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

\+ W.P.(C) 4895/2021

VIKAS AGARWAL .....Petitioner

Through: Mr. Dayan Krishnan, Senior Advocate with Mr. Susmit Pushkar, Mr. Gaurav Sharma and Ms. Bhavna Mishra, Advocates.

versus

BUREAU OF IMMIGRATION & ORS. .....Respondents

Through: Mr. Kirtiman Singh, CGSC with Mr. Waize Ali Noor, Mr. Maulik Khurana, Mr. Ranjeev Khatana, Mr. Varun Pratap, Advocates for BOI/R-1 Mr. Santosh Kumar Rout, SC for PNB/R-2 with Ms. Dharna Veragi, Advocate

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **04.11.2024**

1. Mr. Vikas Agarwal, a Non-Resident of India presently residing in Dubai, is the former Director of Visa Power Limited,[1] which is currently undergoing the liquidation. He has filed the instant petition challenging the Look Out Circular[2] dated 29th February, 2020 issued by the Bureau of Immigration,[3] Respondent No. 1 at the instance of Punjab National Bank,[4] Respondent No. 2 against him.

[1] "VPL"
[2] "LOC"
[3] "BoI"

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2. The facts leading to the filing of the petition are as follows:

2.1. VPL availed credit facilities for an amount of INR 1964 Crores from the consortium of 14 banks led by PNB for setting up a thermal power plant at Raigarh, Chattisgarh.

2.2. The Petitioner filed Form DIR-12 for resignation as a Director from VPL with effect from 30th June, 2015.

2.3. Pursuant to the Supreme Court's order dated 24th September, 2014 in W.P. (Crl.) No. 120 of 2012,[5] multiple coal blocks which had been allotted to various companies were cancelled. As a result, the development of the thermal power plant was stalled leading to a lack of revenue for VPL. Consequently, VPL was declared as a Non-Performing Asset[6] on 31st March, 2016, by PNB.

2.4. Due to the NPA status, proceedings under Section 7 of Insolvency and Bankruptcy Code, 2016,[7] were initiated against VPL at the behest of the Bank of Maharashtra, one of the banks in the consortium of lenders, before the NCLT, Kolkata Bench and on 11th October, 2018 an order of liquidation was passed.

2.5. Ultimately, the loan account of VPL was declared as "fraud" on account of various irregularities noticed in the account. However, the NCLT through order dated 11th April, 2019 directed that no coercive action be taken against VPL and on 25th July, 2019, NCLT held that there is not enough material to conclude that any fraudulent transactions were made. The appeal against the order of the NCLT was later dismissed by the

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[4] "PNB"
[5] titled ***Manohar Lal Sharma v. The Principal Secretary & Ors.***
[6] "NPA"
[7] "IBC"

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NCLAT on 30th September, 2019.

2.6. Thereafter, the Petitioner was served summons dated 20th February, 2021 in CC No. CBI/100/2019 issued by the Special Judge (PC Act), Rouse Avenue Court requiring the Petitioner to appear on 4th May, 2021, which he duly complied with.

2.7. After declaration of the loan account as fraud, PNB lodged a complaint dated 8th August, 2019 before the Joint Director (Police), Central Bureau of Investigation, HQ, New Delhi but the same was returned by CBI to PNB. Additionally, through letter dated 20th October, 2020, PNB also initiated proceedings for classifying VPL and its Directors as Wilful Defaulter. A second complaint dated 18th June, 2021 was filed requesting to register an FIR against Mr. Vishambar Saran, Mr. Vikas Agarwal and Mr. Subrato Trivedi, the Directors of VPL. This complaint was premised on the Master Circular of Wilful Defaulters issued by the Reserve Bank of India[8] on 1st July, 2015 which provides that after declaration of the of an entity as a Wilful Defaulter, the bank/financial institution is required to lodge a complaint against the said entity. On the basis of this complaint, on 18th August, 2023, an FIR was registered by CBI which was ultimately set aside *qua* Mr. Vishambar Saran by the High Court at Calcutta through judgment dated 17th November, 2023.

2.8. Subsequently, Petitioner learnt that at the instance of PNB an LOC has been issued against the former Directors of VPL. Hence, the Petitioner has now invoked the jurisdiction of this Court seeking to set aside the LOC issued against him.

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[8] "RBI"

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3. In this background, Mr. Krishnan contends that the LOC is untenable in law as there are no criminal proceedings subsisting against the Petitioner in relation to any cognizable offence under the Indian Penal Code or other Penal Laws in respect of the credit facilities availed by VPL as one complaint filed with CBI has been returned and the other complaint was lodged on 18th June, 2021 which is subsequent to the issuance of the LOC. He further urges that the LOC has been issued in disregard of the findings of the NCLT and NCLAT and of the fact that the Petitioner had resigned from VPL's Board on 30th June, 2015 and he is neither a borrower nor a guarantor to any loan. He states that despite repeated attempts, the Respondents have not produced either the request from PNB or the LOC issued at the instance of PNB. Additionally, he contends that the LOC issued at PNB's request against former Directors has been quashed by the High Court at Calcutta and PNB's declaration of fraud under the RBI Master Directions on Frauds has been set aside by this Court through order dated 12th May, 2023 in W.P. (C) 4458/2021. Moreover, PNB has dropped the Wilful Defaulter proceedings against VPL and Mr. Vishambar Saran and the Petitioner informed through letter dated 9th November, 2022.

4. On the contrary, Mr. Santosh Kumar Rout, Standing Counsel for PNB, strongly opposes the petition on the ground of non-maintainability. He states that this Court does not have the jurisdiction to entertain the present petition as the cause of action arose in Calcutta. This is bolstered by the fact that three Directors of VPL had instituted a writ petition before the High Court at Calcutta and the Petitioner ought to have presented his case before the said Court. He contends that the LOC has been issued as a preventive measure under the apprehension that the Directors/ Guarantors of VPL will

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flee from the country. Moreover, the Petitioner was responsible for the day-to-day activities and affairs of the borrower company and therefore, the Respondent-Bank has a right to take action against the Petitioner. The CBI has already registered a case which is pending investigation and considering the huge amount in default which is to be recovered from VPL, the LOC is necessary.

5. The Court has considered the facts and the contentions of the parties. The instant petition is only concerned with the LOC which has been issued by BoI at the request of PNB. The Petitioner is neither a guarantor nor a mortgagor to the loans advanced by PNB. The LOC has been issued, as the Petitioner was serving as the Director of Visa Power Limited.

6. It must be noted that PNB has requested for issuance of LOC against the Petitioner as well as other Directors of the Company, namely, Mr. Vishambhar Saran, Mrs. Saroj Agarwal and Mr. Vishal Agarwal. The other Directors impugned the LOC before High Court at Calcutta through W.P.A. No. 10241 (W)/2020 wherein they succeeded and through judgment dated 24th December, 2021, the Court quashed the LOC issued at the request of PNB in respect of other Directors mentioned above. The relevant portion of the said decision reads as follows:

> *"53. In the present case, the respondent-authorities have failed to justify rationally as to why the departure of the petitioners from India would, in any manner, be detrimental to the sovereignty or security or integrity of India or to the bilateral relations with any country or to the strategic and/or economic interests of India as a whole. The mere subsistence of an allegation of default could not trigger the issuance of the LoC at the drop of a hat. As such, the expression "detrimental to the economic interests" of India ought not to be an excuse to restrain citizens of India from leaving the country without any convincing ground being disclosed for such restraint. In the present case, there is no allegation that the CBI has an arrest-warrant against the petitioners and/or the petitioners'*

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personal participation in the CBI enquiry is of utmost necessity at the present juncture. That apart, even if the petitioners were to leave India, there is nothing on record to indicate that the recovery of any amount of default, if committed at the behest of the petitioners by the borrower-company, would affect such recovery in any manner, detrimental or otherwise.

54. As such, the LoC was unfounded and lacked any cogent contemporaneous or prior act of the petitioners.

55. Rather, in the present cases, the respondent no.2-bank has abused its authority to request for opening a Lookout Circular at the behest of the Chairman/Managing Director/Chief Executive, in the capacity of a Public Sector Bank, thereby substituting a regular proceeding for recovery of the debt in the process. The issuance of LoC cannot be an alternative for initiating recovery proceedings against the borrower itself, let alone a director of the borrower-entity."

7. This Court is also apprised that the Wilful Defaulter proceedings against have been dropped against VPL, Mr. Vishambhar Saran and the Petitioner through letter dated 9th November, 2022.

8. Furthermore, on 31st January, 2023, High Court at Calcutta in W.P.A. No. 6670/2022 has also quashed the LOC issued at the instance of Bank of Baroda, a member of the consortium of 14 banks that had advanced loan to VPL. Subsequently, on 12th May, 2023, in W.P.(C) 4458/2021 the declaration of fraud made by PNB under the RBI Master Directions on Frauds, was also quashed by this Court.

9. Pertinently, on the complaint made by PNB to the CBI, an FIR dated 18th August, 2023 was registered by CBI wherein the Petitioner has been arrayed as accused. However, it must be noted that the underlying complaint dated 18th June, 2021 which resulted in the said FIR was also impugned by the other Directors before High Court at Calcutta wherein they have succeeded through order dated 17th November, 2023 in W.P.O No. 1626/2023 which reads to the following effect:

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"48. In the present case, no fact-finding enquiry into the genuineness or reliability of the allegations need be entered into at all in view of the admitted position that none of the grounds made out in the complaint subsist today or subsisted on the date of registration of the FIR. Moreover, the complaint being made clearly within the contemplation of Clause 4.2(ii) of the Master Circular dated July 1, 2015, read with Chapter VI of the RBI Master Direction dated July 1, 2016, has been rendered infructuous in view of the declarations of wilful defaulter and fraud having been recalled/set aside before even the registration of the FIR.

49. The argument of the Bank that no legal right of the petitioner has been infringed cannot be accepted either. The right to live with dignity is an integral part of any human being, enshrined and guaranteed by Article 21 of the Constitution of India. Equality before the law is another important aspect, guaranteed under Article 14 of the Constitution. The moment arbitrariness and/or mala fides is exhibited against a citizen of India, a contravention of Article 14 occurs as in the present case. The impugned complaint against the petitioner dated June 18, 2021, thus, being palpably vitiated as on today as well as on the date of filing of the writ petition and the registration of the FIR, cannot be sustained as against the petitioner.

50. In view of the above observations, WPO No.1626 of 2023 is allowed on contest, thereby setting aside the impugned complaint lodged by the PNB requesting the CBI to register FIR dated June 18, 2021 insofar as the writ petitioner is concerned. Liberty is granted to the petitioner to approach the appropriate forum seeking quashing of the consequential FIR only so far as the petitioner is concerned and any ancillary action or investigation, which has been commenced against the petitioner on the basis of such FIR."

10. Subsequently, the Petitioner also preferred a petition bearing W.P.O. No. 415/2024 before High Court at Calcutta impugning the underlying complaint which has resulted in the afore-noted FIR. On 15th May, 2024, the said writ petition was also allowed in the following terms:

"The Court: Affidavit of service filed today be kept on record.

Learned counsel for the petitioner submits that the petitioner's father Vishambar Sharan had moved a previous writ petition bearing WPO/ 1626/2023 against a complaint lodged by the Punjab National Bank, a respondent herein as well, on the basis of which the Central Bureau of Investigation (CBI) registered an FIR. It is argued that the said complaint dated June 18, 2021 also named the present petitioner, the

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son of Vishambar Sharan, as an accused person. It is submitted that since the writ petitioner was not one of the co-petitioners in the previous writ petition, the benefit of the order dated November 17, 2023 passed in WPO/1626/2023 setting aside the said complaint, ought also to be extended to the petitioner.

Learned counsel for the bank contends that pursuant to the said complaint, an FIR has already been registered by the CBI. As such, since the complaint has culminated in the said FIR, the former has merged in the latter. In any event, leave was granted to the petitioner to inform about the said order to the CBI and as such the present writ petition ought not to be entertained.

A bare perusal of the order dated November 17, 2023 passed in WPO/ 1626/2023 annexed at page 247 of the present writ petition shows that the Court, upon detailed reasoning, had set aside the self-same complaint of the bank which has been impugned herein, granting liberty to the petitioner therein to approach the appropriate forum seeking quashing of the consequential FIR only so far as the petitioner therein was concerned.

Since the present petitioner, the son of the writ petitioner in WPO/1626/2023, stands on an equal footing as his father, who was the writ petitioner therein, and as the common cause of action of the present writ petitioner and his father in the previous writ petition is furnished by the selfsame complaint annexed at page 91 of the present writ petition, there cannot be any reason why the same benefit as that extended to the writ petitioner in WPO/1626/2023 should not be extended to the present writ petitioner as well. The fact of an FIR having been registered was also available to the parties on the date when the previous writ petition was disposed of and as such, does not furnish any change of circumstance.

In the light of the above observations, WPO/415/2024 is disposed of with the observation that the decision and observations made in the judgment and order dated November 17, 2023 in WPO/1626/2023 are equally applicable to the present writ petitioner as well. In order to avoid any doubt, it is made clear that the impugned complaint lodged by the PNB as annexed at page 91 of the present writ petition requesting the CBI to register an FIR, is also quashed and set aside in so far as the present writ petitioner is concerned. Liberty is granted to the present writ petitioner as well to approach the appropriate forum seeking quashing of the consequential FIR insofar as the present writ petitioner is concerned, including any ancillary action or investigation which might have commenced against the present writ petitioner on the basis of such FIR.

No order as to costs.

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made available to the parties subject to compliance with the requisite formalities."

11. The purpose for issuing an LOC is 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. The impugned LOC against the Petitioners have been in effect since 29th February, 2020. However, in view of the aforementioned orders, there is no cogent evidence before the Court at this stage to establish the Petitioners' personal liability or criminal culpability, nor any indication that they intend 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***[9] and ***Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer and Ors.***[10]

12. The Ministry of Home Affairs[11], which is 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 dated 27th October, 2010 and the amended Clause in Office Memorandum dated 05th December, 2017, which

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[9] (1978) 1 SCC 248
[10] AIR 1967 SC 1836

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reads as follows:

*"**Office Memorandum dated 27th October, 2010***

"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.
xx ... xx ... xx
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."
Office Memorandum dated 27th October, 2010, as amended on 5th December, 2017
"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."

13. Thereafter, MHA released Office Memorandum 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

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[11] "MHA"

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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

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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."

14. The above makes it clear that only in exceptional cases can an LOC be issued without fulfilling the 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.

15. Furthermore, as has been held by the Coordinate Bench of this Court in ***Prateek Chitkara v. Union of India***[12], the scope of the term 'detrimental to the economic interest of India', as mentioned in Clause 'L' of the Office Memorandum dated 22nd February, 2021, must be narrowly construed. The relevant extracts of the judgement are as follows:

> ***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."*

16. It is also well settled in law, as has been held in multiple judgements 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

[12] 2023 SCC OnLine Del 6104

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Constitution of India. Reliance in this regard is placed on W.P.(C) 14837/2022.[13]

17. As noted above, LOC has been issued against the Petitioner solely for the reason that the company of which he was a Director was unable to repay its debts. The criminal complaint filed by PNB to CBI has been quashed. There is no other material on record which can justify PNB to insist that the Petitioner's right to travel should be restricted and he should not be allowed to depart from the country.

18. In light of the above, the LOC issued by PNB against the Petitioner cannot sustain and accordingly, the LOC against the Petitioner is set aside. It is clarified that the Court's opinion is only in respect of the LOC issued by PNB.

19. Since the LOC against the Petitioner no longer subsists, the condition imposed by this Court through an interim order allowing the Petitioner to travel abroad subject to conditions, shall not be in force. Accordingly, the Registrar is directed to release the security deposit of INR 5 crores furnished in terms of order dated 6th September, 2021 to the Petitioner.

20. With the above direction, the present petition along with pending application(s), if any, is disposed of.

SANJEEV NARULA, J

NOVEMBER 4, 2024/ab

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[13] *titled* ***Vikas Goel v. Union of India***

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