN W.P(CRL) 129/2023
CRL.M.A.24515/2024 (Exemption) IN W.P(CRL) 140/2023

1. Exemption allowed, subject to all just exceptions.

2. The Applications stand disposed of.

CRL.M.A.24757/2024 (under Section 528 of B.N.S.S filed by the petitioner for early hearing) in W.P(CRL) 129/2023
CRL.M.A.24514/2024 (under Section 528 of B.N.S.S filed by the petitioner for early hearing) in W.P(CRL) 140/2023

3. The Applications under Section 528 of B.N.S.S, 2023, have been filed by the petitioner for early hearing.

4. Issue Notice.

5. Learned counsels for CBI as well Bank of Baroda have appeared on advance notice and accepts notice.

6. For the reasons stated in the Applications, the same are allowed and the matters are taken up today.

7. The Applications are disposed of accordingly.

W.P(CRL) 129/2023 (under Article 226 of the Constitution of India rad with Section 482 CrPC for setting aside/quashing the Look Out Circular issued at the instance of respondent No. 1/Bank of Baroda) and W.P(CRL) 140/2023 (under Article 226 of the Constitution of India rad with Section 482 CrPC for setting aside/quashing the Look Out Circular issued at the instance of respondent No. 1/Bank of Baroda)

8. The Criminal Writ Petitions under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure (*hereinafter referred to as 'Cr.P.C. 1973')* have been filed on behalf of the petitioners for setting aside/quashing the *Look Out Circular* issued at the instance of respondent No. 1/Bank of Baroda against them in RC No. RC0502021A0009.

9. It is submitted that the aforementioned FIR, dated 06.06.2021, has been registered under Section 406 and 420 read with Section 120-B of the Indian Penal Code *(hereinafter referred to as 'IPC, 1860'),* at Police Station SC-II, Delhi, against SRS Finance Limited and other accused persons at the instance of the Assistant General Manager, Bank of Baroda. The allegations in the FIR, pertain to a bank loan default committed by the accused persons.

10. The petitioner *Ritu Jindal* was one of the ten guarantors of the loan taken by the accused No. 1 Company i.e. SRS Finance Limited. The property belonging to the petitioners which they had given as a guarantee for the loan, was taken into possession and sold through an auction by the respondent No. 1/Bank of Baroda on 10.05.2018.

11. The other guarantor *Mrs. Shashi Jindal* in W.P.(Crl) 129/2023, was scheduled to travel to The United States of America on 27.05.2022 but she was prevented from boarding the flight at the Indira Gandhi International Airport, on the ground of *Look Out Circular* (for short 'LOC'), issued against her and other guarantors. Mrs. Ritu Jindal has claimed that she was not aware about the Look Out Circular, about which she came to know from Mrs. Shashi Jindal.

12. The cancellation of LOC is sought by the petitioners on the ground

that they are neither the accused nor a suspect. They are not deliberately evading arrest or not appearing in the Court during the trial or that NBWs have been issued against them, which are the pre-conditions for issuance of LOC, as has been held by this Court, in the matter of *Sumer Singh Salkan vs. Asst. Director & Ors*., (2010 (4) JCC 2401).

13. Therefore, a prayer is made that the LOC issued against the petitioners, at the instance of respondent No. 1/Bank of Baroda, be cancelled.

14. The *CBI in its Counter-affidavit,* has submitted that as per the information, LOC does exist against the petitioners, which has been opened at the behest of the Managing Director & Chief Executive Officer, Bank of Baroda, BKC, Mumbai *vide* their reference Letter dated 02.08.2021 with the action to prevent subject from leaving India and to inform the originator.

15. The LOC has been issued against the petitioner being one of the Director of the Company M/s SRS Finance Limited, whose account with the concerned Bank, has been declared as NPA. The Bureau of Immigration (BOI) issued LOC, on the basis of the Guidelines issued *vide* MHA's Office Memorandum No.25016/31/2010-1, dated 27.10.2010 (now revised LOC guidelines dated 22.02.2021). It is further submitted that BOI has no objection to the withdrawal/modification of LOC, against the petitioners.

16. The ***respondent No. 1*** **Bank of Baroda** ***in its Reply***, has submitted that the petitioners had stood as personal Guarantors for SRS Finance Limited and had played an integral part in securing a substantial Cash Credit Limit amounting to RS.50,00,00,000/-, on 15.04.2013. It was on the petitioners' assurance who took personal responsibility for ensuring the repayment of the borrowed amount in case of default, that the credit facility

was granted, which was subsequently enhanced to Rs.65,00,00,000/-. However, despite the significant financial support to the Borrower Company, it failed to meet its repayment obligations as per the agreed terms and conditions. Consequently, because of persistent defaults, the Loan Facility extended to the Borrower Company, was classified as a Non-Performing Asset (NPA), on 28.02.2017.

17. It is further claimed that in gross violation of the sanctioned terms, the Borrower Company provided unsecured loans to five Companies, which was in breach of the terms agreed while extending the credit facility. These loans were not backed by any collateral or security, exposing the Borrower Company to significant financial loss. The investigations have also revealed that the Borrower Company made ill-advised investments in Loss-Making companies, which curiously share their Administrative/Corporate offices at the same address. This had raised serious concerns about the legitimacy and purpose of these investments. As a consequence of these wrongful acts, total 14 potentially related Companies have been identified, which collectively owe an outstanding amount of Rs.51.27 Croes. These amounts have not been recovered, adding to the financial strain caused by the Borrower's Company's misconduct. In addition to this, these 14 Companies so identified, share common directors with the Borrower Company, which strongly suggests their close association. Moreover, the FIR against the SRS Finance Limited and other accused persons, is not arbitrary or frivolous but based on the diligent investigation by the competent Authorities.

18. It is claimed that seeking the quashing/cancellation of the LOC, is pre-mature and not maintainable, at this stage. It is a preventive measure

issued by the competent Authorities to secure the petitioners' presence during the ongoing investigation. As the investigation is still in progress, the request for quashing of LOC, does not warrant any consideration. The appropriate stage would be after the investigations have been concluded. Since the petitioners are personal guarantors, who have accepted their liabilities in the General Form of Guarantee executed on 23.12.2015, the relief sought is not merited.

19. It is further submitted that any interference with the LOC, would potentially hinder the ongoing investigations and proceedings. The LOC had been issued against the petitioners, in the public interest for effective investigations into the alleged bank loan default and related offences. While the petitioners claim that they are not accused or suspect, but their role as guarantors in the loan agreement with SRS Finance Ltd., establishes a connection to the case. The cancellation of the LOC is thus, contested on the ground of being pre-mature.

20. Submissions Heard.

21. Admittedly, the petitioner in the present writs are the guarantor to the Loans taken by the SRS Finance Ltd. against which the FIR has been registered. The Petitioner are not the accused in the FIR.

22. The circumstances in which the Look Out Notice can be opened has been explained in the decision of this Court in *Sumer Singh Salkan vs. Asstt. Director and Others* Writ Petition (Crl.) No.1315/2008 decided on 11.08.2010. It was observed that *"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 the trial court despite NBWs*** *and other coercive measures and* ***there was***

likelihood of the accused leaving the country to evade trial/arrest".

23. In the present case as noticed above, none of the conditions for the LOC are made out against the Petitioners who were merely the guarantors who had furnished their property as security, which in fact has already been auctioned in discharge of their liability. They are admittedly, not the accused persons and none of the prerequisites for opening the LOC are made out. Thus, the LOC against the two petitioners are directed to be closed.

24. The above two petitions, along with any pending Applications, are hereby disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 20, 2024/RS