



2024:DHC:5205



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

Date of decision: 12th JULY, 2024

IN THE MATTER OF:

+ **W.P.(C) 11502/2023**

USHA SINDHU

..... Petitioner

Through: Mr. Sanjeev Sindhwani, Sr. Advocate
with Mr. Sumit Goel, Ms. Sonal
Gupta and Ms. Apurba Pattanayak,
Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Anil Soni, CGSC with Mr.
Devvrat Yadav, GP.
Mr. Rajiv Kapur, Mr. Akshit Kapur,
Mr. Aditya Saxena, Advocates for
SBI.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court challenging the Lookout Circular dated 26.05.2022 issued against the Petitioner by the Bureau of Immigration at the request of the State Bank of India.
2. The facts of the case reveal that the Petitioner has been working a non-executive Director in ACB (India) Limited (*hereinafter called as 'ACBIL'*), which is engaged in the core business of coal beneficiation and power generation. It is stated that the ACBIL availed multiple term loan facilities from various consortium of Banks including the State Bank of



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India.

3. It is stated that due to the outbreak of COVID-19 pandemic, the business of the company had suffered and ACBIL planned for restructuring of its debt in accordance with the Resolution Framework for COVID-19 related stress dated 06.08.2020 read with the RBI Circular dated 07.09.2020. It is stated that ACBIL entered into the Master Restructuring Agreement with its lenders including the State Bank of India on 29.05.2021. Since ACBIL was not in a position to honour the agreement and the account of ACBIL was declared as Non-Performing Asset (NPA).

4. A Lookout Circular was opened against the Petitioner and the Petitioner has approached this Court by filing the instant writ petition.

5. It is stated in the writ petition that the Petitioner is only the non-executive Director of the company and is neither a signatory to the Master Restructuring Agreement nor a personal guarantor to the credit facilities availed by ACBIL.

6. It is stated that out of the consortium of lenders, only Canara Bank has initiated proceedings under Section 13(2) of the SARFAESI Act. It is also stated that no criminal case has been initiated against the Petitioner.

7. The Petitioner places reliance on various judgments passed by this Court to contend that since no criminal proceedings have been initiated against the Petitioner and merely because of the inability of the company to repay its debts in which the Petitioner was a non-executive Director, Lookout Circular cannot be opened against the Petitioner and the same is violative of the Fundamental Right of the Petitioner to travel abroad guaranteed under Article 21 of the Constitution of India.

8. This Court in Apurve Goel v. Bureau of Immigration & Anr.,



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W.P.(C) 5674/2023; Shalini Khanna v. Union of India & Anr., W.P.(C) 10951/2022; Rajiv Aggarwal v. Union of India & Ors., W.P.(C) 7093/2022 and various other judgments has consistently held that mere inability to repay the amounts due to Banks cannot result in opening of Lookout Circulars.

9. Lookout Circulars are issued against a person at the instance of any of the agencies mentioned in the Office Memorandums issued by the Ministry of Home Affairs from time to time.

10. Ministry of Home Affairs issued an Office Memorandum dated 27.10.2010 laying down the guidelines for issuance of Lookout Circulars. According to the said Office Memorandum dated 27.10.2010, Lookout Circulars could not be opened at the instance of Banks and, therefore, an amendment was sought to the Office Memorandum dated 27.10.2010 and an amended Office Memorandum dated 05.12.2017 was issued and Paragraph No.8 (j) of the Office Memorandum dated 27.10.2010 was amended which reads as under:

“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 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



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point in time.

Instead of:

“In exceptional cases, LOCs can be issued without complete parameters and/or case details CI suspects, terrorists, anti-national elements, etc in larger national interest.”

11. Another Office Memorandum dated 04.10.2018 was issued by the Ministry of Finance, Government of India empowering the heads of Public Sector Banks to issue requests for opening of Lookout Circulars. By virtue of this Office Memorandum, Chairman (State Bank of India), Managing Directors and Chief Executives Officers (MD & CEOs) of all Public Sector Banks could request for opening of LOCs against the persons who are fraudsters and persons who wish to take loans and wilfully default or launder money and then escape to foreign jurisdiction as these actions will not be in the economic interests of India on a larger public interest.

12. Further, another Office Memorandum dated 22.11.2018 was issued by the Ministry of Finance, Government of India regarding empowerment of heads of Public Sector Banks to issue requests for opening of Lookout Circulars which reads as under:

“Subject: Empowerment of heads of Public Sector Banks to issue requests for opening Look Out Circulars (LOCs)

Dear Sir / Madam,

Kindly find enclosed the following, for necessary action:

“(a) A copy of Department of Financial Services



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(DFS)'s OM No. 6/3/2018-BO.II dated 04.10.2018 to the Ministry of Home Affairs (MHA), vide which DFS had requested MHA to empower the heads of Public Sector Banks (PSBs) to issue requests for opening of Look Out Circulars (LOCs).

(b) A copy of MHA's OM No. 25018/10/2017-Imm dated 12.10.2018, vide which MHA has now made the desired amendment to paragraph 8 (b) of their OM No.25016/31/2010-Imm dated 27.10.2010 by adding sub-paragraph (xv), namely "Chairman/ Managing Directors/ Chief Executives of all Public Sector Banks" in the list of officers competent to request opening of LOCs, thereby empowering the heads of PSBs also, as requested by DFS.

2. In this context, it may kindly be noted that:

"(a) Issuance of LOCs in respect of Indian citizens and foreigners is governed by the instructions contained in MHA's OM dated 27.10.2010, as amended from time to time.

(b) Paragraph 8 (b) of MHA's OM dated 27.10.2010 lists those authorities of minimum rank, with whose approval the request for opening of LOC must be issued. Pursuant to the amendment vide MHA's OM dated 12.10.2018, the list now includes the Chairman/ Managing Directors/ Chief Executives of all Public Sector Banks.

(c) Paragraph 8 (j) of MHA's OM dated 27.10.2010 (amended through MHA's OM dated 05.12.2017) states that "In exceptional cases, LOCs can be issued even in such cases, as would



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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 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 parson 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.

3. It is requested that the instructions contained in MHA's OM dated 27.10.2010 (as amended by MHA's OMs dated 05.12.2017 and 12.10.2018), vide which the heads of PSBs have now been empowered to issue requests for opening of Look Out Circulars, may be strictly complied with henceforth, so that all persons who are covered under the said amended OM of MHA, including fraudsters and persons who wish to take loans and wilfully default or launder money and then escape to foreign jurisdictions to avoid paying back, are restricted from escaping from the country. MHA's Proforma for issue of LOCs is also enclosed."

(emphasis supplied)

13. Office Memorandum bearing No. 25016/10/2017-Imm (Pt.) dated 22.02.2021 is the last of the guidelines issued by the Ministry of Home Affairs for issuance of Lookout Circulars. The relevant portion of the said Office Memorandum reads as under:-

"6. The existing guidelines with regard to issuance of Look Out Circulars (LOC) in respect of Indian



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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:-

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(B) The request for opening of LOC must invariably be issued with the approval of an Originating agency that shall be an officer not below the rank of—

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xv. Chairman/ Managing Directors/ Chief Executive of all Public Sector Banks.

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(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



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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



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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."
(emphasis supplied)

14. Clause L of the Office Memorandum of 2021, as quoted above, states that in exceptional cases, an LOC can be issued at the instance of the Bank if the authorities are of the view that letting the person to depart from the country will be detrimental to the economic interests of India.

15. The Courts have also laid down the scope of the term '*detrimental to the economic interest of India*' used in Office Memorandum bearing No.25016/10/2017-Imm (Pt.) dated 22.02.2021, which is the last of the guidelines issued by the Ministry of Home Affairs for issuance of Lookout Circulars, which cannot be resorted in every case of Bank default and the citizen's right to travel abroad, which is a Fundamental Right guaranteed under Article 21 of the Constitution of India, cannot be taken away and persons cannot be deprived of their liberty and right to travel abroad only because of their inability to repay the amounts due to Banks.

16. The scope of the term 'detrimental to the economic interest of India' has been dealt with by the various High Courts in various judgments. A Coordinate Bench of this Court in Prateek Chitkara v. Union of India & Ors., 2023 SCC OnLine Del 6104, has observed as under:

"47. The question before this court is, whether clause L of the Office Memorandum of 2021, would be



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legally valid, especially in respect of the phrase “detrimental to the economic interests of India” and in respect of other clauses which permit indefinite continuation of look-out circulars, non-communication of reasons either prior or post issuance of the look-out circular and extension of look-out circular to such individuals who in the opinion of the authorities ought not to be permitted to travel on the ground of it being detrimental to the economic interests of India.

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57. In Mr. Chaitya Shah v. Union of India [2021 : BHC-AS : 16392-DB.] , a learned Division Bench of the Bombay High Court was dealing with a case where a substantial amount had been invested in a company called M/s. Gitanjali Gems of Rs. 50 crores and various banking operations and transfer of money was found. The court observed that the words “economic interest of India” and “larger business interest” are not empty words. The relevant paragraph of the said judgment is extracted below:

*“32. In the present case the **Serious Fraud Investigation Office** is investigating into the affairs of the aforementioned companies and its investigation overrides the investigations by other investigating agencies. Therefore recourse to look-out circular was not unfounded as the petitioner has definite connection with the investigation as discussed hereinabove. From the facts of the case it is clear that clause (L) of these guidelines clearly covers the petitioner's case as it is detrimental to the ‘economic interests of India’ and that his departure ought not to be permitted in the larger public interest. The words ‘economic interests of India’ and ‘larger public interest’ are not empty words in the context of the present case because as mentioned earlier the petitioner is*



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directly involved and was concerned with considerable shareholding of M/s. Gitanjali Gems Limited. It involves huge amount of almost Rs. 50 crores which requires serious explanation from the petitioner in the background of the allegations that the money belonged to Mr. Mehul Choksi, who has left India and has not returned back. This transaction is an important part of the entire fraud involving huge amount. Sheer magnitude of the offence and its spread through various banking operations and transfer of money through different modes and different countries shows that it has definitely affected the economic interests of India and the larger public interest is definitely involved and affected. Therefore, we do not find that issuance of look-out circular against the petitioner was unnecessary.”

58. In Vishambhar Saran v. Bureau of Immigration (W.P. No. 10241(W) of 2020, decided on December 24, 2021) [2021 SCC OnLine Cal 3074.] , the Calcutta High Court held that vague allegations of a person's travel being detrimental to the economic interest of the country or the quantum of the alleged default (Rs. 351 crores in this case), is not sufficient to issue a look-out circular thereby restricting the personal liberty of a person to travel. In the said petition, no civil or criminal proceedings were initiated against the petitioner and thus the petitioner was allowed to travel. This view was echoed in Vishambhar Saran v. Bureau of Immigration (W.P.A. No. 6670 of 2022, decided on January 31, 2023).

59. In Vikas Chaudhary v. Union of India (W.P. (C) No. 5374 of 2021, decided on January 12, 2022) [(2022) 442 ITR 119 (Delhi).] , the petitioner was a businessman engaged in the export of garments to a



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number of foreign countries. A look-out circular was issued against the petitioner on the ground of undisclosed foreign assets and interests in foreign-entities liable for penalty and prosecution under the Income-tax Act, 1961, the Black Money (Undisclosed Foreign Income and Assets) and Imposition of tax Act, 2015, as also the proceedings under the Prevention of Money Laundering Act, 2002, having been commenced against the petitioner. The petitioner did not hold any foreign assets and any undisclosed assets.

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61. The court noted that the phrase “detrimental to the economic interests of India” was introduced for the first time in the Office Memorandum (hereinafter “OM”) dated December 5, 2017. The said phrase did not exist in the previous Office Memorandum dated October 27, 2010. However, it continues to exist in all the subsequent Office Memoranda. In this context, the court observed as under (page 137 of 442 ITR):

*“36. However, the matter does not end here and the crucial issue which needs to be now determined is as to whether the clause ‘detrimental to the economic interests of India’ introduced vide the amendment in 2017, with a specific rider that the same would be used only in exceptional circumstances, could have, in the facts of the present case, been resorted to, for issuing the impugned look-out circular, as also whether the impugned look-out circular could be continued for the last almost three years without any proceedings under the Penal Code, 1860 or any other penal law being initiated against the petitioner. It has to be kept in mind, that the issuance of a look-out circular necessarily curtails the rights of an individual to travel abroad and therefore, **I am of the view, that for***



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invocation of this clause, which, in any event, is meant to be used only in exceptional circumstances, a mandatory precondition would be a formation of a reasonable belief by the originating authority that the departure of an individual would be 'detrimental to the economic interests of India' to such an extent that it warrants curtailment of an individual's fundamental right to travel abroad...

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39. Merely because the Office Memorandum dated December 5, 2017 permits the issuance of a look-out circular, in exceptional circumstances, even when the individual is not involved in any cognizable offence under the Penal Code, 1860 or any other penal law, it has to be remembered that this power is meant to be used in exceptional circumstances and not as a matter of routine, it must therefore, be interpreted in a manner that indicates an offence of such a magnitude so as to significantly affect the economic interests of the country. Mere suspicion of a person opening bank accounts in other countries and of investing in a foreign company cannot, in my view, be accepted as the basis for holding that the petitioner being allowed to travel abroad would be 'detrimental to the economic interest of India', when it is undisputed that this suspicion has remained a suspicion for such a long period of almost three years."

62. Thus, the conclusion of the court was that exceptional circumstances could exist even if a person was not involved in any cognizable offence under the Penal Code, 1860 or under any other penal law. In the said petition, the look-out circular was quashed by the court.

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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.”
(emphasis supplied)

17. It is well settled that merely because the Office Memorandum permits the issuance of a lookout circular in exceptional circumstances, even when an individual is not involved in any offence under the IPC or any other penal law, the said power should be used in exceptional circumstances and not as a matter of routine.

18. This Court in Apurve Goel v. Bureau of Immigration & Anr., **W.P.(C) 5674/2023**, has held as under:-

"22. The Look Out Circulars cannot be opened merely on the request of the banks. There has to be some application of mind by the authority concerned opening the Look Out Circular since the opening of Look Out Circular results in restraining a person's right to travel abroad. The authority opening the Look Out Circular must satisfy itself that the departure of a



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person against whom Look Out Circular has been opened would be detrimental to the sovereignty or security or integrity of India or that the same is detrimental to the bilateral relationship with any country or to the economic interests of India or departure of such a person ought not be permitted in the larger public interest at any given point in time."

19. It is well settled that mere inability to pay money without there being a criminal case cannot be a reason to take away the Fundamental Right guaranteed under Article 21 of the Constitution of India. Right to travel abroad has been held to be a Fundamental Right under Article 21 of the Constitution of India which cannot be taken away in an arbitrary and illegal manner.

20. In Maneka Gandhi v. Union of India, (1978) 1 SCC 248, the Apex Court has held as under:

"5. ...Thus, no person can be deprived of his right to go abroad unless there is a law made by the State prescribing the procedure for so depriving him and the deprivation is effected strictly in accordance with such procedure. It was for this reason, in order to comply with the requirement of Article 21, that Parliament enacted the Passports Act, 1967 for regulating the right to go abroad. It is clear from the provisions of the Passports Act, 1967 that it lays down the circumstances under which a passport may be issued or refused or cancelled or impounded and also prescribes a procedure for doing so, but the question is whether that is sufficient compliance with Article 21. Is the prescription of some sort of procedure enough or must the procedure comply with any particular requirements? Obviously, the procedure cannot be arbitrary, unfair or unreasonable. This indeed was conceded by the learned Attorney-General who with



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his usual candour frankly stated that it was not possible for him to contend that any procedure howsoever arbitrary, oppressive or unjust may be prescribed by the law....”

21. A Division Bench of the High Court of Bombay in a batch of writ petitions *vide* Judgment dated 23.04.2024 in Viraj Chetan Shah v. Union of India & Anr., **W.P.(C)719/2020** etc. has quashed Clause 8(b)(xv) of the Office Memorandum dated 27.10.2010 bearing O.M. 23016/31/2010-Imm. equivalent to Clause 6(B)(xv) of the O.M. dated 22.02.2021 bearing O.M. 25016/10/2017-Imm.(Pt.) whereby the Chairman/Managing Director/Chief Executives of all Public Sector Banks could request for opening of an LOC. The effect of the said judgment is that the Chairman/Managing Director/Chief Executives of the Public Sector Banks cannot make a request for issuance of LOC.

22. The issuance of lookout circular cannot be resorted to in every case of bank loan defaults or credit facilities availed for business and the Fundamental Right of a citizen of the country to travel abroad cannot be curtailed only because of failure to pay a bank loan more so when the person against whom the lookout circular is opened has not been even arrayed as an accused in any offence for misappropriation or siphoning off the loan amounts.

23. In view of the above, since there is no criminal case pending against the Petitioner and the Petitioner is only a non-executive Director of the company, who is not even the signatory to the restructuring agreement or a personal guarantor to the credit facilities availed by the company, this Court is of the opinion that the Lookout Circular issued against the Petitioner



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cannot be sustained and, therefore, the Lookout Circular issued against the Petitioner is hereby quashed.

24. The writ petition is allowed. Pending application(s), if any, stand disposed of.

SUBRAMONIUM PRASAD, J

JULY 12, 2024

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