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

+ **W.P.(C) 7239/2024, CM APPL. 30131/2024 & CM APPL. 31147/2024**

SHRI BABU RAM

.....Petitioner

Through: Mr. Ravi Sikri, Senior Advocate with
Mr. Deepank Yadav, Ms. Kanak
Grover, Advocates.

versus

**UNION OF INDIA THROUGH MINISTRY OF HOME AFFAIRS &
ORS.**

.....Respondents

Through: Mr. Ishkaran Singh Bhandari, CGSC
with Mr. Milan Deep Singh, Mr.
Sahasradeep Sharma, Advocates for
R-1 & 2.

Mr. Arun Aggarwal, Mr. Shivam
Saini & Mr. Praful Rawat, Advocates
for R-4/Bank of Baroda

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

08.08.2024

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1. The instant writ petition seeks *inter-alia* quashing of a Look Out Circular¹ issued against the Petitioner at the instance of Respondent No. 4 - Bank of Baroda².

2. Counsel for the Petitioner puts forth the following case:

2.1. The Petitioner is a law-abiding citizen of India and resident of Delhi. The Petitioner, along with his family members has been carrying on

¹ "LOC/ impugned LOC"

² "BOB"



business and trade in India for the past several years. The Petitioner holds an Indian Passport bearing No. R7525212, issued from Delhi and which is valid up to 18th March, 2028.

2.2. The Petitioner has no criminal antecedents, except being arrayed as a Co-accused in Criminal Case No. 4846 of 2014, pursuant to an FIR registered under Sections 504, 323 and 506(2) of the Indian Penal Code, 1860, at Gandhidham Police Station – Kachchh District, Gujarat. The said case has been at the stage of prosecution evidence since 2021 and the Petitioner has been granted bail. It is submitted that there are no restrictions placed on the Petitioner for travelling abroad by the prosecuting agency or the Court in terms of the said criminal case

2.3. In 2013, the Petitioner and several others executed a Deed of Guarantee in respect of certain loan facilities availed by the company - Mahesh Timber Pvt. Ltd.³ from a Consortium of Banks including Respondent No. 4 - BOB. The Petitioner is neither a Director/ Shareholder in Mahesh Timber Private Limited nor the Beneficiary of the Loan Facilities availed by it.

2.4. In 2015-16, MTPL defaulted in repayment of the loans availed by it on account of purported business/trade losses. In view of such loan defaults, Respondent No. 4 – BOB initiated action against MTPL before the Debt Recovery Tribunal – I in Chandigarh⁴ by filing Original Application No. 1465 of 2016. The same is yet to be adjudicated. CBI has registered an FIR against MTPL for the banking frauds committed by them and a chargesheet has also been filed in the matter, however, the Petitioner is not an accused in

³ “MTPL”

⁴ “DRT”



the said proceedings.

2.5. Consequently, BOB also initiated proceedings against the Petitioner by issuing a notice dated 17th January, 2017 under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002⁵. The Petitioner has been contesting the claims of BOB regarding the invocation of Deed of Guarantee before the DRT, Chandigarh and it is highlighted that no orders have been passed by any Court/Tribunal restraining or imposing any conditions on the Petitioner's travel within India or abroad.

2.6. In the years 2021-2022 the Petitioner recorded information that his son, Mr. Deepal Singhal (also a co-guarantor for the loan availed by MTPL from BOB) has been prevented from travelling abroad due to a LOC having been issued against him at the instance of BOB due to loan defaults of MTPL.

2.7. Thereafter, the Petitioner and his family have been engaging in discussions with the BOB for a One Time Settlement and discharge of the Personal Guarantees, in terms of the loan facilities availed by MTPL. During such discussions, on being queried by the Petitioner, BOB confirmed that an LOC had also been opened by them against the Petitioner. On receipt of such information, the Petitioner submitted to the BOB that such issuance of LOC against him amounts to harassment to compel the Petitioner to settle the liabilities of MTPL.

2.8. Thereafter, the Petitioner has also sent a written representation dated 13th July 2023 to the Respondents No. 2, 3, and 4, i.e., - Bureau of Immigration, Department of Financial Services, Ministry of Finance and



BOB respectively, seeking complete particulars in respect of the LOC issued against the Petitioner and seeking to quash/recall the LOC or change the same into an Intimation LOC. The Petitioner has till date not received any response to the abovementioned representation from the Respondents.

2.9. In light of the above factual background, the present writ petition has been filed by the Petitioner challenging the LOC issued against him as well as the powers of issuance of LOCs under the Office Memorandums dated 22nd February, 2021, 12th October, 2018 and 27th October, 2010 issued by Respondent No. 1, as being *inter-alia* patently illegal, arbitrary, ultra vires and discriminatory, and having been issued in gross violation of the Principles of Natural Justice.

2.10. The issuance of LOC by BOB is arbitrary as there has been no cause to show that the Petitioner is a flight risk. Considering that the Petitioner is not the main borrower and is just a guarantor against whom BOB has already initiated proceedings for recovery of their dues, BOB is trying to put pressure on the Petitioner, through the issuance of the impugned LOC, to pay the dues owed by MTPL.

2.11. Further, the Petitioner has previously been allowed to travel abroad to Turkey, after opening of the LOC against him pursuant to the directions of this Court, at furnishing of certain security.

3. *Per contra*, Respondent No. 4 – BOB, in their Counter Affidavit have argued as follows:

3.1. The Petitioner has not approached this Court with full disclosure of facts. He, along with his family members, is a guarantor of MTPL who availed various credit facilities from the consortium of banks of which BOB

⁵ “SARFAESI Act”



holds a share of 23.75%. As such, when the credit facilities extended to MTPL turned into a Non-Performing Asset on 29th December, 2016 having more than INR 50 Crores in dues.

3.2. To avoid direct losses to the nationalized banks, lending banks have the requirements of collateral securities. When defaults occur by the principal debtor, it is the guarantor who is called upon to pay. The issuance of LOC comes as a last resort, when the credit facilities extended by BOB are not found to be coming back.

3.3. The essence of the LOC stems from the particular procedure defined in the Office Memorandum dated 12th October, 2018 issued by the Ministry of Home Affairs. It is to protect the interest of the public sector banks when the credit facilities extended by them are diverted or utilized for purposes other than for the purpose for which they were advanced. The idea is to put a check on the defaulting borrowers so as to not let them escape the country.

4. The Court has considered the afore-noted contentions of the parties.

5. At the outset, it must be noted that, during the pendency of the present proceedings, the Petitioner has been granted permission to travel abroad to Turkey in June, 2024 as has been recorded in the order of this Court dated 29th May, 2024. In the said order, the permission to travel abroad was granted to the Petitioner on the basis of certain conditions including furnishing an Fixed Deposit Receipt and an immoveable property as security along with an affidavit from the owners of the property attesting to the fact that the said property has not been encumbered and that no third party interest shall be created on the same. It is noted that the Petitioner has come back to the country and duly complied with the conditions imposed upon him.



6. It is also noted that even though there is ongoing criminal proceedings pending against the Petitioner in terms of Criminal Case No. 4846 of 2014 instituted in Gujarat, the Petitioner has been granted bail and no restriction has been placed on his travel abroad.

The basis of the LOC issued against the Petitioner is on the basis of him being a guarantor for the loan default of MTPL, however, it is noted that he has not been named as an accused in the ongoing CBI proceedings initiated against MTPL alleging diversion of funds. Moreover, in the proceedings initiated against the Petitioner as a guarantor of the defaulting company under SARFEASI Act, before the DRT, no orders have been passed by the Tribunal restraining the Petitioner from travelling abroad.

7. Further, it is noted that the impugned LOC against the Petitioner has been in place since 2022. The rationale behind issuing the instant LOC is to effectively monitor the entry or exit of the Petitioner from the country.

8. However, there is no material placed before the Court which can demonstrate the Petitioner's criminal culpability at this juncture in terms of the offence of default of loan of MTPL, that could indicate that the Petitioner is intending to abscond. Therefore, the mere apprehension of a person defaulting on his liabilities under law cannot be a basis for opening an indefinite LOC against him, thereby restricting the movement of a citizen who has a right to travel abroad which is acknowledged to be a fundamental right under Article 21 of the Constitution of India, 1950, as observed in the

10. The Ministry of Home Affairs⁸, 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:

"Amendment-

8 “MHA”



“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.”

11. 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:-

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(H) Recourse to LOC is to be taken in cognizable offences under IPC or other penal laws. The details in column IV in the enclosed Proforma regarding ‘reason for opening LOC’ must invariably be provided without which the subject of an LOC will not be arrested/detained.

(I) In cases where there is no cognizable offence under IPC and other penal laws, the LOC subject cannot be detained/arrested or prevented from leaving the country. The Originating Agency can only request that they be informed about the arrival/departure of the subject in such cases.

(J) The LOC opened shall remain in force until 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."

12. 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.

13. Furthermore, as has been held by the Coordinate Bench of this Court in *Prateek Chitkara v. Union of India*⁹, 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 look-out circular, if it is found that the conduct of the individuals concerned affects public interest as a whole or has an adverse impact on the economy. Squandering of public money, siphoning off amounts taken as loans from banks, defrauding depositors, indulging in hawala transactions may have a greater impact as a whole which may justify the issuance of look-out circulars. However, issuance of look-out circulars cannot be resorted to in each and every case of bank loan defaults or credit facilities availed of for business, etc. Citizens ought not to be harassed and deprived of their liberty to travel, merely due to their participation in a business, whether in a professional or a non-executive capacity. The circumstances have to reveal a higher gravity and a larger impact on the country.”

14. 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 fundamental right to travel guaranteed under Article 21 of the Constitution of India. Reliance in this regard is placed on W.P.(C) 14837/2022.¹⁰

15. To conclude, an LOC has been issued against the Petitioner for the reason that the company for which he stood as a guarantee was unable to repay its debts. The Petitioner is not an accused in any cognizable offence related to the said default. Even though there are criminal proceedings pending against him, he has been granted bail and his travel abroad has not been challenged or restricted by the prosecuting agency. In terms of his liability as a guarantor of MTPL, the BOB has already initiated the requisite steps under the SARFAESI Act so as to secure their interest in terms of repayment of dues. Therefore, Banks ought not to be permitted to use an

⁹ 2023 SCC OnLine Del 6104

¹⁰ titled *Vikas Goel v. Union of India*



LOC as a means to recover debts. In such circumstances, there is no material on record which can justify Respondent No. 4 - BOB to insist that the Petitioner's right to travel should be restricted and he should not be allowed to depart from the country.¹¹

16. Thus, having regard to the aforementioned facts and the judgments referred above, in the opinion of the Court, LOC issued against Petitioner at the behest of BOB cannot be sustained. Accordingly, the same is quashed.

17. In light of the above, the writ petition is allowed and disposed of, along with pending applications.

SANJEEV NARULA, J

AUGUST 8, 2024/ab

¹¹ See also: *Rajesh Kumar Mehta v. Union of India*, 2024:DHC:4548