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

Date of decision: 14th October, 2024

\+ **W.P.(CRL) 3812/2023 & CRL.M.A. 27942/2024**

RAJESH KUMAR GUPTA .....Petitioner

Through: Mr. Vivek Sood, Sr. Adv. with Mr. Abhishek Singh, Mr. Raunak Gupta & Mr. Ankit Chadha, Advs. (M: 9870589070)

versus

UNION OF INDIA AND ORS .....Respondents

Through: Mr. Nishant Gautam (CGSC), Ms. Sanjana Mehrotra, Mr. Mayank Sharma & Mr. Ajay Kanojiya, Advs. for R-1. (M:9990507556)
Mr. Anupam S Sharrma- SPP-CBI. (M: 9810009734)

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\+ **W.P.(CRL) 3813/2023 & CRL.M.A. 27945/2024**

ATUL KUMAR GUPTA .....Petitioner

Through: Mr. Vivek Sood, Sr. Adv. with Mr. Abhishek Singh, Mr. Raunak Gupta & Mr. Ankit Chadha, Advs.

versus

UNION OF INDIA AND ORS .....Respondents

Through: Mr. Anupam S Sharrma- SPP-CBI.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE AMIT SHARMA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The present two writ petitions have been filed under Article 226/227 of the Constitution of India read with Section 482 of CrPC by Mr. Rajesh Kumar Gupta and Mr. Atul Kumar Gupta challenging *inter alia,* the respective Look Out Circulars *('LOCs')* issued by the NCB-India (INTERPOL), CBI, New Delhi against both the Petitioners.

3. The background to the issuance of the said LOCs is that a Red Corner Notice (***Control No.A-1791/2-2022***) dated 28th February, 2022 was issued by the INTERPOL at the behest of the requesting country, South Africa, declaring that the Petitioners are fugitives wanted for prosecution in a case arising in Pretoria, South Africa, relating to certain allegations of embezzlement and money laundering. The said INTERPOL Red Corner Notice was issued on 28th February, 2022 at the behest of the requesting country, South Africa.

4 As per the said notice, the Petitioners have been convicted by the Courts of the originating country *i.e.,* South Africa. Pursuant to the said notice, a message was received by the NCB – India, which led to the issuance of LOCs against the Petitioners, in terms of the Office Memorandum dated 22nd February, 2021 bearing No. **25016/10/2017-Imm (Pt.)** issued by the Ministry of Home Affairs, Government of India. The said memorandum provides that a request for issuance of LOC shall be made by an Originating Agency and the '*designated officer of the INTERPOL*' is recognised as the competent person for raising a request in this regard.

5. Various grounds of challenge have been raised in these writ petitions for seeking quashing of the respective LOC. The prayers in these writ petitions are as set out below:

"*a) Declare the Office Memorandum No. 25016/10/2017-Imm (Pt.) Dated 22.02.2021 (Annexure P-1) issued by the Respondent No. 3 to be unconstitutional, wholly non-est, illegal, arbitrary & ultra-vires being violative of Articles 13, 14, 19 & 21 of the Constitution of India & consequently quash the same;*
b) Read down Section 41 as well as Section 70 of the Code of Criminal Procedure, 1973 to hold that the power to arrest or to issue warrant does not include within its ambit & sweep the power to issue a Look Out Circular, in the absence of any statutory provision that may validate such an action.
c) Set aside & quash the LOC, if any, issued against the Petitioner & consequently, direct the Respondents to delete / expunge the name of the Petitioner from the Data Base of individuals who are not allowed to enter or leave the country, as the circular so issued would be in grave contravention to the settled tenets of criminal jurisprudence; absolutely non-est; otiose; nugatory; redundant; null and void ab initio & vitiated by the application of legal maxims "debile fundamentum fallit onus", meaning, thereby, that when the foundation falls, everything falls; and "sublato fundamento cadit opus"; meaning thereby, in case a foundation is removed, the superstructure falls;
d) Pass any other or further orders as deemed fit in favour of the Petitioner in the interest of justice."

6. The present writ petitions were filed on 18th December, 2023. The said petitions were listed on 22nd December, 2023 and on the said date notice was issued to the Respondents.

7. Thereafter, interim applications were filed on behalf of the Petitioners seeking permission to travel to India, and *vide* order dated 28th May, 2024 the Petitioners were permitted to travel to India for a period of 8 weeks between 29th May, 2024 to 24th July, 2024 (as corrected by order dated 5th July,

2024).

8. Further, the applications seeking extension of the said stay in India were filed on 11th September, 2024 raising various grounds of medical exigencies of Mrs. Aarti Gupta, wife of Mr. Rajesh Kumar Gupta, as also in respect of Mr. Atul Kumar Gupta, one of the Petitioner herein. Vide order dated 13th September, 2024 the Respondents were directed to verify the medical documents attached with the said applications.

9. Today, the verification report dated 3rd October, 2024 has been handed over by the Respondents as per which the concerned International Police Cooperation Unit ('IPCU'), CBI Inspector, Ravi Kumar has verified from Medanta Hospital, Gurgaon which has given them a report as under:

Patient Name	**Admission Date**	**Discharge Date**	**Diagnosis & Co-Morbidities**
Aarti Gupta	07.09.2024	07.09.2024	• Post Viral Myalgia. • Known case of Epilepsy. • Status post bilateral hip replacement (2020).
Atul Kumar Gupta	28.08.2024	31.08.2024	• Viral fever (H1N1 positive) with type I respiratory failure. • Chronic hypersensitivity pneumonitis. • Type II Diabetes Mellitus.

10. The medical reports, thus, stand verified.

11. On the merits of the matter, clearly, there can be no dispute that whenever a request is received from the INTERPOL pursuant to the request made from any member country, under the aforesaid Office Memorandum dated 22nd February, 2021, a LOC can be issued by the authorities. The relevant clauses of the said memorandum are extracted below:

> *"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 I 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 or Look Out Circulars (LOC) in respect of Indian citizens and foreigners:-*
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> *(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****.*
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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-*
>
> *Xxxxx*
>
> *(xiii) Designated officer of Interpol; or*
>
> *Xxxxx*
>
> ***(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 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."*

12. Whenever such LOCs are issued, the same ought to be in terms of the said Office Memorandum which is now a comprehensive memorandum forming consolidated guidelines for issuance of LOCs.

13. The issuance of LOC at the request of INTERPOL and similar agencies traces its origin to the Constitution of the *International Criminal Police Organization-INTERPOL,* adopted by the General Assembly of member states of ICPO-INTERPOL in 1956. The said Constitution contemplates under Articles 31 & 32, establishment of National Central Bureaus (NCBs) by each member state for liaising between the various law enforcement agencies in the said member country and NCBs of other member states. The said Constitution aims to ensure and promote the widest possible mutual assistance between all criminal police authorities in the spirit of 'Universal Declaration of Human Rights'. It also contemplates establishment of institutions to prevent and suppress ordinary law crimes.

14. The Supreme Court has dealt with various INTERPOL notices and their binding nature in ***Bhavesh Jayanti Lakhani v. State of Maharashtra and Ors., (2009) 9 SCC 551***, whereby the Supreme Court has recognized the

manner in which the system of INTERPOL *vis-à-vis* the NCBs functions. The Supreme Court has also considered the various kinds of notices that are issued by the General Secretariat of INTERPOL seeking information or co-operation from member countries, including the Red Corner Notice which is issued to seek the location and arrest of a person wanted by a legal jurisdiction or an international tribunal with a view to his/her extradition. The relevant portion of the said judgment is set out below:

> "***Interpol notices***
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> ***58.*** ***The organisational system of issuing international notices forms the backbone of its functioning. The Member countries in terms of notices share critical crime related information.*** *They concern individuals wanted for serious crimes, missing persons, unidentified bodies, etc. Such notices contain comprehensive identity particulars of the individuals concerned including the physical description, fingerprinting, occupation and all other relevant information including the offence with which the person has been charged, reference to the law under which the charge was made or the conviction was obtained, etc.* ***The notices issued by Interpol are of six types —red notice; yellow notice; blue notice; green notice; black notice and orange notice. It also contemplates Interpol-United Nations special notice.*** *We are concerned herein only with red and yellow notices.*
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> ***59.*** ***A red corner notice is issued to seek the provisional arrest of a wanted person. However, it by itself does not have the effect of warrant of arrest. It is issued for persons, against whom a national or international court has issued a warrant of arrest. It is solely a request of the***

issuing entity to provisionally or finally arrest the wanted person for extradition. *A yellow notice, however, is issued for finding a missing person or to identify people who are not capable of identifying themselves. It is an "international missing person notice". It is issued specially to locate minors.*

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Binding nature of the Interpol notices
63. *The notices issued by Interpol are not considered as administrative decisions on individual cases with transnational effect. They are not construed as an "international administrative act". They lack a character of regulation.* ***They do not constitute an international arrest warrant and they are not in any other form binding the individuals concerned legally. They, however, gain de facto with special relevance to the human rights through multiplication of its recipients****.*

64. *In fact, Interpol's "red notices" often function as de facto international arrest warrants and countries issue warrants immediately upon receipt of such a notice. However, they do so with the understanding that a request for extradition with supporting evidence will follow the red notice, without delay. The suspect must then go through the standard extradition process.* ***The bottom line is that "warrants to arrest suspects must have legal authority in the jurisdiction where the suspect is found" and Interpol red notices do not have such authority. They are primarily a means of facilitating communication between police agencies and the success of the Interpol system still depends***

entirely upon voluntary cooperation. They, however, do not entirely lack external effects.

65. A number of States recognise the red notices as an official request for the arrest of a person. However, such a request does not require the action of national police authorities and does not provide a legal basis thereto. The transnationalisation takes place through the membership in the organisation, through the supervision proviso of the General Secretariat and the recognition of the transnational effect of the information.

***66.** A successful search does not result in Interpol's further operative involvement either. The authorities concerned or the public are supposed to contact the local police office, which then gets in touch with the issuing authority and initiates the necessary steps. Therefore, the Member State usually gives the initiative for a notice, and cooperates with one or several other Member States in order to find and arrest the wanted person. Existing information is just distributed through a special communication channel. Interpol's role is limited to that of a service agency. (See Bettina Schondorf-Haubold, "The Administration of Information in International Administrative Law — The Example of Interpol", 9 German L.J. 1719.)*

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96.** Extradition of a fugitive criminal from India to any other foreign country, irrespective of the fact as to whether any treaty has been entered into or with that country, is within the exclusive domain of the Central Government. The* *extradition of a person from India to any other foreign country is covered by the Parliament Act, namely, the Act.* ***Keeping in view the Constitution of Interpol vis-à-vis the resolutions adopted by CBI from time to time, although a red corner notice per se does not give status of a warrant of arrest by a competent court, it is merely a request of the issuing authority to keep surveillance on him and provisionally or finally arrest the wanted person for extradition.

97. *The provisions of the Act and the treaty are required to be given effect to.* ***Whenever a request is received from Interpol the authority must act on behalf of the Central Government. Interpol provides constitution of NCBs by Member States. All members are required to constitute NCBs which should be an authority within the meaning of the provisions of Interpol for coordination of the functioning within the Member States and/or Interpol in case of any request received.*** *Location of a missing person and or tracing the whereabouts of a fugitive criminal is not an easy task. The authority within the meaning of the words of Interpol must act in cooperation with the State police. For the said purpose it may have to request more than one States. A missing person or a fugitive criminal may move from one State to another. In such a case it is not possible for one State to find out the missing person or fugitive criminal.*

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100. *CBI has different roles to play. When it acts as NCB, being a department of CBI, it acts under a treaty. It acts in terms of the Constitution of Interpol. It acts as a authority of the Central*

Government. By reason of such an act it does not carry out investigation, although it is entitled therefor. It functions as an NCB which is to give effect to the request received from Interpol and/or foreign country. When it does so, indisputably it has to apply its mind. It can take any action only because it is lawful to do so. It does not exercise absolute discretion. It has to act if a case therefor has been made out including the question as whether any extraditable offence has been made out. ***For the aforementioned purpose it does not Act as an agency within the four corners of the DSPE Act. It acts, it will be a repetition to state, as an authority of the Central Government.”***

15. As per the above judgment, it is clear that, insofar as India is concerned, the CBI is the designated agency which acts as a NCB under the Constitution of the INTERPOL. Further, when a request is received from INTERPOL, the NCB-India acts on behalf of the Central Government.

16. In the present case, the request received from INTERPOL is quite clear to the effect that the Petitioners have been declared fugitives wanted for prosecution in proceedings before competent Courts in South Africa. The relevant Red Corner Notice in the present cases, itself records that the action to be taken if the Petitioners are traced, would be the extradition or provisional arrest of the Petitioners.

17. The affidavit dated 30th March, 2024 filed on behalf of NCB-India (INTERPOL), CBI, New Delhi records clearly that the LOCs in the present case have been issued pursuant to the INTERPOL Red Corner Notice which was received by the NCB-India. The final action as recorded in the said notice is as under:

"3. ACTION TO BE TAKEN IF TRACED
LOCATE AND ARREST WITH A VIEW TO EXTRADITION:
Assurances are given that extradition will be sought upon arrest of the person, in conformity with national laws and/or the applicable bilateral and multilateral treaties.
PROVISIONAL ARREST:
This request is to be treated as a formal request for provisional arrest, in conformity with national laws and/or the applicable bilateral and multilateral treaties. Immediately inform NCB PRETORIA South Africa (NCB reference: INTERPOL PRETORIA of 6 June 2021) and the ICPO-INTERPOL General Secretariat that the fugitive has been found."

18. It is noted that the NCB-India is merely an agency giving effect to the Red Corner Notice and does not deal with the merits of the matter. Under the aforesaid Office Memorandum, once notice seeking assistance is received from INTERPOL owing to the cooperation between various countries and their law enforcement agencies, the NCB-India is to issue the LOC and extend cooperation.

19. The LOC having been issued pursuant to the INTERPOL Red Corner Notice, it cannot be claimed that the same is contrary to law. The Court in such cases is not examining the merits of the matter. It is up to the Petitioner's to avail of their remedies in accordance with law in the courts of the country of origin depending upon the facts.

20. The allegations against the Petitioners are that of money laundering and certain other monetary embezzlement issues. Mr. Vivek Sood, ld. Sr. Counsel, submits on instructions that in fact, the Petitioners have not been convicted by the concerned Court of South-Africa in respect of the alleged offences. These

are issues which are to be dealt with by the Petitioners after availing appropriate remedies in the requesting country, i.e., South Africa. Indian Courts are not to examine an INTERPOL Red Corner Notice on merits.

21. There is also an allegation on behalf of the concerned investigating agency that Annexure P-7 in both the petitions, which is a letter issued by the South African Police Service and signed by one Captain K. Ralala, stating that the Petitioners do not have a criminal record, is a fabricated document. This position is disputed by the Petitioners in terms of their affidavit dated 30th March, 2024. The Court is of the view that it cannot deal with the said allegation in the present proceedings, since it relates to a certificate issued by the South African Authority, the forgery and fabrication, if any, may be looked into by the appropriate countries' agencies.

22. Further, in light of the aforesaid discussion, the LOCs under challenge would not be liable to be quashed or set aside. Since the medical documents of the concerned persons have been verified, the Petitioners can continue to stay in India, however, if any investigation request is received along with any provisional arrest request,[1] the same shall be given effect to in accordance with law by the concerned agencies. If any request for extradition is made, the same shall also proceed in accordance with law.

23. Needless to add, this Court has not considered the merits of the dispute including the alleged contractual dispute, if any, which formed the subject of the INTERPOL Red Corner Notice issued pursuant to the proceedings against

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[1] A request for 'Provisional Arrest' may be raised by the competent authorities of the Requesting State i.e., the Republic of South Africa, under Article 12 of the Treaty between the Republic of South Africa and the Republic of India on Extradition, read with relevant provisions of the Extradition Act, 1962.

the Petitioners before the competent Courts of South Africa.

24. If the Petitioners wish to leave the country, they shall give an advance intimation of at least one week to the NCB-India (INTERPOL), CBI, New Delhi at their email address-*ddco@cbi.gov.in.*

25. The Petitions above are disposed of in these terms. Pending application(s) if any, are also disposed of.

26. No further orders are called for.

PRATHIBA M. SINGH
JUDGE

AMIT SHARMA
JUDGE

OCTOBER 14, 2024
dj/ms/sc
(corrected & released on 22nd October, 2024)