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

+ W.P.(CRL) 2231/2022 & CRL.M.A. 19298/2022 (stay)

KUSHAL RATHI Petitioner

Through: Mr. Atul Agarwal, Advocate

versus

STATE Respondent

Through: Mr. Amol Sinha, ASC (Crl.) for State
with Insp. Shikhar Chaudhry, PS EOW.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

28.02.2024

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1. This petition has been filed on behalf of the Petitioner under Articles 226 and 227 of the Constitution of India read with Section 482 Cr.P.C. for issuance of a writ of *certiorari*, to quash and/or withdraw the Look Out Circular ('LOC') issued against the Petitioner, in FIR No. 82/2018 dated 16.03.2018 under Sections 406/420/34/120B IPC registered at PS: Mayur Vihar, Phase-I.

2. Brief facts to the extent necessary are that FIR No. 82/2018 was registered against the Petitioner, being one of the Directors of the accused Company M/s. Ecnon Residency Buildcon Pvt. Ltd. at PS: Mayur Vihar, pursuant to a complaint by the Complainants that in 2013 Complainants were contacted by Sandeep Wadhwa, one of the Directors of the Company (Accused No. 4) and was induced to invest in the project in question. Complainants were made to believe that if they bought flats in the project, they would get huge profits and returns on the investments. Money was invested by the Complainants, for which receipts were issued by the



Petitioner herein and Sandeep Wadhwa. Thereafter, Complainants were never informed of any construction or the assured returns on the investments made.

3. It is stated in the petition that Petitioner was not summoned or asked to join investigation in FIR No. 82/2018, though the IO was the same who was investigating in FIR Nos. 244/2017 and 189/2016, in which Petitioner was granted regular bail, after arrest. Even at the time of hearing the bail applications in the other FIRs, IO never served any summons on the Petitioner and in fact, the signatures of the Petitioner were taken in Court in respect of the present FIR to verify the receipts issued to the Complainants.

4. It is averred that in the year 2020, Accused Company entered into a settlement with the Complainant, based on which the main Accused i.e. Neeraj Kumar Sharma was granted interim bail on 22.01.2020 which was further extended on 10.02.2021 and the Complainants acknowledged possession of the entire land and registration of some part of land in their names and the investigation report stated that remaining part of the land was not registered due to administrative restrictions by the Government.

5. It is further stated that Petitioner was attending all Court proceedings and co-operating with investigation in all the FIRs, yet an LOC was opened by the Respondent in the present FIR, illegally and overlooking that Petitioner was co-operating in every possible way in the investigation. Respondent also overlooked the fact that at the time of granting regular bail in the other two FIRs, the Sessions Court had laid down a condition that Petitioner will not leave the country without permission of the Trial Court and on an application filed by the Petitioner, his passport which had been deposited with the Court, was returned. Petitioner asserts that in the



intervening night of 31.09.2021 and 01.10.2021, he was detained and arrested at the International Airport, New Delhi by Immigration Authorities on account of the LOC. Petitioner was thereafter released on interim bail by the learned Sessions Court on 07.10.2021 and was subsequently granted regular bail on the basis of settlement. Petitioner states that on a number of occasions, despite the Sessions Court granting him permission to travel, he is being illegally detained by the Immigration Authorities on account of the LOC operating against him. Petitioner's wife lives abroad and is suffering from health issues and therefore, his travel is imperative. In this backdrop, the present petition has been filed to quash the LOC against the Petitioner as it infringes his fundamental rights.

6. Learned counsel for the Petitioner contends that LOC cannot be sustained and deserves to be quashed as there is nothing on record to show that he is deliberately evading service of summons and/or not participating or co-operating in any investigation. Petitioner is not a flight risk and has been appearing regularly in all Courts, as and when required. No NBWs have been issued against the Petitioner and no proceedings were initiated under Sections 82 and 83 Cr.P.C. Despite having being granted permission by the Trial Court on several occasions to travel abroad, which was a condition of grant of regular bail, Petitioner is being harassed and prevented from travelling on account of the LOC. Initially, while granting bail in FIR No. 244/2017, Court had imposed a condition that Petitioner would surrender his passport, however, the condition was varied and passport was released, only because the Court had faith that Petitioner was not a flight risk and there are no chances of his evading investigation and/or trial. Argument is that once the Sessions Court while granting regular bail has



imposed an onerous condition that Petitioner will not leave the country without Court's permission, no purpose will be achieved by continuing with the LOC and in fact, issuing of LOC is contrary to the bail condition imposed by the Court.

7. In support of his pleas, learned counsel relies on the judgment of this Court in ***Sumer Singh Salkan v. Asstt. Director & Ors., 2010 SCC OnLine Del 2699***, more particularly paragraph 11 thereof wherein it was observed that recourse to LOC can be taken by the investigating agency in cognizable offences under IPC and under penal laws, where the accused is deliberately evading arrest or not appearing in the Trial Court, despite NBWs and other coercive measures and there is a likelihood that the accused leaves the country to evade trial/arrest. It is submitted that in view of the judgment, the LOC cannot be sustained as it is not the case of the Respondent that Petitioner is either evading arrest or not co-operating in the investigation. The order granting bail to the Petitioner is unassailed and therefore, the LOC deserves to be quashed. Had the State feared that Petitioner would evade the process of law, it would have applied for cancellation of regular bail, which has not been done till date.

8. Learned ASC for the Respondent, on the other hand, relying on the status report, states that present FIR was registered in compliance of order dated 23.12.2017 passed by the learned MM, on a joint complaint filed by Nitin Mittal along with 07 other complainants under Section 156(3) Cr.P.C. Complainants alleged that the Accused Company and its Directors including the Petitioner herein had cheated and induced the Complainants into investing in the project 'Ecnon King's Court' at 22D, Yamuna Expressway'. Under the allurements, huge sums of money were invested by the



Complainants and after receiving payments, Accused persons neither updated the Complainants about the construction nor gave any returns as promised. During investigation, Complainants supported their versions in their statements under Section 161 Cr.P.C. Yamuna Express Industrial Development Authority confirmed that as per their records, no allotment of land or sub-lease was granted to the Accused Company. FSL result established that the handwritten cash receipts were issued by the Accused persons including the Petitioner to Deepak Mittal and others.

9. It is further contended that notices under Section 41A Cr.P.C. were served on the Petitioner but he did not join investigation. NBW was issued by the Court on 10.01.2020 against the Petitioner but he could not be traced on his given address. LOC was issued against the Petitioner and co-accused Sandeep Wadhwa to secure their presence in the investigation. It is true that regular bail has been granted to the Petitioner with one of the conditions being that he shall not leave the country without permission of the Court, however, the allegations are serious and Petitioner is involved in 05 other FIRs. Wife of the Petitioner works in Dubai and therefore, the Petitioner is also a flight risk, and in these circumstances, the LOC should not be quashed. Having so stated, learned ASC fairly states that the impugned LOC was issued in 2021 and thereafter no review has taken place as to whether the LOC is to continue or has to be deleted. Learned ASC hands over copy of an Office Memorandum ('OM') dated 22.02.2021 issued by Immigration Section, Foreigners Division, Ministry of Home Affairs, Government of India, whereby '*Consolidated Guidelines for Issuance of LOC for Indian Citizens and Foreigners*' have been laid down. Relying on the Guidelines, it is stated that LOC once opened shall remain in force until a deletion request



is received by Bureau of Immigration ('BoI') from the Originator and is not deleted automatically *albeit* the Guidelines also mandate that Originating Agency must keep reviewing the LOCs opened at its behest on quarterly and annual basis and submit proposals to delete LOCs, if any, immediately after such review. Learned ASC, therefore, fairly states that the Respondent will take necessary steps to carry out a review to examine if the LOC issued against the Petitioner is to be deleted or continued in terms of the Guidelines. Learned counsel for the Petitioner questions the very applicability of these Guidelines in respect of the impugned LOC.

10. I have heard the learned counsel for the Petitioner and the learned ASC for the State and examined their contentions.

11. There can be no dispute or debate that an LOC is issued to ensure that the person against whom it is issued is available for investigation and will not flee from the country thwarting the investigation. The relevance and importance of the LOC and the Scheme of the OM dated 22.02.2021, was examined by this Court in ***Rahul Dilip Shah v. Union of India and Another***, 2024 SCC OnLine Del 51, and relevant paragraph is as follows:-

"30. Purpose of opening the Look Out Circular (LOC) is to ensure that the person against whom the LOC has been opened is available for investigation and he will not flee from the country thwarting the investigation and if it appears 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. An LOC is opened at the instance of an investigating agency or a bank which is called as the Originating Agency. The officer at whose instance LOC can be opened has been specified in paragraph 6 (B) of the Office Memorandum dated 22.02.2021. The request for opening the LOC is transmitted to the Bureau of Immigration which opens the LOC. The scheme of things as



present today shows that the competent officer entitled for making the request for opening the LOC has to make a request and the Bureau of Immigration does not sit as an Appellate Authority over the request made by the Originator as the Bureau of Immigration is only an executant. The Bureau of Immigration has to only see as to whether the Officer is authorized under the Office Memorandum or not. Once the Originator issues the LOC against the person and transmits the same to the Bureau of Immigration, the Bureau of Immigration as the executor has to merely execute the same. The scheme of things as specified does not envisage that the Bureau of Immigration to sit as Appellate Authority and to see as to whether there is sufficient material for opening the LOC and the materials of this nature can be questioned only in a court of competent jurisdiction. Clause (J) of the Office Memorandum dated 22.02.2021 also stated that the LOC shall remain in force until and unless a deletion request is received by Bureau of Immigration (BoI) from the Originator itself and no LOC shall be deleted automatically. This indicates that the Bureau of Immigration does not have any say at the time of opening of LOC other than saying that whether the LOC has been issued by the Officer competent under Clause (B) of the Office Memorandum and also cannot delete the LOC on its own unless a request is received from the Originator. The contention of the Petitioner that the Bureau of Immigration ought not to have issued the LOC mechanically cannot be accepted as the Bureau of Immigration is only an executant and has not been vested with any jurisdiction to decide as to whether the request of the Originator should be accepted or not nor has been vested with the jurisdiction to delete the LOC on its own without there being any request from the Originator.”

12. Reading of the OM dated 22.02.2021 shows that by the said OM, Ministry of Home Affairs has consolidated the Guidelines for issuance of LOC in respect of Indian citizens and foreigners. Prior to the said OM, the Guidelines were incorporated in OM dated 27.10.2010, which has been modified from time to time vide OMs dated 05.12.2017, 19.09.2018 and 12.10.2018. The consolidated Guidelines were issued in 2021, pursuant to directions issued by this Court in **Sumer Singh Salkan (supra)**. Clause (J) of the OM dated 22.02.2021 stipulates that LOC opened shall remain in force until a deletion request is received by BoI from the Originator itself and no LOC shall be deleted automatically. However, it is also stipulated



that Originating Agency must keep reviewing the LOCs opened at its behest on quarterly and annual basis and submit the proposals for deletion, if any, immediately after the review. Relevant clause is extracted hereunder:-

“(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.”

13. Significantly, the same clause also provides that where a person against whom LOC has been opened is no longer wanted by the Originating Agency or by the Competent Court, LOC deletion request must be conveyed to BoI immediately so that liberty of the individual is not jeopardised.

14. In the present case, broadly, the contentions of the Petitioner are that he is on regular bail granted by a Court of competent jurisdiction. While initially the bail conditions require the Petitioner to surrender his passport but this condition was subsequently varied and the passport was returned. It is also strenuously urged that the Trial Court has also imposed an onerous condition that the Petitioner shall not leave the country without permission of the Court and therefore, once the Court permits the Petitioner to travel abroad, the LOC cannot be used against him to detain him and prevent him from travelling. It is also argued that the LOC cannot be placed on a higher pedestal than the faith reposed by the Court when it permits the Petitioner to travel. The contention of the State, *per contra*, is that on account of the serious allegations of cheating and duping several Complainants as well as



being involved in other cases as also considering that Petitioner's wife works for gain in Dubai, Petitioner is a flight risk and the LOC cannot be deleted.

15. Indisputably, OM dated 22.02.2021 governs the opening and deletion of LOCs and lays down the procedure and the methodology to do so. No doubt, at the first instance, it is for the Originator itself to decide whether a deletion request is to be made or not and depending on that request, the BoI takes a decision. There is, however, a safeguarding provision in Clause (J) of OM dated 22.02.2021, which protects the individual against whom LOC has been opened and this requires the Originating Agency to review the LOC on quarterly and annual basis and submit proposals to the BoI. This is to ensure that after the LOCs are opened, they do not continue indefinitely and change in circumstances can lead to the deletion of the LOCs. Admittedly, in the present case, after the LOC was issued in 2021, there has been no review as mandated by Clause (J). The circumstances post the issue of the LOC, pleaded by the Petitioner cannot be ignored and therefore, it is imperative that the Originator of the LOC follows the procedure in the OM and undertakes a review to examine whether the LOC is to be deleted or continued. Therefore, in my view, it would be appropriate at this stage to remand the matter to the Competent Authority (Originator) to take a decision in terms of Clause (J) of OM dated 22.02.2021 and needless to state by taking into all the circumstances post the issue of the LOC.

16. The aforesaid decision shall be taken by the Competent Authority within a period of eight weeks from today. The decision so taken shall be communicated to the Petitioner, who shall be at liberty to take recourse to appropriate remedies in law, in case of any surviving grievance.



17. Petition stands disposed of in the aforesaid terms. Pending application also stands disposed of.

JYOTI SINGH, J

FEBRUARY 28, 2024/KA/shivam