

Case No. 32/2017
ECIR/HQ/17/2017
ED Vs. Gagan Dhawan & Ors.

31.08.2021

Present: Sh. Nitesh Rana, Ld. SPP for State through VC.
Sh. Arshdeep Singh Khurana and Sh. Hitesh Rai, Ld.
Counsel for applicant/accused through VC.
Applicant Suresh Nandlal Rohira present through VC.

Proceedings done through video conferencing.

It is certified that link was working properly and no grievance was agitated by either of the counsel in this regard.

1. Vide this order, I propose to dispose of the application moved on behalf of applicant Suresh Nandlal Rohira seeking directions to the Directorate of Enforcement (hereinafter referred to as ED) to revoke the Look Out Circulars dated 16.07.2019 issued against him and allow him to travel abroad.
2. It is submitted by Ld. counsel for the applicant that the issuance of the aforesaid LOC against the applicant is illegal, arbitrary, a gross abuse of power and violative of constitutional rights and the same is liable to be revoked. Ld. counsel for applicant/accused submits that the applicant is not an accused nor a witness in the present case nor he is having any criminal antecedents against him.
3. It is further submitted that the applicant hails from a professional background; he had worked with the Ministry of Finance and Commerce during GST implementation; he had uploaded his profile on an online job portal i.e. 'Nakuri.com' and through the said portal, the applicant received a call for an online interview from M/s Ashtavinayak Hydrocarbons Ltd. situated in Lagos, Nigeria where he was appointed as Deputy Operating Officer and he worked there w.e.f. November, 2019 to March, 2020. It is submitted that after resigning from the

job, the applicant returned to India on 13.06.2020 but due to widespread impact of Covid-19, he could not get a job. It is submitted that after returning to Mumbai, he received summons dated 03.07.2020 from the Assistant Director, PMLA with directions to appear before the IO on 06.07.2020 at Mumbai Office of ED. It is further submitted that till date, the applicant has no knowledge regarding the contents of the alleged ECIR nor he is aware of the nature of allegations levelled against him. It is submitted that applicant is not even remotely connected to the allegations levelled by the department.

4. It is submitted that applicant, as per the directions, appeared before the IO on 06.07.2020, on which date, his statement u/s 50 PMLA was recorded questioning him about M/s Sterling Biotech Ltd. and Sandesara brothers. It is submitted that applicant is neither having any association with M/s Sterling Biotech Ltd. or Sandesara brothers nor he has ever worked with them at any point of time. It is further submitted that on 06.10.2020, he got a new job in M/s Dorado Nuts Pte Ltd. (an agricultural company based in Singapore) and the applicant was bound to join the company at Ivory Coast from 01.02.2021 (initially for a probation period of six months) but due to ill health of his wife and due to present pandemic situation, the applicant requested for a few months time to which the aforesaid Company agreed. It is submitted that on 19.04.2021, when the applicant was set to depart to Ivory Coast for the aforesaid job and was at the Immigration Centre, Delhi Airport but to the complete shock and surprise of the applicant, he learnt from the Immigration Officer that a 'Look Out Circular' (LOC) has been issued against him by the Directorate of Enforcement restricting him to travel abroad.

5. It is submitted that applicant did not receive any summons after 03.07.2020 till 19.04.2021. It is further submitted that the applicant is a lawful Indian passport holder and was travelling abroad in accordance with law and rules and there was no prohibition on his movement out of India till the present LOC was issued. It is submitted that being aggrieved, the applicant immediately visited the office of ED where he was again handed over with another summon dated 19.04.2021 for appearance on the same day and on that day, his statement u/s 50 of PMLA was recorded. It is submitted that applicant vide his email dated 19.04.2021 made request for revocation of LOC and in reply thereof, vide an email of the same date, the applicant was informed that his request for revocation of the LOC has been considered and that the same is under process and that he will be intimated once it is done.

6. It is further submitted that due to the widespread impact of COVID-19, the applicant is without a permanent job since March, 2020 due to which the applicant and his family is facing tremendous hardships and is under immense financial stress and further he has been informed by the Chairman of M/S Dorado Nuts Pte Ltd. Indicating that his job offer will be cancelled in case the applicant is not able to join soon or give a specific date for joining. It is submitted that despite his several requests to the concerned officials of Directorate of Enforcement through emails, written representations, letters, telephonic conversations and personal visits, to revoke the said LOC nothing constructive materialised. It is submitted that applicant once again received summons dated 28.05.2021 to appear before the IO on 10.06.2021, on which date also, his statement u/s 50 PMLA was again recorded. It is further submitted that due to the issuance of aforesaid illegal and arbitrary LOC and non-withdrawal of the same, the

applicant is facing relentless trauma, loss of reputation and career devastation as he is not able to travel to the Ivory Coast to join his new job and honour his professional commitments. It is therefore requested to direct the Directorate of Enforcement to revoke the "Look Out Circular" issued against the applicant and allow him to travel abroad.

7. In support of his submissions, Ld. counsel has placed reliance upon the *Office Memorandum dated 27.10.2020 issued by the Government of India* and judgments in the matter of *Sumer Singh Salkan v. Assistant Director & ors W.P (Crl.) No. 1315/2008 decided on 11.08.2020*, *Brij Bhushan Kathuria v. Union of India & Ors W.P (c)3374/2021 decided on 15.04.2021*.
8. On the contrary, Ld. Special PP for ED has vehemently opposed the instant application contending that as on date, the applicant has not furnished documents/ information sought from him. It is further submitted that the applicant worked for Ashtvinayak Hydrocarbons Limited in Nigeria on the visa of Sterling Petrochemical and received salary from Superflux Nigeria Limited and this is the same modus operandi which was adopted by Sandesaras in India who are promoters of Sterling Biotech Limited (SBL) group. It is further submitted that there is no requirement in law which entitles the applicant being informed about the issuance of the LOC; the genuineness of the offer of employment by the Singapore company is also not known; accused persons in the instant matter are absconding and if the Look Out Circular issued against the applicant is lifted, his presence would be very difficult to secure.
9. It is further submitted by Ld. Special PP that during investigation, it was revealed that applicant, employee of

Grant Thornton India LLP, was in constant touch with Nitin Jayantilal Sandesara and also visited him in Nigeria during 2019; he was issued summons dated 03.07.2020 to appear on 06.07.2020 at Mumbai office on which date, his statement u/s 50 of PMLA was recorded and further statements of the applicant were recorded on 19.04.2021 and 10.06.2021 u/s 50 of PMLA wherein he was asked to provide documents in respect of Ashtvinayak Hydrocarbons Limited but he denied of having any documents; he was also asked to provide details of employees and management of Ashtvinayak Hydrocarbons Limited but he failed to provide the same. He was also not able to provide documents/information regarding Sandesara group of companies and LOC was issued against the applicant on 16.07.2020 for a period of one year which has now been extended till 15.07.2022. It is submitted that the accused persons in the present case are absconding/Fugitive Offenders and are based in African countries and applicant is also travelling to Ivory Coast where he might contact the accused persons/key persons of Sandesara group and he may attempt to evade arrest by leaving the country. It is submitted that extant procedure has been adhered to while issuing the LOC; investigation qua the role of applicant in laundering of proceeds of crime in connivance with Sandesaras is still ongoing and there is strong apprehension that if the applicant is allowed to travel abroad, the further investigation would get stalled as the present matter involves laundering over Rs.14,500 crores and thus the instant applicant should not be allowed. In support of his submissions, Ld. Special PP has placed reliance upon the judgment in the matter of *Sumer Singh Salkan v. Assistant Director & ors W.P (Crl.) No. 1315/2008 decided on 11.08.2020*.

10. During the course of arguments, upon specific query by this court regarding the status of the applicant, it was informed to this court by way of an affidavit that applicant may potentially be arrayed as an accused upon completion of investigation upon fulfillment of the ingredients of Section 3 of PMLA and at this stage, there is reason to suspect on the basis of the investigation conducted so far that applicant is instrumental in assisting the prime accused persons in Nigeria and it would cause grave prejudice to the investigation if applicant is allowed to leave the country as his presence in India is necessary in the investigation for layering of the proceeds of crime across multiple jurisdictions including Nigeria.

11. I have heard the rival submissions and carefully gone through the material available on record.

12. Hon'ble Delhi High Court in the locus classicus titled **Sumer Singh Salkan v. Assistant Director & ors (supra)** has delineated the circumstances under which an LOC can be issued observing here as under :

“...The questions raised in the reference are as under:

- A. What are the categories of cases in which the investigating agency can seek recourse of Lookout- Circular and under what circumstances?
- B. What procedure is required to be followed by the investigating agency before opening a Lookout- circular?
- C. What is the remedy available to the person against whom such Look-out-Circular has been opened?
- D. What is the role of the concerned Court when such a case is brought before it and under what circumstances, the subordinate courts can intervene?

The questions are answered as under:

- 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 WP(C) No.5382 /2020 Page 6 other coercive measures and there was likelihood of the accused leaving the country to evade trial/arrest.

- B. The Investigating Officer shall make 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..."
13. Admittedly, the applicant in the instant case has neither been arraigned as an accused nor he is reported to be evading his arrest /appearance. Rather to the contrary, he has always responded to the summons issued by ED and has duly joined the investigations as and when summoned by the IO.
14. ED has attempted to justify the issuance of **impugned** LOC contending that he can be arrayed as a potential accused in the instant matter. Placing reliance upon the Office Memorandum issued by Ministry of Home Affairs dated 13.12.2017, it is contended that in exceptional circumstances,

LOC can be issued in the '**economic interest**' of the country even if the case of applicant is not strictly covered by the relevant guidelines. The relevant portion of the above said Office Memorandum is reproduced herein for a ready reference:-

“... In exceptional cases LOC 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 of integrity of India or that the same is detrimental bilateral relations with any country or to the strategic and/or Economic interest 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 larger public interest at any given point in time...”

15. Pertinently, ED has failed to cite any plausible explanation as to how applicant taking a job abroad would be prejudicial to the economic interest of the country. It is simply averred that if the applicant/accused is permitted to leave the country, it shall cause great prejudice to the investigation and his presence is necessary in India for further leads in the investigation of layering of proceeds of crime across multiple jurisdiction in Nigeria.
16. The applicant has a fundamental right to travel abroad for earning his livelihood guaranteed under Article 21 of the Constitution of India. Reliance is placed upon **Maneka Gandhi v. Union of India & Ors. (1978) 1 SCC 248.**
17. In my considered opinion, when the State attempts to curtail the right of life and liberty of an individual, the State action must be necessarily an exercise of utmost responsibility and restraint. State's interference with the fundamental rights of the citizens cannot be countenanced upon mere propitious anticipations. The investigation in ECIR/HQ/17/2017 is reported to be pending since 2017. The applicant has been

extensively examined by ED u/s 50 of the PMLA on multiple occasions. Till date, nothing incriminating has been reported against the applicant. Ld. SPP for ED has forcefully argued that the applicant is not divulging the details of the employees and management of M/s Ashtavinayak Hydrocarbons Ltd and he has also refused to provide the documents in respect of Sandesara group of companies. The said contention is vehemently resisted by the Ld. Counsel for the applicant arguing that every relevant information and document available with the applicant has already been provided by him to the ED and he is not in possession of any document or evidence in this regard. It is further submitted that in the present information technology era, with a single click of button, ED can online collate all the necessary information with respect to the Sandesara group of companies.

Be that as it may, the primary duty to investigate and collect evidence is of ED and it cannot shift its onus upon the applicant to collect evidence for ED. No palpable explanation has been brought to my notice that as to why appropriate penal action u/s 175 of the Indian Penal Code or any other statutory provision has not been initiated against the applicant during the past four years, if ED was in possession of any credible material to the effect that the applicant is intentionally withholding the relevant documents required for proper investigation in the instant matter. Except for bare allegations, nothing credible has been brought to my notice by ED to support the contention that the applicant is deliberately concealing any vital piece of evidence. Furthermore, during the course of arguments, the applicant voluntarily undertook before this court that he shall continue to appear and cooperate, as and when summoned by the ED. Instead of accepting the voluntary undertaking of the applicant, ED is contesting the petition of the applicant on vague and general grounds. Hon'ble Delhi High Court in the

matter of **Deept Sarup Aggarwal v. Union of India & Anr U.P(C) 5382/2020**, while dealing with a similar situation has observed as under :-

14. In the present case, there is no doubt that the allegations made against the petitioner are of a grave nature. The petitioner has submitted that the same are false and unsubstantiated, however, this Court need not detain itself on the examination of such allegations. For the purposes of the Impugned LOC, what is relevant to be noted is that the FIR was registered on 08.10.2018. Based thereon, the Enforcement Directorate registered ECIR on 02.07.2019. In undue haste, on 25.07.2019, the Impugned LOC was issued against the petitioner. The petitioner has asserted that prior thereto, the petitioner had joined investigation on 26.12.2018 and 07.01.2019. It is not asserted in the counter affidavit or in the sur-rejoinder filed by the respondents that the petitioner is a flight risk having no roots in India or that there is a likelihood of the petitioner absconding from the country. The only allegation made is that the conduct of the petitioner is evasive and non-cooperative. In my opinion, this cannot be a ground for issuance of a LOC.
15. Similarly, reliance of the respondents on the amendment made to the Office Memorandum is also unfounded. Though, the said amendment allows a LOC to be issued even in cases not covered by the Guidelines and in economic interest of India, no such case has been made out against the petitioner. It has not been explained how the travel of the petitioner would in any manner prejudice the economic interest of the country. Mere mention of the power in the counter affidavit cannot take the place of giving reasons for exercise of the same...”
18. Apparently, the applicant poses no flight risk as his family is residing in India and he has voluntarily undertaken to appear before the authorities as and when summoned by them.
19. As a cumulative effect of the abovesaid discussion, I am of the considered opinion that the impugned LOC and the extension thereof cannot be legally permitted to be continued. Consequently, the impugned LOC and its extension is hereby set aside subject to the following conditions :-
 1. That the applicant shall present himself in Indian Embassy in Singapore/ Ivory Coast atleast once in every calender month during his stay in Singapore/Ivory Coast.

2. That the applicant shall file an undertaking before this Court, duly supported with an undertaking by his wife, to the effect that he would appear before the ED upon being issued one month's advance notice.

3. That the wife and kids of the applicant shall not leave the country without prior permission of this court. (Reliance is placed upon the judgment of the Hon'ble Delhi High Court in the matter of **Brij Bhushan Kathuria v. Union of India & ors W.P (c) No. 3374/21 D.O.D 15.04.2021.**)

20. With these observations, the instant application stands disposed off.

21. Copy of the order be given dasti to all the concerned.

(Dharmender Rana)
ASJ-02, NDD/PHC/New Delhi
31.08.2021