



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

Date of decision: 05th JANUARY, 2024

IN THE MATTER OF:

+ **W.P.(C) 13790/2023 & CM APPLs. 54568/2023, 54570/2023, 56221/2023 & 57474/2023**

RAHUL DILIP SHAH

..... Petitioner

Through: Mr. Siddharth Agarwal, Sr. Advocate with Mr. Srijan Sinha, Mr. Siddharth Garg, Mr. Himanshu Chaubey, Mr. Vinayak Chitali and Ms. Arshiya Ghose, Advocates.

versus

UNION OF INDIA AND ANR

..... Respondents

Through: Mr. Arnav Kumar, CGSC with Mr Rudra Paliwal, GP and Mr. Gurdas Khurana, Advocate.
Mr. Raghav Sharma, Advocate for EOW.
Mr. Munawwar Naseem, Advocate for Intervener.
Mr. Akhil Sibal, Sr. Advocate with Ms. Aakanksha Munjal, Mr. Sahil Sethi, Mr. Diwaker Chaturvedi and Mr. Samriddh Bindal, Advocates for Intervener/Yes Bank.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner seeks to challenge the Look Out Circular which has been issued against him by Respondent No.1/ Bureau of Immigration at the instance of EOW Mumbai.
2. Material on record reveals that a complaint was received by the



Economic Offences Wing, Unit- VI, Mumbai, from the authorized representative of the companies, namely, Suraksha Realty Limited and Topsoil Developers Private Limited.

3. It is stated in the complaint that DSR Infotech Limited through its Directors, Rahul Shah, Trupti Milind Pandit and Akhand Pratap Singh availed a loan of Rs. 10 crores from Suraksha Realty Limited towards Optionally Fully Convertible Debentures (OFCD). It is stated that even after more than five years, DSR Infotech India Limited did not return the Optionally Fully Convertible Debentures worth Rs. 15 crores, resulting in breach of the terms and conditions of the OFCDs.

4. It is stated that Suraksha Realty Limited initially invested Rs.15 crores and on 30.10.2015, an additional funding of Rs. 45 lakhs was made through RTGS into DSR Infotech Limited totalling the amount to Rs.15.45 crores. It is stated that apart from Suraksha Realty Limited, another group company of the Suraksha Realty Limited, namely, Topsoil Developers Private Limited was made part of the OFCDs which invested a sum of Rs.1 crore into DSR Infotech Limited. The allegation is that the total amount of Rs.16.45 crores has been misused by DSR Infotech Limited and its Directors Rahul Shah, Trupti Milind Pandit and Akhand Pratap Singh.

5. Material on record discloses that summons were issued to the Petitioner on 27.12.2021 in relation to the said complaint and the Petitioner was asked to appear before the Inspector, Economic Offences Wing, Unit-VI (CG4), CP Office Compound, 3rd Floor, New Police Commissioner Office Building, Mumbai. Instead of honouring the said summons, a reply dated 27.04.2022 has been given on behalf of the Petitioner by an Advocate, giving out the details of the transactions. The reply has been given after four



months of the summon.

6. The reply to the summons dated 27.12.2021 states that the Petitioner is currently in USA and resides in Evanston area of Northern District of Chicago, State of Illinois and his statement should be recorded through video conferencing as he has no immediate travel plans to India.

7. Material on record reveals that a subsequent summon dated 28.06.2022 was issued to the Petitioner asking the Petitioner to attend the EOW office on 05.07.2022 at 12:00 hrs. The said summons were not replied to by the Petitioner. Material on record further discloses that on 22.06.2023, a third summons was issued to the Petitioner asking him to be present within seven days from the receipt of the letter which was not been complied with by the Petitioner.

8. Material on record disclose that on the basis of the said complaint, an FIR bearing FIR No.393/2023 dated 12.09.2023 has been registered against the Petitioner at Police Station Matunga, Brihanmumbai, Maharashtra for offences under Section 420, 406 and 34 IPC.

9. The Petitioner finally arrived in India, Delhi on 08.10.2023. The Petitioner had booked his return tickets for 11.10.2023. After his arrival in India, it is to be noted that a further summon was issued against the Petitioner on 10.10.2023, requiring the Petitioner's presence on 16.10.2023.

10. Material on record also discloses that on his arrival to India and on coming to know that an FIR has been registered against him, the Petitioner appeared before the concerned officer on 11.10.2023 and the Petitioner was informed that a Look Out Circular dated 10.10.2023 has also been opened against him. The Petitioner was informed that the said LOC has been opened against the Petitioner pursuant to the registration of the FIR being FIR



No.393/2023 dated 12.09.2023 registered at Police Station Matunga, Brihanmumbai, Maharashtra for offences under Section 420, 406 and 34 IPC.

11. A fifth summon was issued on 23.10.2023 and finally the last summon was issued on 08.11.2023 requiring the Petitioner's presence on 10.11.2023 which has not been complied with.

12. Material on record discloses that the Petitioner had approached the Court of the Chief Metropolitan Magistrate, Esplande Court, Mumbai on 17.10.2023 seeking permission to go to the USA. The said application was not pressed and the application was disposed of *vide* Order dated 17.10.2023. Further, the Petitioner has already approached the High Court of Judicature at Bombay by filing W.P.(CRL.) 19726/2023 for quashing of FIR being FIR No.393/2023, dated 12.09.2023, registered at Police Station Matunga, Brihanmumbai, Maharashtra for offences under Section 420, 406 and 34 IPC, which is pending adjudication.

13. The Petitioner has approached this Court challenging the Look Out Circular issued against him.

14. Learned Senior Counsel for the Petitioner states that since the Look Out Circular has been issued from Delhi, High Court of Delhi will have the territorial jurisdiction to entertain the instant writ petition.

15. Further, learned Senior Counsel for the Petitioner states that the summons which have been issued in the year 2021 and 2022 were without jurisdiction, in the absence of registration of FIR, which was registered only on 12.09.2023 and despite the summons have been issued without jurisdiction, the Petitioner submitted his replies to the same *vide* letter dated 27.04.2022 giving all the particulars. It is stated that after coming to India,



the Petitioner has already joined investigation and has given all information to the authorities and that his presence in India is not required. It is also stated that the Petitioner is facing prosecution in United States of America and has travelled to India after obtaining due permission from the competent courts in USA wherein it has been undertaken by him that he would return to the United States of America.

16. Learned Senior Counsel for the Petitioner has strenuously contended that the offences which are alleged against the Petitioner is primarily civil in nature and the FIR has been registered against the Petitioner only as an arm-twisting tactic. It is also stated that the Bureau of Immigration ought to have applied its mind as to whether the conditions laid down in the Office Memorandum dated 27.10.2010, the subsequent memorandums dated 05.12.2017, 24.01.2018, 19.07.2018, 12.10.2018 and 22.02.2021 have not been complied with. It is stated that LOC has been issued in violation of the Office Memorandum issued by the Ministry of Home affairs and also in violation of the various judgments of the Apex Court as well as the High Courts. It is also contended that as per the guidelines issued by the Ministry of Home Affairs regarding citizens who resides outside the country, against whom complaints have been filed, efforts were to be made to record statement through video-conferencing. It is stated that the insistence that the Petitioner's presence in India is a must, is completely unjustified as LOC has been issued without any application of mind and therefore deserves to be quashed.

17. *Per contra*, learned Counsel for the Respondent very strenuously contends that this Court does not have the territorial jurisdiction to entertain the instant writ petition on the ground that LOC has been opened on the



instructions of the Economic Offences Wing, Mumbai. Further, the fact that the Petitioner has already approached the Court of Chief Metropolitan Magistrate, Mumbai, seeking permission to go abroad and in view of the fact that an FIR being FIR No.393/2023 dated 12.09.2023 was registered at Police Station Matunga, Brihanmumbai, Maharashtra for offences under Section 420, 406 and 34 IPC, and that a petition under Section 482 CrPC has been filed by the Petitioner for quashing the same, the Petitioner ought to have approached the High Court of Judicature at Bombay. It is also contended that if the present writ petition is entertained, there is a possibility of conflicting order by the two High Courts.

18. It is stated that six summons have been issued against the Petitioner and the Petitioner has not complied with any of the summons. The summons dated 27.12.2021 were issued against the Petitioner, which was responded after five months, i.e., on 27.04.2022. The second one being issued on 28.06.2022 and the third summons was issued on 22.06.2023 and the fourth summon was issued against the Petitioner on 10.10.2023. The fifth summon was issued on 23.10.2023 and the last of the summons was issued on 08.11.2023.

19. It is stated that the purpose of the LOC is to ensure that a person against whom there is a complaint joins investigation, cooperates with the investigation and does not evade arrest for the purpose of thwarting investigation.

20. It is stated that summons have been issued six times and the Petitioner has not cooperated with the investigation. It is stated that even after LOC having been issued and the Petitioner having come to India and vide summons dated 23.10.2022, the Petitioner was asked to join investigation on



27.10.2023 for which there was no compliance and time was sought by the Petitioner. It is stated that another summons were issued against the Petitioner on 08.10.2023 and the Petitioner was asked to appear on 10.11.2023 which has again not being complied with and a reply is furnished by the Petitioner to the said summons on 27.11.2023. It is, therefore, stated that in view of the apprehension that the Petitioner who has no roots in India and does not have sufficient properties in the country which would deter the Petitioner from appearing and coming to the country in order to cooperate with the investigation, the LOC against the Petitioner need not be quashed.

21. Learned Counsel for the Respondent/EOW further contends that the Petitioner did get permission from the Court in United States of America for his travel to India from 06.10.2021 and the Petitioner was permitted to travel to India in the month of October, 2021 and he was directed to surrender his passport back in USA on 01.11.2021 as 31.10.2021 was Sunday. It is stated that despite the said permission, the Petitioner has chosen not to reply to the said summons.

22. The Petitioner has placed on record the docket entry dated 06.10.2021 issued by the US District of Northern District of Illinois-CM/ECF Live, Ver 6.3.3 showing that permission has been given in a case of United States v. Rahul Shah, in case bearing 1:20-cr-00293 bearing document No.81. The said letter is being reproduced as under:-



United States District Court

Northern District of Illinois - CM/ECF LIVE, Ver 6.3.3

Notice of Electronic Filing

The following transaction was entered on 10/6/2021 at 3:51 PM CDT and filed on 10/6/2021

Case Name: USA v. Shah
 Case Number: 1:20-cr-00293
 Filer:
 Document Number: 81

Docket Text:

MINUTE entry before the Honorable Robert M. Dow, Jr as to Rahul Shah: Bond hearing held. Mr. and Mrs. Shah along with attorneys for defendant, counsel for the government, and pretrial services appeared via video conference. Mr. Shah and Mrs. Shah admonished as to the conditions of posting the three properties listed on the appearance bond, the surrendering of the passports of Mrs. Shah, his son and his niece. The Court finds that Mr. Shah and Mrs. Shah understand the consequences and knowingly agree to the conditions of the bond. This is collateral so that Mr. Shah may travel to India for in the month of October 2021. Appearance Bond Executed. Mr. Shah may pick up his passport from Pretrial Services on 10/7/2021 and he shall surrender his passport on 11/1/2021 (as October 31 is a Sunday). Once the international travel is completed and Mr. Shah's passport is with Pretrial Services, the prior bond conditions will be in effect and the special conditions of bond will longer be in effect. Emailed notice (cdh,)

1:20-cr-00293-1 Notice has been electronically mailed to:

23. Another docket entry dated 28.09.2023 has also been produced by the Petitioner, wherein the Petitioner has been given permission to travel to India in the month of October, 2023. The relevant portion of the said docket entry issued by the US District Court for the Northern District of Illinois reads as under:-



**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF NextGen 1.7.1.1
Eastern Division**

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UNITED STATES OF AMERICA

Plaintiff,

v.

Case No.: 1:20-cr-00293

Honorable Manish S. Shah

Rahul Shah

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Thursday, September 28, 2023:

MINUTE entry before the Honorable Manish S. Shah: Motion hearing held. Defendant's motion to modify conditions of pretrial release [188] is granted. The court finds that there are conditions of release that will assure the court that defendant will not flee, while allowing him to travel for a limited time and purpose. Defendant's conditions of release are modified to permit him to travel to India from 10/6/23 through 10/13/23. The forfeiture agreements [83] [84] are reinstated and if necessary, the government and defense shall execute and refile forfeiture agreements for the posted property before 10/5/23. On 10/5/23, defendant shall provide pretrial services with his travel itinerary, hotel/residence information, contact information for himself in India, and any and all passports for Shobha Shah and Naman Shah. Once complete, pretrial services shall provide defendant with his own passport. Pretrial services is authorized to contact and communicate with the defendant while in India. Defendant must return his passport to pretrial services upon his return to the district, no later than 10/16/23. Notices mailed. (psm,)

24. It is stated by learned Counsel for the Respondent/Economic Offences Wing that the said documents do not show that the US Courts have given permission to the Petitioner to travel to India specifically for the purposes of attending summons which had been issued against the Petitioner. It is stated that the Petitioner has not stated the purpose of his visit to the country at all. It has been contended by learned Counsel for the Respondent that the Office Memorandum dated 22.02.2021 stipulates that the Bureau of Immigration does not sit as an Appellate Authority over the request given by the authority



on whose behalf LOC has been issued and the scheme of things do not envisage that the Bureau of Immigration must sit as an Appellate Authority. It is stated that the LOC in the present case has been issued at the request of the Economic Offences Wing, Mumbai.

25. The Yes Bank and the complainants have filed applications for intervention, objecting to the instant writ petition stating that after having approached the High Court of Judicature at Bombay and after having approached the Judicial Courts in Mumbai seeking permission to go abroad, which was not pressed, the Petitioner ought not to have approached this Court on the ground of territorial jurisdiction. Further, it is the contention of the Respondents that the Petitioner herein and his wife are US citizens. It is stated that the Petitioner has no roots in India and since the Petitioner is facing multiple prosecutions in United States of America and if he is permitted to travel abroad, he will never come back to the country.

26. It is stated by the Yes Bank in the intervention application that a complaint has been filed by the Yes Bank against the Petitioner stating that he has received a sum of 42 Million USD as credit facility, which is pending investigation. It is stated that the Petitioner is holding 99.99% shares in the DSR Infotech Limited. It is also stated that during the preliminary enquiries made to Trupti Milind Pandit and Akhand Pratap Singh, it was stated that the Petitioner is aware of the case and all the material facts.

27. Heard learned Counsel for the parties and perused the material on record.

28. Pursuant to the judgments of this Court, the Ministry of Home Affairs issued an Office Memorandum No. 25016/31/2010 dated 27.10.2010 in respect of India citizens and foreigners. The relevant portion of the said



Office Memorandum reads as under:-

"7. The High Court has answered these questions in its judgement dated 11.08.2010 which are reproduced below for guidance of all concerned agencies:

a) 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.

b) The Investigating Officer shall made a written request for LOC to the officer as notified by the circular of Ministry of Home Affairs, giving details & reasons for seeking LOC. The competent officer alone shall give directions for opening LOC by passing an order in this respect.

c) The person against whom LOC is issued must join investigation by appearing before I.O. or should surrender before the court concerned or should satisfy the court that LOC was wrongly issued against him. He may also approach the officer who ordered issuance of LOC & explain that LOC was wrongly issued against him. LOC can be withdrawn by the authority that issued and can also be rescinded by the trial court where case is pending or having jurisdiction over concerned police station on an application by the person concerned.

d) LOC is a coercive measure to make a person surrender to the investigating agency or Court of law. The subordinate courts' jurisdiction in affirming or cancelling LOC is commensurate with the jurisdiction of cancellation of NBWs or affirming NBWs."



29. The said Office Memorandum was amended from time to time and the last of the Office Memorandum was issued on 22.02.2021. The relevant portion of the said Office Memorandum and more particularly paragraph 6 reads as under:-

“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 supersession 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:-

(A) The request for opening an LOC would be made by the Originating Agency (OA) to the Deputy Director, Bureau of Immigration (BoI), East Block- VIII, R.K. Puram. New Delhi - 110066 (Telefax: 011-26192883, email: boihq@nic.in) in the enclosed Proforma.

(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 –

- (i) Deputy Secretary to the Government of India; or*
- (ii) Joint Secretary in the State Government; or*
- (iii) District Magistrate of the District concerned; or*
- (iv) Superintendent of Police (SP) of the District concerned; or*
- (v) SP in CBI or an officer of equivalent level working in CBI; or*
- (vi) Zonal Director in Narcotics Control Bureau (NCB)*



or an officer of equivalent level [including Assistant Director (Ops.) in Headquarters of NCB]; or
(vii) Deputy Commissioner or an officer of equivalent level in the Directorate of Revenue Intelligence or Central Board of Direct Taxes or Central Board of Indirect Taxes and Customs; or
(viii) Assistant Director of Intelligence Bureau/ Bureau of Immigration (Bol); or
(ix) Deputy Secretary of Research and Analysis Wing (R&AW); or
(x) An officer not below the level of Superintendent of Police in National Investigation Agency; or
(xi) Assistant Director of Enforcement Directorate; or
(xii) Protector of Emigrants in the office of the Protectorate of Emigrants or an officer not below the rank of Deputy Secretary to the Government of India; or
(xiii) Designated officer of Interpol; or
(xiv) An officer of Serious Fraud Investigation Office (SFIO), Ministry of Corporate Affairs not below the rank of Additional Director (in the rank of Director in the Government of India); or
(xv) Chairman/ Managing Directors/ Chief Executive of all Public Sector Banks.

(C) LOCs can also be issued as per directions of any Criminal Court in India. In all such cases, request for opening of LOC shall be initiated by the local police or by any other Law Enforcement Agencies concerned so that all parameters for opening LOCs are available.

(D) The name and designation of the officer signing the Proforma for requesting issuance of an LOC must invariably be mentioned without which the request for issuance of LOC would not be entertained.

(E) The contact details of the Originator must be provided in column VI of the enclosed Proforma. The



contact telephone/ mobile number of the respective control room should also be mentioned to ensure proper communication for effective follow up action. Originator shall also provide the following additional information in column VI of the enclosed Proforma to ensure proper communication for effective follow up action:-

- (i) Two Gov/ NIC email IDS*
- (ii) Landline number of two officials*
- (iii) Mobile numbers of at least two officials, one of whom shall be the originator*

(F) Care must be taken by the Originating Agency to ensure that complete identifying particulars of the person, in respect of whom the LOC is to be opened, are indicated in the Proforma mentioned above. It should be noted that an LOC cannot be opened unless a minimum of three identifying parameters viz. name & parentage, passport number or Date of Birth are available. However, LOC can also be issued if name and passport particulars of the person concerned are available. It is the responsibility of the originator to constantly review the LOC requests and proactively provide additional parameters to minimize harassment to genuine passengers. Details of Government identity cards like PAN Card, Driving License, Aadhaar Card, Voter Card etc. may also be included in the request for opening LOC.

(G) The legal liability of the action taken by the immigration authorities in pursuance of the LOC rests with the originating agency.

(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 supplied)

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.



31. In the present case, there is no dispute that the LOC has been issued at the instance of EOW, Mumbai. There is no doubt that LOC has been issued at the request of the competent officer of the EOW.

32. The Petitioner has already challenged the FIR being FIR No.393/2023 dated 12.09.2023 registered at Police Station Matunga, Brihanmumbai, Maharashtra for offences under Section 420, 406 and 34 IPC before the High Court of Judicature at Bombay by filing a petition and, therefore, ordinarily it was for the Petitioner to approach the High Court of Judicature at Bombay since the offence has been committed in Mumbai. The Originator is in Mumbai, the Petitioner having approached the Judicial Courts in Mumbai ought to have approached the High Court of Judicature at Bombay for challenging the LOC because the High Court of Bombay would have been ideally competent to hear the case.

33. Substantial part of the cause of action arises only in Mumbai. However, this Court is not acceding to the contention of learned Counsel for the Respondent that no cause of action has arisen in Delhi because the LOC has been issued at the request of EOW, Mumbai.

34. At this juncture, it is apposite to refer to the judgment passed by the Apex Court in Kusum Ingots & Alloys Ltd. v. Union of India & Anr., (2004) 6 SCC 254. The relevant portion of the said judgment reads as under:-

"27. When an order, however, is passed by a court or tribunal or an executive authority whether under provisions of a statute or otherwise, a part of cause of action arises at that place. Even in a given case, when the original authority is constituted at one place and the appellate authority is constituted at another, a writ petition would be maintainable at both the places. In



other words, as order of the appellate authority constitutes a part of cause of action, a writ petition would be maintainable in the High Court within whose jurisdiction it is situate having regard to the fact that the order of the appellate authority is also required to be set aside and as the order of the original authority merges with that of the appellate authority."

35. Though in paragraph 30 the Apex Court has observed as under:

"30. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens. [See Bhagat Singh Bugga v. Dewan Jagbir Sawhney [AIR 1941 Cal 670 : ILR (1941) 1 Cal 490] , Madanlal Jalan v. Madanlal [(1945) 49 CWN 357 : AIR 1949 Cal 495] , Bharat Coking Coal Ltd. v. Jharia Talkies & Cold Storage (P) Ltd. [1997 CWN 122] , S.S. Jain & Co. v. Union of India [(1994) 1 CHN 445] and New Horizons Ltd. v. Union of India [AIR 1994 Del 126] .]"

This Court is of the opinion that since the LOC has been opened in Delhi, this Court will have the jurisdiction to entertain the Writ Petition.

36. Reliance has been placed by the Petitioner on the judgment of the Madras High Court in Karti P Chidambaram v. Bureau of Immigration & Ors., **2018 SCC OnLine Mad 2229**. In the facts of that case, the entire cause of action had arisen within the jurisdiction of the High Court of Madras but the LOC had been issued by the Bureau of Immigration in Delhi. The learned Additional Solicitor General contended that only the High Court



of Delhi will have the jurisdiction since the opening of LOC is requested from Delhi. The High Court of Madras rejected the said contention and observed that since the offences have been committed in Madras and held that the High Court of Madras will also have the jurisdiction to adjudicate on the matter apart from the High Court of Delhi which in any event has the jurisdiction to entertain the Writ Petition.

37. The undisputed facts of the case are that a complaint had been received against the Petitioner, Trupti Milind Pandit and Akhand Pratap Singh, who are Directors of the DSR Infotech India Limited and they have committed offences under Sections 420, 406 and 34 IPC against one Suraksha Realty Limited and Topsoil Developers Private Limited by receiving money towards Optionally Fully Convertible Debentures and have not complied with the terms and conditions of the OFCDs. The stand of the Petitioner is that it is primarily a civil dispute and registration of FIR is an abuse of the process of law to arm-twist the Petitioner to refund the money. The additional fact that another complaint has been filed at the instance of Yes Bank against the Petitioner for about Rs.350 crores with the EOW, Mumbai for which no FIR has been registered.

38. The Apex Court in Lalita Kumar v. Government of Uttar Pradesh & Ors., 2014 (2) SCC 1, has emphasized mandatory registration of FIR on receipt of information regarding cognizable offence. The five Judge Bench of the Apex Court has held that registration of FIR is mandatory under Section 154 CrPC, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation. It was held that if the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, in that case, a preliminary inquiry



may be initiated to determine as to whether a cognizable offence is disclosed or not and if the inquiry discloses cognizable offence, then FIR must be registered and if the preliminary inquiry ends in closing of the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It was also held that the scope of preliminary inquiry is not to ascertain as to whether the information reveals any cognizable offence or not. The Apex Court has also held that there is an exception to the rule of registration of preliminary inquiry by stating that there can be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crimes with the passage of time. The EOW has, therefore, acted contrary to the dictum of the Apex Court in not registering the FIR in September, 2022.

39. Material on record discloses that a complaint had been given in September, 2022. The Petitioner was first summoned on 27.12.2021, and there were subsequent summons issued against the Petitioner on 28.06.2022, 22.06.2023, 10.10.2023, 23.10.2023, 08.11.2023. The complaint against the Petitioner deals the transactions from the year 2015.

40. The Police has violated the dictum laid down by the Apex Court in Lalita Kumari (supra) by not registering the FIR. Summons have been issued pursuant to the registration of the FIR and it was for the Petitioner to appear before the Police Officers in response to the summons. Even after coming to India on 08.10.2023, summons have been issued against the Petitioner on 10.10.2023, 23.10.2023 asking the Petitioner to appear on 27.10.2023 and on 08.11.2023 asking the Petitioner to appear on 10.11.2023, which have not been complied with by the Petitioner.

41. Material on record does not disclose that the Petitioner had informed



the courts in USA regarding complaints against him in India or that he wanted to go to India in response to the summons which have been received by him as the purposes of his visiting India. Therefore, the contention of learned Senior Counsel for the Petitioner that the Petitioner has come to India to comply with the summons cannot be accepted.

42. The facts remains that the Petitioner is facing a number of proceedings, both civil and criminal in USA. The Petitioner is a citizen of USA. The wife of the Petitioner is also the citizen of USA and the details of properties owned by the Petitioner in India have been given by him in an affidavit dated 27.11.2023. The relevant portion of the said affidavit reads as under:-

"2. Accordingly provided below is a tabulated depiction of the Petitioner's moveable and immoveable assets in India:

S. No.	Type of Property (Moveable/Immoveable)	Description of Ownership	Location of Ownership	Value of the Asset
1	Immovable Property Plot bearing Nos. 318, 319 & 320 ("Pune Property")	Shobha Shagle (Wife of the Petitioner)	Gat No. 1492, 1494, 1495 situate at village Lavale, Taluka Mulshi, District Pune, Maharashtra-412108	INR 70 Lacs
2.	Moveable Property 9,26,753 shares in Katalyst Software Services Limited (KSSL Shares)	Petitioner	ROC-Pune	INR 92,67,530/- or INR 28,17,32,912/- as per



				complainant's valuation.
3.	Moveable Property 7,77,480 shares in N2N Technologies Limited (N2N Shares)	Petitioner	ROC- Pune	INR 79,14,746.40/-

3. That in support of the aforestated table, the following supporting documents are relevant and accordingly are being relied upon by the Petitioner:

i. Pune Property:

a. A copy of the registered sale deed dated 25.04.2006, executed in favor of the Petitioner's wife Ms. Shobha Shagle is annexed herewith and marked as Annexure A-1.

b. A copy of the undertaking, granting rights, entitlements and interest in favour of the Petitioner by Ms. Shabha Shagle is annexed herewith and marked as Annexure A-2.

c. Pune Property was purchased by Ms. Shobha Shagle for an amount of INR 3,00,000.00 (Indian Rupees Three Lakhs Only) in 2006. However, the price of the said property is increasing significantly from time to time and the current price of the said Property is believed to be upwards of INR 70,00,000/- (Indian Rupees Seventy Lakhs Only).

ii. KSSL Shares:

a. The Petitioner owns 330/0 in Katalyst Software Services Limited ("KSSL"). Petitioner owns unencumbered shares totaling to 9,26,753. The Petitioner's remaining 26% shareholding is pledged



with Karvy Capital Limited. That the majority shareholding in KSSL is held by the Sudhir Valia, his relatives and associated entities.

b. That as per the commercial suit bearing CS (Comm) No. 138 of 2022 dated 25.02.2022 filed by the KSSL before this Hon'ble Court, the value of one share is INR 304.00. A copy of the memo of commercial suit is annexed herewith and marked as Annexure A-3.

c. Therefore, the current value of the shares owned by the Petitioner in KSSL is INR 28,17,32,912.00/(Indian Rupees Twenty-Eight Crores Seventeen Lakhs Thirty-Two Thousand Nine Hundred and Twelve Only).

d. A copy of the holding statement of Petitioner's Demat account is annexed herewith and marked as Annexure A-4.

e. A copy of the shareholding pattern of KSSL is annexed herewith and marked as Annexure A-5.

iii. N2N Shares:

a. Petitioner owns 11,77,480 shares In N2N Technologies Limited ("N2N"), which is public listed company. The Company has 13 Lac shares in total. Out of the Petitioner's shareholding 4,00,000/shares are pledged in favor of Inga Advisors Pvt. Ltd. whereas 7,77,480 are free from any encumbrance.

b. The current price of per share of N2N as per the Bombay Stock Exchange ("BSE") is INR 10.18/- per share. The highest price of the said share has been INR 20 per share and the lowest recorded price has been INR 6 per share. A true copy of the screenshot



of the BSE showing the current price of the value of N2N share is annexed herewith and marked as Annexure A-6.

c. Hence, the current value of the unencumbered shares owned by the Petitioner in N2N is INR 79,14,746.40/(Indian Rupees Seventy-Nine Lakhs Fourteen Thousand Seven Hundred Forty-Six and Forty Paise Only).

4. Furthermore, relatives of the Petitioner also reside in India. The tabular chart of their details along with their residential address in India and their relation with the Petitioner:

S. No.	Name of the Relative	Residential Address	Relation with the Petitioner
1	Tushar and Nita Shah	Shivthirt Apt Flat no 201/2nd floor off Karve Maharashtra-411038	1st Cousin Brother and sister-in-law
2.	Trupti Pandit	7 Konark Apartments, 175 Dhole Patil Road, Pune 411001	1st Cousin sister
3.	Hina Parekh	89 B Neapean Sea Road, Mumbai, Maharashtra-400026	1st Cousin Sister

43. Other than having cousins, the Petitioner has no relatives in India and the immovable properties of the Petitioner are such which does not inspire confidence that the Petitioner would return to India to cooperate with the



investigation. According to the Petitioner, the value of shares owned by the Petitioner in KSSL is INR 28,17,32,912/-. The value of shares owned by the Petitioner in KSSL is not on the basis of stock exchange price but the valuation derived in the commercial suit and, therefore, the same does not have any substance. The constant reluctance on the part of the Petitioner to comply with the summons even after the registration of FIR is a clear indication from the Petitioner that he does not intends to come back to India. The Petitioner is not joining investigation and he apprehends arrest and there is no order granting him any protection from arrest.

44. The Petitioner has given the details regarding the pending proceedings against the Petitioner in USA and an additional affidavit dated 30.10.2023 has been filed. The details of the same read as under:-

- 1) United States v. Rahul Shah (Criminal), Case No.1:20-CR-00293 before United States District Court for the Northern District of Illinois, Eastern Division.
- 2) Yes Bank v. Katalyst Technologies Inc. ("KT") & Rahul Shah (Civil)
- 3) State Bank of India, Chicago Branch v. Katalyst Technologies Inc., Rahul Shah & Sudhir Valia (Civil), Circuit Court of Cook Country, State of Illinois, 2021 L 010143

45. A perusal of the above shows that other than the first case, the other two are civil in nature for which Petitioner's presence in USA might not be necessary.

46. The Petitioner is a Director in DSR Infotech India Ltd. and is a major shareholder. He is directly involved in the transactions and is not a stranger



to the transactions. The investigation is at a nascent stage. It is pertinent to mention that, after the conclusion of the hearing in the matter, the Petitioner appeared in person and handed over a letter from one Leinenweber Baroni & Daffada LLC, Attorneys at Law directly addressed to (Subramonium Prasad, J), the Judge hearing the matter. The same letter has also been later filed in Court along with CM APPL.66102/2023. The Petitioner has been represented by very competent Senior Counsels and a team of lawyers but the Petitioner has made his lawyers in the USA to address a letter directly to the Judge hearing the matter, which also shows the Petitioner's respect towards the Indian Courts and Indian laws. The said letter does not indicate that the permission given to the Petitioner to come to India was to attend summons issued to him or to attend judicial proceedings. The letter also does not give any indication that the Petitioner would be permitted to come to India again to cooperate with the investigation. Rather, the letter indicates that the Hon'ble Judge of the United States District Court for the Northern District of Illinois is rapidly running out of patience about his order of the Petitioner to return being ignored. The letter further indicates that, according to the lawyer, the LOC has been opened against the Petitioner without any legal basis and is in violation of the criminal code of Indian law and that multiple judgments passed by the US Courts and the Supreme Court of India supports this analysis. In the absence of any indication by the lawyers that the Petitioner would be permitted by the Courts in the USA to come to India, the apprehension of the EOW that the Petitioner would not come back to the country once he leaves the country cannot be said to be arbitrary or perverse which requires interference under Article 226 of the Constitution of India.

47. The attitude of the Petitioner in not responding to the summons does



not inspire any confidence in this Court that he will come back to the country because presence of the Petitioner is not necessary for quashing of FIR being FIR No.393/2023 dated 12.09.2023 registered at Police Station Matunga, Brihanmumbai, Maharashtra for offences under Section 420, 406 and 34 IPC or the proceedings in the NCLT which are ongoing and can be handled through his lawyers. It, therefore, cannot be said that the LOC has been opened without any material or that it has been opened without any basis. It is trite law that the purpose of opening the LOC is to ensure that the person against whom the LOC is opened cooperates with the investigation and attends judicial proceedings in Court and does not run away from the country and thwarts investigation. The investigation is only at an initial stage and the presence of the Petitioner is necessary for effective investigation and complaints have also been received at the instance from Yes Bank.

48. Look Out Circular has been issued during the pendency of the criminal proceedings and is in consonance with the Memorandum issued by the Central Government. While exercising jurisdiction of Article 226 of the Constitution of India, writ courts can interfere only when decision taken by the authorities is completely without any basis or is perverse. In the present case there is an FIR against the Petitioner, the Petitioner has not responded to the summons and the apprehension that the Petitioner will not return back to India cannot be said to be completely baseless. The Petitioner has no roots in the country and, therefore, this Court does not deem it expedient to quash the LOC issued against the Petitioner at this stage. However, it is always open for the Petitioner to approach the courts of competent jurisdiction for quashing of the LOC after the investigation is concluded or in case the



petition under Section 482 CrPC is dismissed by the High Court of Judicature at Bombay. This Court expects that the investigation will be concluded at a fast pace so that the Petitioner can go abroad to attend the proceedings initiated against him in the US Courts. It is well settled that LOC cannot be extended endlessly as it seriously impedes the right of a person to travel abroad and has the effect of abridging the rights guaranteed under Article 21 of the Constitution of India.

49. With these observations, the petition is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

JANUARY 05, 2024

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