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

% ***Reserved on: 14th August, 2024***
Pronounced on:13th September, 2024

\+ **W.P.(CRL) 1063/2023, CRL.M.A. 9940/2023 (stay), CRL.M.A. 24253/2024 (seeking permission to travel abroad)**

HARISH SINGLA .....Petitioner

Through: Mr. Arvind Nayar, Senior Advocate with Mr. Shubham Pandey, Mr. Akshay Joshi, Mr. Rajat Gautam and Mr. Aditya Sen, Advocates.

versus

MINISTRY OF EXTERNAL AFFAIRS & ORS ......Respondents

Through: Mr. Anurag Ahluwalia, CGSC with Mr. Kaushal Jeet Kait and Mr. Abhay Singh, Advocates for R1 & R2/UOI.
Mr. Yashu Rustagi, Advocate for R3.
Mr. Ripu Daman Bhardwaj, SPP with Mr. Kushagra Kumar, Advocate for CBI.
Mr Yashu Rustagi Advocate for Respondent No.3/Indian Bank.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Petition has been filed under Article 226 and 227 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973, *("Cr.P.C. 1973")* seekingwithdrawal/recall of Look-Out-

Circular *("LOC") if any,*issued by respondents and to allow the Petitioner/Mr. Harish Singla to travel abroad.

2. The Petitioner/Mr. Harish Singla, 58 years of age, is a qualified Engineer (B.E. in Industrial Engineering – Design) holdingan MBA from the Indian Institute of Management, Ahmedabad, with a career spanning over 30 years having worked in various Companies and holding positions in his field of expertise, has stated that he was engaged with *M/s Gajanan Oils Pvt. Ltd.* ("the Company*" hereinafter*)as Director (Marketing) and remained in the position till March, 2018. He resigned from the Company *vide* Letter dated 15.01.2018 and also submitted Form DIR-12 to the Ministry of Corporate Affairs on 15.01.2018. He is currently employed as Country Sales Head for a Multi-National Company namely *M/s Forever Living Products Pvt. Ltd.*

3. It is asserted that while in the employment of *M/s Gajanan Oils Pvt. Ltd*, the petitioner's role was confined to overseeing Marketing and Trading Operations in the field of edible oil taken by the Company. He reported directly to the Managing Director and had no role or final say in the management of affairs of the Company. The financial issues of the Company were overseen by General Manager (Finance). Pertinently, members of one family i.e. Jadhav Family were appointed in the key positions which was headed by the CEO, Mr. Nitin Jadhav.

4. Respondent No. 3/Indian Bank had initiated certain proceedings against the petitioner on account of nonpayment of Credit facilities availed by *M/s Gajanan Oils Pvt. Ltd.* The petitioner has asserted that he was not a party to the said transactions or privy to the nature of the proceedings. It is submitted that all the loans and credit facilities were sanctioned by

Respondent No. 3 to *M/s Gajanan Oils Pvt. Ltd.* before the petitioner even joined the Company as Director (Marketing) in April, 2016. Additionally, the default in payment by the Company occurred after he resigned from the Company and joined his present employer.

5. On 08.02.2023, the petitioner was shocked when he was stopped at the Immigration Counter at Indira Gandhi International Airport, New Delhi while boarding Ethiopian Airlines Flight No. ET 687, headed to Addis Ababa and further to Johannesburg for a business meeting, due to an LOC issued against him due to which he missed the meeting and his employer Company suffered a grave loss. It was at this moment the Petitioner discovered that an LOC was issued against him at the behest of Respondent No. 3.

6. The petitioner communicated to the Respondent No. 3/Bank that he was not in control of the erstwhile Management of the Company and expressed his willingness to cooperate in *any manner whatsoever* required by him. He also informed the Bank that in fact, he was aggrieved by the Company as well as his own employment dues including salary for Notice period, Provident Fund, etc. were not cleared by *M/s Gajanan Oils Pvt. Ltd.*and he was pursuing the same before the Liquidator as the liquidation proceedings of the Company is pending before the NCLT.

7. To pursue his remedies against the LOC, he sent email dated 28.02.2023 to General Manager, Stressed Asset Management, Indian Bank, Mumbai (Respondent No. 3) seeking further information regarding the LOC to which no response was sent by Respondent No. 3. To get the information regarding the LOC, he filed an application under Right to Information Act, 2005 but to no avail.

8. It is asserted by the petitioner that as Country Sales Head of *M/s Forever Living Products Pvt. Ltd.* the petitioner is duty-bound to undertake International Travel. The details of petitioner's travel history with the current employer from 2018 under April 2022 are as under:

S NO.	TIME PERIOD	PURPOSE	TRAVEL ITINERARY
1.	16.6.2018 To 21.6.2018	Business Meeting	Mauritius
2.	22.4.2018 To 6.5.2018	Business Meeting	USA
3.	16.6.2018 To 22.6.2018	Business Meeting	Mauritius
4.	9.10.2018 To 19.10.2018	Business Meeting	USA
5.	10.12.2018 To 13.10.2018	Business Meeting	Thailand
6.	27.4.2019 to 5.5.2019	Business Meeting	Finland
7.	5.5.2019 To 12.5.2019	Business Meeting	Sweden
8.	1.10.2019 To 6.10.2019	Business Meeting	USA
9.	5.12.2019 To 12.12.2019	Business Meeting	Thailand
10.	2019 to 2022	NO TRAVEL BECAUSE OF COVID	
11.	10.5.2022 To 20.5.2022	Business Meeting	UAE

9. The Petitioner has asserted that he is not a flight risk and cannot be deemed to be evading the process of law as he has deep roots in India including his family who are now residing at Gurugram in a Company-leased accommodation. He has been frequently travelling for business

purposes and has built up a career spanning over 30 years with hardwork, integrity and unrelenting commitment.

10. The Petitioner is ready to duly cooperate with the investigations as communicated to Respondent No. 3; however, till date there is nothing to validate the apprehension of the Respondents that the petitioner would not surrender toor cooperate with the Investigating Agency.

11. The petitioner asserts that the mandate of issuance of LOC is codified in Office Memorandum dt. 27.10.2010 of the Ministry of Home Affairs ('MHA' *hereinafter*) amended on 05.12.2017 and 12.10.2018 along with judgement of Coordinate bench of this court in *Sumer Singh Salkan v. Asst. Director &Ors.* W.P.(Crl) No. 1315/2008. The same has not been followed in the issuance of LOC, if any, against the petitioner. As per the Office Memorandum if there is no cognizable offence made out under the IPC or other penal laws, then LOC cannot be detained, arrested or prevented from leaving the country.

12. Further reliance is placed on *Brij Bhushan Kathuria v. Union of India & Ors.* 2021 SCC OnLine Del 2587 and *Vikas Choudhary v. Union of India & Ors.* W.P. (C) 5374/2021 to state that fetters cannot be placed on an individual's right to travel abroad in a routine and mechanical manner without due consideration of facts and circumstances.

13. It is asserted by the petitioner that he is not aware of any proceedings that may have occurred after his resignation from *M/s Gajanan Oils Pvt. Ltd* in 2018. Thus, the Present Writ Petition has been preferred by the petitioner to assail the LOC if any, has been opened against him. in the event of the existence of any such LOC at the behest of Respondent No. 3 etc., it is prayed that the same may be quashed and set aside as being violative of the fundamental rights of the petitioner as guaranteed under Articles 14, 19 & 21 of the Constitution of India.

14. ***Respondent No.1*** submitted that the LOC was opened at the instance of Respondent No. 3 which is recorded in ***Order dated 26.04.202.***

15. ***Respondent No. 3/Indian Bank has filed a Counter-Affidavit*** to the Writ Petition wherein it is contended that in 2016, the bank sanctioned facilities aggregating to Rs. 255 crores to *M/s Gajanan Oils Pvt. Ltd.* under Consortium Banking arrangement with IDBI Bank as Lead and other member Banks being State Bank of India, Bank of Baroda (*erstwhile* Vijaya Bank) and Indian Bank which were secured by way of *pari-passu* Hypothecation Charge over the current assets/moveable properties of the Company, and personal Guarantees of Shri Nitin R. Jhadav, Smt. Nisha N. Jadhav, Shri Balaji S. Choudhary, Shri Amol Ramachandra Jhadav & Shri Bhavrao R. Gore along with mortgage on several properties.

16. After this sanction of limits of the Company, the Petitioner joined the Board of Directors of the Company on 17.10.2016. Subsequently, the Company defaulted in repaying the Consortium Banking Arrangement because of which the account of the Company was classified as Non-Performing Asset on 31.10.2018.

17. Pertinently, *M/s Ashapura Perfoclay Ltd.* filed an Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 for initiation of Corporate Insolvency Resolution Process of the Company which was admitted by Hon'ble National Company Law Tribunal, Mumbai bench *vide Order* dated06.05.2019. It is submitted that the Respondent No. 3 has filed its Claim before the Resolution Professional of the Company for an amount of Rs. 41,33,37,564.50/- as a financial creditor. On behalf of the

Consortium, a Forensic Audit of the Company was conducted by *Batliboi & Purohit* for April 2015 to March 2018 wherein the Auditor *vide* final report dated 27.09.2019 has concluded that accounts of the borrower fall under the definition of '*fraud'* and the details of the same have been explained in their Reply.

18. It was on receipt of this Report that Respondent No. 3/Bank filed a Complaint with the CBI dated 17.06.2020 against the Directors of the Company including the Petitioner herein. Additionally, the Respondent-Bank sent the proforma for issuance of LOC to the Chief Executing Officers in accordance with Office Memorandum dated 22.11.2018 issued by the Ministry of Finance, Government of India.

19. The Respondent No. 3 asserts that during the subsistence of the investigation of the Complaint before the CBI, the Respondent No. 3 reported the fraud of the Company by filing Fraud Monitoring Return to the RBI on 17.07.2020 as per RBI Norms. Further, the Respondent Bank filed a separate Complaint with the CBI dated 06.08.2022 alleging fraud, cheating, breach of trust and other offences committed by the petitioner and other Promotor/Directors. The petitioner's name is reflected at '*Sr. No. 7*' in the CBI complaint. Admittedly, an LOC was issued against the Petitioner and all the other Directors of the Company on 08.08.2022 at the behest of respondent Bank being a Public SectorBank. The CBI complaint filed by the Answering Respondent was returned on 11.10.2022 for additional clarifications the Complaint was again filed on 09.03.2023 to the Joint Director, CBI.

20. It is submitted that since the petitioner was a Director, he was involved in the fraud and suspicious transactions of criminal conspiracy

against the Consortium Banks. It is asserted that investigation is pending before the CBI and the Directors are not participating or cooperating in the investigation; therefore, there was a necessity to issue LOC against the Directors of the company to prevent them from escaping the country to avoid repayment of the loan.

21. The Respondent no. 3 places reliance on *Office Memorandum No. 25016/31/2010-Imm dated 12.10.2018* issued by the MHA to state that LOC can be issued by a Chairman/Managing Directors/Chief Executive of all Public Sector Banks in cognizable offences under the IPC. Further, as it is asserted that as per Para 8 (j)of the Office Memorandum dated LOCs can be issued without complete parameters in exceptional cases in larger national interest and accordingly LOCs were issued.

22. Further, it was submitted by the respondent Bank that Petitioner was a frequent foreign visitor and if he is permitted to travel abroad, then there is possibility that he won't return to India as he has an independent source of income abroad. There is also alikelihood of non-cooperation with the investigation and evading the recovery proceedings. The grant of permission to travel abroad would frustrate the proceedings of Respondent No. 3.

23. Lastly, it is submitted that given the context and the magnitude of the fraud, the Petitioner is not entitled to any relief whatsoever.

24. It is pertinent to mention that *vide* ***Order dated 17.05.2024*** Notice was issued to CBI which was accepted by the SPP to implead CBI as a party as the LOC was issued at the instance of the complaint filed with the CBI which was pending and no action was being taken on the same.

25. As is reflected in ***Order dated 14.08.2024***, *Ld. Counsel appearing on behalf of the CBI submitted* that as per the respondent Nos. 1 and 2, there is

only one subsisting LOC against the petitioner and there is nothing further to be stated on behalf of the CBI.

26. ***The Petitioner in his Rejoinder*** has reiterated his contentions and contended that the LOC issued at the behest of the Bank, is done mechanically and liable to be quashed or set aside.

27. The Counsel for the petitioner submits that 3 LOCs against the family members of the erstwhile Company has been quashed by the Hon'ble Bombay High Court *vide* Order dated 03.05.2024 in *Nitin Ramachandra Jhadav v. The Bureau of Immigration & Ors*. W.P. (Crl) No. 2404 of 2023, Order dated 26.04.2023, Order dated 25.11.2022 and Order dated 05.09.2022 in W.P. (Crl) No. 22523 of 2022. Further, reliance is placed on *Vishambhar Saran v. Saroj Agarwal* 2021 SCC OnLine Cal 3074 to argue that mere quantum of alleged default cannot be a basis for the extreme measure of opening the LOC.

28. **Submissions heard and record as well as judgements, perused.**

29. The circumstances in which the Look Out Notice can be opened has been explained in the decision of this Court in *Sumer Singh Salkan (Supra)* 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"**.

30. The Petitioner's involvement essentially is that he was an employee holding the designation of Director (Marketing) and was apparently nowhere involved in the transaction pertaining to the Consortium Banking

Arrangement which were secured by way of *pari-passu* hypothecation charge over the current assets/moveable properties of the Company, personal Guarantees of Shri Nitin R. Jhadav, Smt. Nisha N. Jadhav, Shri Balaji S. Choudhary, Shri Amol Ramachandra Jhadav & Shri Bhavrao R. Gore along with mortgage on several properties.

31. As per the abovementioned Office Memorandum of the MHA dated *12.10.2018* with its subsequent Amendments, the Public Sector Bank is entitled to open an LOC. However, in the ***present case*****,** none of the circumstances for opening an LOC, are made out.

32. **Firstly,** it is apparent from the record that the Loan was taken in 2016, by the Promoters.Respondent No. 3 Bank filed a Complaint with the CBI against the Directors of the Company including the Petitioner herein on 17.06.2020 i.e. 2 years after he had resigned from *M/s Gajanan Oils Pvt. Ltd.* on 15.01.2018. Though it has been insisted that the LOC was issued to secure the presence of the Petitioner during the investigation and that he is evading investigations. There are no averments by the Respondent No. 1, Respondent No. 2 or the CBIthat the Petitioner has notcooperatedor has avoided joining or **evading the investigation proceedings.**

33. **Thirdly**, the Petitioner has explained that his family,property, employment and residence is in India therefore, he is not a *flight risk* and cannot be deemed to be evading the process of law as he has *deep roots* in India including his family who are now residing at Gurugram. However, owing to professional commitments, he has to travel abroad.

34. Given the facts of the present case, the petitioner is willing to join investigation, if any, and is not evading the process of law as he is gainfully employed as Country Sales Head of *M/s Forever Living Products Pvt.*

*Ltd.*and there is no likelihood of the petitioner leaving the country to evade trial; none of the grounds for continuing the LOC continue to exist.The Lookout Circular (LOC) issued against the Petitioner is hereby quashed.

35. The Writ Petition is allowed, in the aforesaid terms. Pending Application(s), if any, stand disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 13, 2024