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

\+ W.P.(C) 3746/2023

VIPUL MITTAL .....Petitioner

Through: Mr. Rahul Gupta, Advocate.

versus

UNION BANK OF INDIA & ORS. .....Respondents

Through: Mr. Sanjeev Sagar, SC with Ms. Nazia Parveen, Advocate for R-1.
Mr. Ripudaman Bhardwaj, CGSC with Mr. Kushagra Kumar and Mr. Abhinav Bhardwaj, Advocates for UOI.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **24.09.2024**

CM APPL. 56241/2024 *(seeking permission to travel abroad)*

1. Through this application, the Petitioner seeks permission to travel to Germany from 28th September, 2024 to 4th October, 2024. After briefly hearing the counsel for the parties, the Court is of the opinion that rather than deciding the present application, the main petition itself could be disposed of.

2. Accordingly, with the consent of the counsel for parties, the main petition is called on board for hearing today itself.

W.P.(C) 3746/2023

3. The Petitioner was the director of Respondent No. 4/ Ankur Roller

Flour Mills Pvt Ltd.[1], which is presently undergoing CIRP proceedings. The Company was the borrower who was extended financial facilities by Andhra Bank, which has now merged with Union Bank of India[2]. When the operations of the Company became constrained, the bank took recourse to their legal remedies for recovery of their dues. The Company's account was declared as a fraud and thereafter, a wilful defaulter order was passed against them. Subsequently, the declaration of the account as fraud was set aside pursuant to the Supreme Court's judgment in ***State Bank of India v. Rajesh Agarwal***[3]**.** In this background, a Look-Out Circular (LOC) was issued against the Petitioner at the behest of the Bank. The present petition seeks quashing of the said LOC.

4. Mr. Sanjeev Sagar, SC for Respondent No. 1/ the Bank, strongly opposes the present petition and urges that the LOC is necessary. He states that the Company's account was declared as fraud on 21st January, 2020 and was reported to the Reserve Bank of India (RBI) on 30th January, 2020. Further, the bank filed a complaint with the CBI for prosecution of the Petitioner and the Company. He submits that the fraud declaration order dated 21st January, 2020 and wilful defaulter order dated 17th November, 2022 expressly delineate the events of default and non-compliance at the end of the Petitioner and the Company. Accordingly, he argues that the Petitioner, being at the helm of affairs, permitted all these wrongs must be held responsible for the same.

5. The Petitioner is also guarantor of the Respondent No. 4 Company, besides being director of the said company. The outstanding amount to be

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[1] "the Company"
[2] "the Bank"

recovered from the Company and the Petitioner is over INR 85 crores. Thus, Mr. Sagar argues that this is not a case where the nature of default is default *simpliciter*, as the records of the Company suggest that the transactions were done with criminal element in borrowing from the public sector bank. It was expressly found by the Bank that the Petitioner and the Company were indulging in manipulation of books of accounts, diversion of funds and transactions defrauding the lender bank. It is for this reason that the account was Red Flagged and complaint was made with CBI for lodging an FIR in the year 2020 itself.

6. The Court has considered the afore-noted contentions of the parties.

7. At the outset, it must be noted that the Petitioner has, during the pendency of the present proceedings, through interim applications, been permitted to travel abroad on two occasions as has been recorded in the orders of this Court dated 23rd August, 2023 and 12th July, 2024. On both such occasions, the Petitioner has duly complied with the conditions imposed and returned back to India within the timelines prescribed by the Court.

8. Further, although the impugned LOC was opened against the Petitioner over two years ago, there are still no criminal proceedings pending against the Petitioner. The rationale behind issuing the instant LOC to restrict a person from crossing international borders and going beyond the jurisdiction of domestic Indian authorities, in case there are reasonable and cogent grounds to believe that such a person has committed a serious transgression and is a flight risk. However, there is no material placed before the Court which can ascertain the Petitioner's criminal culpability at this

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[3] (2023) 6 SCC 1.

juncture which could indicate that he is intending to abscond. Therefore, the mere apprehension of default cannot be a basis for opening an indefinite LOC against him, thereby restricting the movement of a citizen who has a right to travel abroad which is acknowledged to be a fundamental right under Article 21 of the Constitution of India, 1950, as observed in the landmark judgments of '***Maneka Gandhi v. Union of India***'[4] and '***Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer and Ors.***'[5].

9. The Ministry of Home Affairs (MHA), the nodal ministry responsible for issuing guidelines for international travel, has noted that an LOC can be issued in cases of cognizable offences under the Indian Penal Code and other penal laws, and only in exceptional circumstances can its scope be expanded. At this juncture, it would be apposite to reproduce Clause 'J' of the Office Memorandum (OM) dated 27th October, 2010 and the amended Clause in OM dated 05th December, 2017, which reads as follows:

> "***Office Memorandum dated 27th October, 2010***
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> *"g) Recourse to LOC is to be taken in cognizable offences under IPC or other penal laws. The details in column IV in the enclosed proforma regarding 'reason for opening LOC' must invariably be provided without which the subject of an LOC will not be arrested/detained.*
> *h) In cases where there is no cognizable offence under IPC or other penal laws, the LOC subject cannot be detained/arrested or prevented from leaving the country. The originating agency can only request that they be informed about the arrival/departure of the subject in such cases.*
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> *xx … xx … xx*
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> *j) In exceptional cases, LOCs can be issued without complete parameters and/or case details against CI suspects, terrorists, anti/national elements etc. in larger national interest."*
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> ***Office Memorandum dated 27th October, 2010, as amended on 5th December, 2017***

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[4] (1978) 1 SCC 248
[5] AIR 1967 SC 1836

"Amendment-
"In exceptional cases, LOCs can be issued even in such cases, as would not be covered by the guidelines above, whereby departure of a person from India may be declined at the request of any of the authorities mentioned in clause (b) of the above-referred OM, if it appears to such authority based on inputs received that the departure of such person is detrimental to the sovereignty or security or integrity of Indian or that the same is detrimental to the bilateral relations with any country or to the strategic and/or economic interests of India or if such person is allowed to leave, he may potentially indulge in an act of terrorism or offences against the State and/or that such departure ought not be permitted in the larger public interest at any given point in time.
Instead of:
"In exceptional cases, LOCs can be issued without complete parameters and/or case details against CI suspects, terrorists, anti/national elements etc. in larger national interest."

10. Thereafter, MHA released OM bearing No. 25016/10/2017-Imm (Pt.) dated 22nd February, 2021, which consolidates the existing LOC guidelines as follows:

"6. The existing guidelines with regard to issuance of Look Out Circulars (LOC) in respect of Indian citizens and foreigners have been reviewed by this Ministry. After due deliberations in consultation with various stakeholders and in suppression of all the existing guidelines issued vide this Ministry's letters/ O.M. referred to in para 1 above, it has been decided with the approval of the competent authority that the following consolidated guidelines shall be followed henceforth by all concerned for the purpose of issuance of Look Out Circulars (LOC) in respect of Indian citizens and foreigners:-

xx ... xx ... xx

(H) Recourse to LOC is to be taken in cognizable offences under IPC or other penal laws. The details in column IV in the enclosed Proforma regarding 'reason for opening LOC' must invariably be provided without which the subject of an LOC will not be arrested/detained.

(I) In cases where there is no cognizable offence under IPC and other penal laws, the LOC subject cannot be detained/arrested or prevented from leaving the country. The Originating Agency can only request that they be informed about the arrival/departure of the subject in such cases.

(J) The LOC opened shall remain in force until and unless a deletion request is received by BOI from the Originator itself. No LOC shall be deleted automatically. Originating Agency must keep reviewing the LOCs 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 BOI should contact the LOC Originators through normal channels as well as through the online portal. In all cases where the person against whom LOC has been opened is no longer wanted by the Originating Agency or by Competent Court, the LOC deletion request must be conveyed to BoI immediately so that liberty of the individual is not jeopardized.

(K) On many occasions, persons against whom LOCs are issued, obtain Orders regarding LOC deletion/ quashing/ suspension from Courts and approach ICPs for LOC deletion and seek their departure. Since ICPs have no means of verifying genuineness of the Court Order, in all such cases, orders for deletion/ quashing/ suspension etc. of LOC, must be communicated to the BoI through the same Originator who requested for opening of LOC. Hon'ble Courts may be requested by the Law Enforcement Agency concerned to endorse-/convey orders regarding LOC suspension/ deletion/ quashing etc. to the same law enforcement agency through which LOC was opened.

(L) In exceptional cases, LOCs can be issued even in such cases, as may not be covered by the guidelines above, whereby departure of a person from India may be declined at the request of any of the authorities mentioned in clause (B) above, if it appears to such authority based on inputs received that the departure of such person is detrimental to the sovereignty or security or integrity of India or that the same is detrimental to the bilateral relations with any country or to the strategic and/or economic interests of India or if such person is allowed to leave, he may potentially indulge in an act of terrorism or offences against the State and/or that such departure ought not be permitted in the larger public interest at any given point in time."

11. From the above, it is clear that only in exceptional cases can an LOC be issued without fulfilling the stipulated parameters. This is because a person's right to travel freely is an expression of their fundamental right to personal liberty enshrined under Article 21 of the Constitution. Therefore, such a right can only be restricted under strict parameters and in accordance with the procedure established by law. Furthermore, as has been held by the

Coordinate Bench of this Court in ***Prateek Chitkara v. Union of India***[6], the scope of the term 'detrimental to the economic interest of India', as mentioned in Clause 'L' of the OM dated 22nd February, 2021, must be narrowly construed. The relevant extract of this judgement is reproduced hereunder:

> *"**82.** The term "detrimental to economic interest" used in the Office Memorandum is not defined. Some cases may require the issuance of a look-out circular, if it is found that the conduct of the individuals concerned affects public interest as a whole or has an adverse impact on the economy. Squandering of public money, siphoning off amounts taken as loans from banks, defrauding depositors, indulging in hawala transactions may have a greater impact as a whole which may justify the issuance of look-out circulars. However, issuance of look-out circulars cannot be resorted to in each and every case of bank loan defaults or credit facilities availed of for business, etc. Citizens ought not to be harassed and deprived of their liberty to travel, merely due to their participation in a business, whether in a professional or a non-executive capacity. The circumstances have to reveal a higher gravity and a larger impact on the country."*

12. It is also well settled in law, as held in multiple judgments by this Court, that mere inability to repay dues to a bank cannot be a reason to take away the fundament right to travel guaranteed under Article 21 of the Constitution of India. Reliance in this regard is placed on the judgment in W.P.(C) 14837/2022 titled ***'Vikas Goel v. Union of India'***.

13. To conclude, LOC has been issued against the Petitioner for the reason that the Company for which he stood as a guarantor was unable to repay its debts. The Petitioner is not an accused in any cognizable offence and there are no criminal proceedings pending against him. There is no material on record which can justify the Bank to insist that the Petitioner's right to travel should be restricted and he should not be allowed to depart

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[6] 2023 SCC OnLine Del 6104

from the country and the Bank should not be permitted to use an LOC as a means to recover debts. Therefore, the basis for maintaining the LOC appears disproportionately punitive rather than precautionary, lacking a justifiable legal foundation. In such circumstances, there is no material on record which can justify the Bank's insistence that the Petitioner's right to travel should be restricted and he should not be allowed to depart from the country.

14. Thus, having regard to the aforenoted facts and the judgments referred above, in the opinion of the Court, the impugned LOC issued against Petitioner cannot be sustained. Accordingly, the same is quashed.

15. In light of the foregoing, the writ petition is allowed and disposed of, along with pending applications.

16. The next date of hearing, i.e. 15th October, 2024, stands cancelled.

SANJEEV NARULA, J

SEPTEMBER 24, 2024
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