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

\+ W.P.(C) 1872/2021, CM APPL. 35568/2022

SANJANA DESAI & ANR. .....Petitioners

Through: Mr. Saurabh Kirpal, Senior Advocate with Mr. Malak Bhatt, Ms. Neena Nagpal, Mr. Vishwendra Tomar, Ms. Supriya Julka and Ms. Adya Rajkotia, Advocates.

versus

BANK OF INDIA & ANR. .....Respondents

Through: Mr. Vipin Rai and Mr. Ujjwal Goel, Advocates for R-1.
Mr. Kunal Tandon, Ms. Aanchal Khanna, Mr. Ronnie Singh Brara and Ms. Bhavna Vijay, Advocates for Indian Overseas Bank/Respondent No.3.
Mr. Ravi Sharma, SPP with Mr. Premtosh K. Mishra, Mr. Anajni Kumar Ravi, Mr. Pradhull Kumar, Mr. Ishann Bhardwaj and Ms. Madhulika Rai Sharma, Advocates for CBI.
Mr. Ripu Daman Bhardwaj, CGSC with Mr. Kushagra Kumar, Advocate for UOI/ SBI.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **08.08.2024**

1. The Petitioners are personal guarantors for the credit facilities availed

by M/s Frost International Ltd.[1] from time to time from a consortium of banks. In June, 2018, the account of FIL was declared as a non-performing asset and the lead bank/Bank of India initiated action. FIL is now in CIRP proceedings. On 10th January, 2019 the Bank of India/Respondent No.1 made a request for issuance of the Look-Out-Cicular[2] against the Directors and Guarantors of FIL including the Petitioners herein. The Petitioners aggrieved by the same have filed the present petition.

2. The Petitioners assert that they are neither the Directors nor shareholders of FIL and were never involved in the affairs or management of FIL. Petitioner No. 2/Nilima Desai asserts that she is a homemaker and has never been associated with the business activity of FIL or any other company. She asserts that she has also never drawn any salary or any perquisites from FIL. Petitioner No. 1/ Sanjana Desai, daughter of Petitioner No.2, urges that she is suffering from breast cancer and is under medical treatment. Considering these special circumstances, this Court has, on several occasions suspended the LOC, allowing Petitioner No.1 to travel abroad subject to certain conditions imposed by this Court. On 1st March, 2021, this Court also allowed Petitioner No.2 to travel abroad subject to certain conditions.

3. In the above background, the Petitioners now seek quashing of the LOC. Mr. Saurabh Kirpal, Senior Counsel for the Petitioner, however, very fairly states, that the conditions imposed by this Court on Petitioners' travel in the previous orders may be continued even subsequent to quashing of the LOC. In other words, Petitioners are willing to furnish a security to the

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[1] "FIL"
[2] "LOC'

Court and also intimate the Central Bureau of Investigation,[3] about their intending departure and return to the country every time they travel abroad. It is further submitted that Petitioner No. 1 was summoned by CBI in November 2022, and she has fully cooperated with the investigation. No details of any summons issued to Petitioner No. 2 have been furnished by the Respondents. Mr. Kirpal states that the Petitioners shall, nonetheless, continue to cooperate in the investigation and appear before the investigating officer whenever they are required to do so.

4. Counsels for the banks as well as CBI strongly oppose the Petitioners' request and submit that an FIR bearing No. RCBD12020E0001 has been registered in Bank Security Fraud Branch CBI, New Delhi, on 19th January, 2020 under Section 120-B read with Sections 420/467/468/471 of IPC with Sections 13(2) read with 13(l)(d) of the Prevention of Corruption Act, 1988 and is pending investigation. Furthermore, they argue that the Petitioners are the guarantors of the defaulting entity- M/s Frost International and Petitioner No.1 is also Director/Guarantor in some of the other accused companies, which are also subject matter of investigation in the aforenoted FIR. It is further stated by counsel for the CBI that Petitioner No. 1 has signed many crucial documents on the basis of which the accused companies availed loans from various banks. Additionally, the Respondents apprehend that if the Petitioners are allowed to travel abroad, there is every chance that they may not return to India.

5. The Court has considered the rival contentions of the parties and deliberated upon the same. The Petitioners are neither the director nor shareholder for the defaulting company- FIL. In the instant case, the FIR

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[3] "CBI"

bearing no. RCBD12020E0001 was registered in 2020, however, the chargesheet has not been filed till date. Petitioner No.1 is suffering from cancer and has been constrained to approach this court on multiple occasions to seek permission to travel abroad for her treatment. Petitioner No.2, mother of Petitioner No.1, has also on earlier occasion, approached this court to seek permission to travel abroad to accompany her daughter for treatment. In light of the above and the fact that the Petitioners are willing to abide by the conditions imposed in the previous orders for suspension of LOC, in the opinion of the Court, the present petition can be disposed of with the following directions:

a. The LOC shall remain suspended till the chargesheet is filed by the CBI in respect of FIR bearing No. RCBD12020E0001. Once the chargesheet is filed, the Petitioners shall be free to approach the concerned Court for quashing of the LOC in terms of the judgement passed in the case titled ***Sumer Singh Salkan vs. Assistant Director & Ors***.[4]

b. Till such time, whenever either of the Petitioners were to undertake any travel, they shall abide by the following conditions:

i. Petitioner(s) shall deposit, by way of a security, FDR amounting to INR 50 Lakhs with the Registrar General of this Court, which shall be kept on an auto-renewal mode.

ii. An affidavit of undertaking shall be furnished to the Registrar General of this Court that Petitioner(s) shall return to India on the relevant date.

iii. Petitioner(s) are directed to provide the complete itinerary regarding their travel to the concerned Investigating officer at least two days prior to the date of departure. Petitioner(s) shall also furnish a copy of the air tickets purchased by them to the Investigating Officer.

iv. Petitioner(s) shall also provide contact numbers where she/they shall be available during the stay abroad and at least one of the said contact numbers shall be kept operational at all times, subject to all fair exceptions, including the period the Petitioner(s) is/are on board the aircraft.

6. The petition is disposed of along with pending application in the afore-noted terms.

SANJEEV NARULA, J

AUGUST 8, 2024
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[4] Judgement dated 11th August, 2010 in W.P (Crl) No. 1315/2008