



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

Date of decision: 24<sup>th</sup> MAY, 2024

IN THE MATTER OF:

+ **W.P.(C) 7093/2022 & CM APPLs. 21748/2022, 24242/2022, 53032/2022, 14723/2023, 39114/2023 & 12915/2024**

RAJIV AGGARWAL

..... Petitioner

Through: Mr. Prithu Garg, Mr. Parth Bhatia  
and Mr. Shivam Singh, Advocates.  
Ms. Sujata Kashyap, Advocate with  
Petitioner in-person.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Kirtiman Singh, CGSC with Mr.  
Waize Ali Noor and Ms. Shreya V.  
Mehra, Advocates for UoI.  
Mr. Arun Aggarwal, Mr. Shivam  
Saini, Ms. Aditi Gupta and Mr. Praful  
Rawat, Advocates for R-2.  
Mr. Ripu Daman Bhardwaj, SPP with  
Mr. Kushagra Kumar and Mr.  
Abhinav Bhardwaj, Advocates for  
CBI.

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT**

1. The Petitioner has approached this Court under Article 226 of the Constitution of India challenging the Look Out Circular issued against the Petitioner at the instance of Bank of Baroda.
2. The facts of the case reveals that the Petitioner was working with M/s Spanco Ltd. In 2010-12 he was sent as a nominee Director to M/s MP



Border Checkpost Development Co. Ltd (*hereinafter referred to as 'the MPBCDCL'*), which was set up as an SPV between ITNL (IL&FS Transportation Network Ltd.) and Spanco Ltd. Material on record indicates that MPBCDCL had taken loans to the tune of Rs.750 crores from various banks, including the Bank of Baroda. The account of MPBCDCL was declared as a non-performing asset. Material on record further discloses that a Show Cause Notice was issued by the Assistant General Manager, Zonal Stressed Assets Recovery Branch to the Petitioner informing him that the Petitioner would be declared as a willful defaulter for non-payment of amounts. It is stated that a complaint was given by the consortium Banks which had lent through the MPBCDCL to the CBI regarding siphoning off the large sums of money given to the MPBCDCL. On the request of the Bank, LOC has been issued against the Petitioner.

3. Notice in the matter was issued on 18.05.2022. Status Report has been filed by the CBI. Relevant portion of the said Status Report reads as under:

*“4. The said complaint was scrutinized by Bank Complaint Cell, CBI, New Delhi and it was observed that the elements of fraud/criminality were not clearly mentioned in the said complaint.*

*5. That, in View of the above, the said complaint dated 03.02.2022 was returned to the complainant bank i.e. Canara Bank vide CBI, BCC letter dated 24.06.2022 requesting to file a fresh complaint after attending above mentioned observations I issues and fully in accordance with DFS Circular dated 13.05.2015.”*

4. A perusal of the Status Report indicates that the complaint was scrutinized by Bank Complaint Cell, CBI and it has been found that



elements of fraud/criminality have not been mentioned against the Petitioner and as of now there is no FIR against the Petitioner.

5. The short question which, therefore, arises is as to whether the LOC issued against the Petitioner at the instance of the Bank can be sustained or not.

6. The Petitioner has been approaching this Court regularly seeking permission to travel abroad and this Court by orders dated 18.05.2022, 07.12.2022, 06.04.2023 and 30.04.2024 has permitted the Petitioner to travel abroad.

7. Lookout Circulars are issued against a person at the instance of any of the agencies mentioned in the Office Memorandums issued by the Ministry of Home Affairs from time to time. The relevant portion of the Office Memorandum bearing No.25016/10/2017-Imm (Pt.) dated 22.02.2021 which is the last of the guidelines which have been issued for opening of LOCs in respect of the Indian Citizens and Foreigners 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:-*

*(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)

8. In terms of the said OM, an LOC can be issued at the request of the Chairman/ Managing Directors/ Chief Executive of all Public Sector Banks. A request is given by a person, who is authorized under the said OM, to the Bureau of Immigration and then the Bureau of Immigration at the request of the said Officer opens the Lookout Circular.

9. The Office Memorandum indicates that the legal liability of the action taken by the immigration authorities in pursuance of the Lookout Circular rests with the Originating Agency, in this case, the Bank of Baroda.

10. Clause L of the Office Memorandum of 2021, as quoted above, states that in exceptional cases, an LOC can be issued at the instance of the Bank if the authorities are of the view that letting the person to depart from the country will be detrimental to the economic interests of India.

11. This Court *vide* Judgment dated 06.02.2024 passed in **W.P.(C) 10951/2022** titled as Shalini Khanna v. Union Of India & Anr., after analyzing the case laws has held as under:-

*“19. The scope of the term ‘detrimental to the economic interest of India’ has been dealt with by the various High Courts in various judgments. The Apex Court in Prateek Chitkara vs. Union of India and Others, 2023 SCC OnLine Del 6104 has observed as under:*

*“47. The question before this court is, whether clause L of the Office Memorandum of 2021, would be legally valid, especially in respect of the phrase “detrimental to the economic interests of India” and in respect of other clauses which*



*permit indefinite continuation of look-out circulars, non-communication of reasons either prior or post issuance of the look-out circular and extension of look-out circular to such individuals who in the opinion of the authorities ought not to be permitted to travel on the ground of it being detrimental to the economic interests of India.*

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*57. In Mr. Chaitya Shah v. Union of India [2021 : BHC-AS : 16392-DB.] , a learned Division Bench of the Bombay High Court was dealing with a case where a substantial amount had been invested in a company called M/s. Gitanjali Gems of Rs. 50 crores and various banking operations and transfer of money was found. The court observed that the words “economic interest of India” and “larger business interest” are not empty words. The relevant paragraph of the said judgment is extracted below:*

*“32. In the present case the **Serious Fraud Investigation Office** is investigating into the affairs of the aforementioned companies and its investigation overrides the investigations by other investigating agencies. Therefore recourse to look-out circular was not unfounded as the petitioner has definite connection with the investigation as discussed hereinabove. From the facts of the case it is clear that clause (L) of these guidelines clearly covers the petitioner's case as it is detrimental to the ‘economic interests of India’ and that his departure ought not to be permitted in the larger public interest. The words ‘economic interests of India’ and ‘larger public*



*interest’ are not empty words in the context of the present case because as mentioned earlier the petitioner is directly involved and was concerned with considerable shareholding of M/s. Gitanjali Gems Limited. It involves huge amount of almost Rs. 50 crores which requires serious explanation from the petitioner in the background of the allegations that the money belonged to Mr. Mehul Choksi, who has left India and has not returned back. This transaction is an important part of the entire fraud involving huge amount. Sheer magnitude of the offence and its spread through various banking operations and transfer of money through different modes and different countries shows that it has definitely affected the economic interests of India and the larger public interest is definitely involved and affected. Therefore, we do not find that issuance of look-out circular against the petitioner was unnecessary.”*

*58. In Vishambhar Saran v. Bureau of Immigration (W.P. No. 10241(W) of 2020, decided on December 24, 2021) [2021 SCC OnLine Cal 3074.] , the Calcutta High Court held that vague allegations of a person's travel being detrimental to the economic interest of the country or the quantum of the alleged default (Rs. 351 crores in this case), is not sufficient to issue a look-out circular thereby restricting the personal liberty of a person to travel. In the said petition, no civil or criminal proceedings were initiated against the petitioner and thus the petitioner was allowed to travel. This view was echoed in Vishambhar Saran v. Bureau of*





*Immigration (W.P.A. No. 6670 of 2022, decided on January 31, 2023).*

*59. In **Vikas Chaudhary v. Union of India** (W.P. (C) No. 5374 of 2021, decided on January 12, 2022) [(2022) 442 ITR 119 (Delhi.)], the petitioner was a businessman engaged in the export of garments to a number of foreign countries. A look-out circular was issued against the petitioner on the ground of undisclosed foreign assets and interests in foreign-entities liable for penalty and prosecution under the Income-tax Act, 1961, the Black Money (Undisclosed Foreign Income and Assets) and Imposition of tax Act, 2015, as also the proceedings under the Prevention of Money Laundering Act, 2002, having been commenced against the petitioner. The petitioner did not hold any foreign assets and any undisclosed assets.*

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*61. The court noted that the phrase “detrimental to the economic interests of India” was introduced for the first time in the Office Memorandum (hereinafter “OM”) dated December 5, 2017. The said phrase did not exist in the previous Office Memorandum dated October 27, 2010. However, it continues to exist in all the subsequent Office Memoranda. In this context, the court observed as under (page 137 of 442 ITR):*

*“36. However, the matter does not end here and the crucial issue which needs to be now determined is as to whether the clause ‘detrimental to the economic interests of India’ introduced vide the amendment in 2017, with a specific rider that the same*



*would be used only in exceptional circumstances, could have, in the facts of the present case, been resorted to, for issuing the impugned look-out circular, as also whether the impugned look-out circular could be continued for the last almost three years without any proceedings under the Penal Code, 1860 or any other penal law being initiated against the petitioner. It has to be kept in mind, that the issuance of a look-out circular necessarily curtails the rights of an individual to travel abroad and therefore, **I am of the view, that for invocation of this clause, which, in any event, is meant to be used only in exceptional circumstances, a mandatory precondition would be a formation of a reasonable belief by the originating authority that the departure of an individual would be ‘detrimental to the economic interests of India’ to such an extent that it warrants curtailment of an individual's fundamental right to travel abroad...***

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*39. Merely because the Office Memorandum dated December 5, 2017 permits the issuance of a look-out circular, in exceptional circumstances, even when the individual is not involved in any cognizable offence under the Penal Code, 1860 or any other penal law, it has to be remembered that this power is meant to be used in exceptional circumstances and not as a matter of routine, it must therefore, be interpreted in a manner that indicates an offence of such a magnitude so as to significantly affect the economic interests of the country. Mere suspicion of a person opening bank accounts in other countries*



*and of investing in a foreign company cannot, in my view, be accepted as the basis for holding that the petitioner being allowed to travel abroad would be ‘detrimental to the economic interest of India’, when it is undisputed that this suspicion has remained a suspicion for such a long period of almost three years.”*

**62.** *Thus, the conclusion of the court was that exceptional circumstances could exist even if a person was not involved in any cognizable offence under the Penal Code, 1860 or under any other penal law. In the said petition, the look-out circular was quashed by the court.*

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**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.” (emphasis supplied)*



20. *Though Paragraph (L) of the aforesaid Office Memorandum permits the Banks to issue a request for opening a lookout circular, in exceptional cases, even if they are not covered by the guidelines, even in such of those cases, the same can be issued only if departure of such person is detrimental to the sovereignty or security of the country, or departure of the person is threat to the bilateral relations to any country, or to the strategic or economic interest of the country, or if such person is allowed to leave, he may potentially indulge in acts of terrorism or offences against State or that such departure ought not be permitted in larger public interest at any given point of time.*

21. *It is well settled that merely because the Office Memorandum permits the issuance of a lookout circular in exceptional circumstances, even when an individual is not involved in any offence under the IPC or any other penal law, the said power should be used in exceptional circumstances and not as a matter of routine.*

22. *The term ‘detrimental to the economic interests’ must be of such a magnitude that it can significantly affect the economic interest of the country. In the present case, the total loan amount disbursed is about Rs.7 crores and even if one adds the interest to it, it cannot be said that the amount is so large that it will affect the economic interests of the country.”*

12. A Division Bench of the High Court of Bombay *vide* Judgment dated 23.04.2024 in Viraj Chetan Shah v. Union of India & Anr., **W.P.(C)719/2020** has quashed Clause 8(b)(xv) of the Office Memorandum dated 27.10.2010 bearing O.M. 23016/31/2010-Imm. equivalent to Clause 6(B)(xv) of the O.M. dated 22.02.2021 bearing O.M. 25016/10/2017-



Imm.(Pt.) whereby the Chairman/Managing Director/Chief Executives of all Public Sector Banks could request for opening of an LOC.

13. The facts of the present case reveal that the LOC has only been issued against the Petitioner because of the inability of the MPBCDCL, in which the Petitioner is only a nominee Director, to repay the loan.

14. The provisions of the Recovery of Debts and Bankruptcy Act, 1993 and the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 lays down the procedure for recovery of debts due to bank. The Banks, therefore, can proceed in accordance with law for recovery of the money due under the abovementioned Acts.

15. It is well settled that mere inability to pay money without there being a criminal case cannot be a reason to take away the fundamental rights guaranteed under Article 21 of the Constitution of India. Right to travel abroad has been held to be a fundamental right under Article 21 of the Constitution of India which cannot be taken away in an arbitrary and illegal manner.

16. In Maneka Gandhi v Union of India, (1978) 1 SCC 248, a Seven Judge Bench of the Apex Court has held as under:

*"5. ...Thus, no person can be deprived of his right to go abroad unless there is a law made by the State prescribing the procedure for so depriving him and the deprivation is effected strictly in accordance with such procedure. It was for this reason, in order to comply with the requirement of Article 21, that Parliament enacted the Passports Act, 1967 for regulating the*



*right to go abroad. It is clear from the provisions of the Passports Act, 1967 that it lays down the circumstances under which a passport may be issued or refused or cancelled or impounded and also prescribes a procedure for doing so, but the question is whether that is sufficient compliance with Article 21. Is the prescription of some sort of procedure enough or must the procedure comply with any particular requirements? Obviously, the procedure cannot be arbitrary, unfair or unreasonable. This indeed was conceded by the learned Attorney-General who with his usual candour frankly stated that it was not possible for him to contend that any procedure howsoever arbitrary, oppressive or unjust may be prescribed by the law....”*

17. As of now, the Petitioner is not an accused in any of the FIRs filed by the Bank or in any of other FIR lodged by the CBI. Liberty of the Petitioner to travel abroad, therefore, cannot be curtailed only cause of the fact that money has not been by MPBCDCL, in which the Petitioner is only a nominee Director, to the banks. Resultantly, in view of the law laid down by this Court in **W.P.(C) 5674/2023**, titled as Apurve Goel v. Bureau of Immigration & Anr. and **W.P.(C) 10951/2022**, titled as Shalini Khanna v. Union Of India & Anr., and in absence of any criminal case against the Petitioner, the LOC against the Petitioner cannot be sustained only on the ground that the Petitioner is unable to pay his debts. Accordingly, the LOC is quashed.

18. The Writ Petition is allowed. Pending application(s), if any, stand disposed of.

19. Vide Order dated 30.04.2024 the Petitioner has been given permission



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to travel to Singapore from 01.05.2024 till 30.05.2024 and he has given an undertaking to this Court that he will return on 30.05.2024. The Petitioner is directed to abide by this condition and the fact that LOC against the Petitioner has been quashed will not entail the Petitioner from violating the undertaking given to this Court.

**MAY 24, 2024**  
*Rahul*

**SUBRAMONIUM PRASAD, J**