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

\+ W.P.(C) 14979/2022 & CM APPL. 46191/2022

RAJ KUMAR YADAV .....Petitioner

Through: Mr. Akshay Goel, Mr. Paras Arora, Ms. Vishali Nahar, Advocates.

versus

UNION OF INDIA AND ORS .....Respondents

Through: Mr. Anurag Ahluwalia, CGSC with Mr. Abhay Singh, Advocate with Mr. Prashant Rawat, GP for UOI.
Mr. U.N. Singh, Ms. Sandhya Chaturvedi, Advocates for R-4/Union Bank of India.
Mr. Apoorv Sarvaria, Ms. Yashika Sarvaria, Ms. Simran Chadha, Advocates for R-5/ PNB

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

<u>O R D E R</u>

% **06.09.2024**

1. The present writ petition pertains to quashing of a Look Out Circular[1] issued against the Petitioner at the instance of Respondent No. 4 - Union Bank of India[2] which is a consortium partner along with Punjab National Bank,[3] for the credit facilities extended to the company M/s Powerwind Limited (now known as M/s R K Wind Limited)[4]. The Petitioner is a

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[1] "LOC"
[2] "UBI"
[3] "PNB"
[4] "Borrower company"

Director of the aforesaid borrower company.

2. Counsel for the Petitioner asserts that they have executed one time settlement[5] with UBI as well as PNB and repaid all the dues payable to them under the OTS.

3. Mr. Apoorv Sarvaria, counsel for Respondent No. 5 - PNB, confirms the repayment of dues to PNB.

4. On the other hand, Mr. U.N. Singh, counsel for Respondent No. 4 – UBI, strongly refutes the Petitioner's assertion that the OTS has been implemented, urging that the Petitioner has breached the terms of the same. He submits that presently an amount of INR 62,49,500/- is still recoverable from the Petitioner and the Bank is in the process of taking appropriate action in this regard. Furthermore, he submits that under the OTS, the Petitioner has not completed their obligations pertaining to bank guarantee.

5. The Court has considered the afore-noted contentions of the parties. At the outset, it must be noted that no ongoing criminal proceedings are pending against the Petitioner and there are no other orders issued by an authority restraining him from travelling abroad. It is also important to note that debt recovery proceedings have already been initiated against the Borrower company and pursuant to the orders of NCLT, Chandigarh Bench, an OTS has been entered into between the parties.

6. The impugned LOC against the Petitioner has been active since 2022 ostensibly to monitor his international travels and to prevent him from fleeing the Country. However, there is no material placed before the Court to demonstrate the Petitioner's criminal culpability that could suggest his intention to abscond. Given these circumstances, the continued enforcement

of the LOC, despite the OTS, based solely on potential remaining financial liabilities is untenable. Such indefinite restrictions on the Petitioner's movement infringe upon his fundamental right to travel abroad, a right protected under Article 21 of the Constitution of India, as observed in the landmark judgments of ***Maneka Gandhi v. Union of India***[6] **and *Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer and Ors*.**[7]

7. The idea behind 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.

8. The Ministry of Home Affairs, 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 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.*
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> *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*

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[5] "OTS"
[6] (1978) 1 SCC 248
[7] AIR 1967 SC 1836

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."

9. Thereafter, MHA released Office Memorandum bearing No. 25016/10/2017-Imm (Pt.) dated 27th October, 2010 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."

[Emphasis added]

10. The above makes it clear that only in exceptional cases can a 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.

11. Furthermore, as has been held by the Coordinate Bench of this Court in ***Prateek Chitkara v. Union of India***, 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 lookout 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 has been held in multiple judgements by this Court, that mere inability to repay dues to a Bank without there being any criminal liability, 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 W.P.(C) 14837/2022[8].

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[8] Titled *Vikas Goel v. Union of India*

13. To conclude, the LOC issued against the Petitioner stems solely from defaulted in debt repayment of the company where the Petitioner was a Director and moreover a One-time settlement has already been effectuated in this regard. Pertinently, 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 UBI to insist that the Petitioner's right to travel should be restricted and he should not be allowed to depart from the country. Therefore, the basis for maintaining the LOC appears disproportionately punitive rather than precautionary, lacking a justifiable legal foundation.

14. In light of the fact that there are no criminal proceedings against the Petitioner, the OTS has already been executed for repayment of the dues owed to PNB and since there is only an alleged breach of OTS in so far as UBI is concerned, the present writ petition is allowed and the LOC issued against the Petitioner at the behest of Respondent No. 4 – UBI is hereby quashed. It is made clear that all rights and contentions of parties regarding repayment of alleged dues under the terms of the OTS shall remain open as the Court has not adjudicated the same.

15. Since the writ petition is being allowed, the Petitioner's request for return of the fixed deposit receipt, furnished as a security in terms of order dated 13th October, 2023, is accepted. The Registry is directed to return the same to the Petitioner.

16. With the above directions, the present writ petition is disposed of along with pending application(s).

SANJEEV NARULA, J

SEPTEMBER 6, 2024/ab