



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

Date of decision: 28th MAY, 2024

IN THE MATTER OF:

+ **W.P.(C) 11707/2022**

RAJESH KUMAR MEHTA

..... Petitioner

Through: Mr. Achal Gupta and Ms. Alizaah Rais, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Anurag Ahluwalia, CGSC for UoI.

Mr. Samarendra Kumar, Ms. Priyanka Singh and Mr. Adarsh Raj Singh, Advocates for R-3.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court under Article 226 of the Constitution of India challenging a Lookout Circular which has been opened against him at the request of Respondent No.3/Union Bank of India.
2. Material on record discloses that the Petitioner was one of the Directors of M/s Sainov Spirits Private Limited. It is stated in the writ petition that the Petitioner was employed as Director and President International Marketing of M/s Sainov Private Limited during the period 2006-2016.
3. It is stated that the Petitioner resigned from M/s Sainov Private Limited on 28.09.2016. It is stated that Sainov Spirits Private Limited was



declared as an NPA on 30.09.2016 before the Petitioner's resignation was uploaded on the website of Registrar of Companies. It is stated that the Petitioner thereafter joined another company, namely, M/s Alcobrew Distilleries India Limited and he is the current Head of Exports and SFA Operations with M/s Alcobrew Distilleries India Limited.

4. Material on record indicates that the Petitioner stood guarantee to Sainov Spirits Private Limited in respect of credit facilities availed by the company from Respondent No.3/Bank aggregating a sum of Rs.69,49,00,000/-. Since the company failed in repaying the debt, proceedings were initiated by Respondent No.3/Bank against the company and also against the Petitioner herein by filing suits before the Debt Recovery Tribunal which is pending adjudication.

5. Material on record also indicates that proceedings under the SARFAESI Act have also been initiated for repayment of dues of the Sainov Spirits Private Limited.

6. Respondent No.3 has given a request to Respondent No.1 for opening a Lookout Circular against the Petitioner herein and a Lookout Circular has been issued against the Petitioner, which is under challenge in the instant writ petition.

7. Material on record does not show that any criminal proceedings have been initiated against the Petitioner. There is no allegation against the Petitioner that the Petitioner was instrumental in siphoning off the money which was given as loan.

8. Notice was issued on 21.11.2022. Counter affidavit has been filed on behalf of Respondent No.3/Bank.

9. In the counter affidavit, it is stated that Sainov Spirits Private Limited



approached Respondent No.3 for Term Facility-I of Rs.35 crore. It is also stated that further credit facilities have been extended to the Sainov Spirits Private Limited and the Bank continued to extend further facilities.

10. Since Sainov Spirits Private Limited did not repay its debt, it was classified as NPA on 30.09.2016 and an original application was filed before the Debt Recovery Tribunal, Delhi. Counter affidavit also indicates that proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act were initiated against Sainov Spirits Private Limited and the guarantors including the Petitioner herein and a demand notice 07.12.2016 under Section 13(2) of the SARFAESI Act was served for the sum of Rs.71,92,25,076.60/-. The counter affidavit also discloses that Company Petition No.3383/2019 under Section 7 of the Insolvency & Bankruptcy Code has been filed by Respondent No.3/Bank.

11. The short question which arises for consideration in this case is whether the Lookout Circular which has been opened at the instance of the Bank only because of the failure on the part of the company, i.e., Sainov Spirits Private Limited to repay the amounts for which the Petitioner stood guarantee can be sustained or does it requires to be quashed.

12. Learned Counsel for the Petitioner places reliance on the judgments of this Court in Prateek Chitkara vs. Union of India and Others, **2023 SCC OnLine Del 6104**; Nipun Singhal v. Union of India, **W.P.(C) 9841/2022**; Apurve Goel v. Bureau of Immigration & Anr., **W.P.(C) 5674/2023**; Shalini Khanna v. Union Of India & Anr., **W.P.(C) 10951/2022**. He places reliance on the judgment of the Calcutta High Court judgment in Vishambhar Saran v. Bureau of Immigration & Ors., **2021 SCC OnLine Cal 3074** and the judgment of the High Court of Punjab & Haryana in Noor Paul v. Union of



India & Ors., 2022 SCC OnLine P&H 3408, to contend just because monies are due and payable to the Bank, it does not authorize Banks to issue Lookout Circulars under the pretext that the person cannot be permitted to go abroad to safeguard the financial interests of the country.

13. It is well settled that the right to travel abroad is guaranteed under Article 21 of the Constitution of India which cannot be taken away in an arbitrary and illegal manner [Refer: Maneka Gandhi v. Union of India, (1978) 1 SCC 248]. This Court is now coming across a large number of cases where banks are now insisting on opening of Look Out Circulars only as a measure to recover money without initiating any criminal proceedings.

14. Ministry of Home Affairs issued an Office Memorandum dated 27.10.2010 laying down the guidelines for issuance of Look Out Circulars. According to the said Office Memorandum dated 27.10.2010. In 2010, Look Out Circulars could not be opened at the instance of Banks. An amendment was brought to the Office Memorandum dated 27.10.2010 and an amended Office Memorandum dated 05.12.2017 was issued and the Paragraph No.8 (j) of the Office Memorandum dated 27.10.2010 was amended which reads as under:

*“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 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.

Instead of:

“In exceptional cases, LOCs can be issued without complete parameters and/or case details CI suspects, terrorists, anti-national elements, etc in larger national interest.”
(emphasis supplied)

15. Another Office Memorandum dated 04.10.2018 was issued by the Ministry of Finance, Government of India empowering the heads of Public Sector Banks to issue requests for opening of Look Out Circulars. By virtue of this Office Memorandum, Chairman (State Bank of India), Managing Directors and Chief Executives Officers (MD & CEOs) of all Public Sector Banks could request for opening of LOCs against the persons who are fraudsters and persons who wish to take loans and wilfully default or launder money and then escape to foreign jurisdiction as these actions will not be in the economic interests of India on a larger public interest.

16. An Office Memorandum dated 22.11.2018 was issued by the Ministry of Finance, Government of India regarding empowerment of heads of Public Sector Banks to issue requests for opening of Look Out Circulars which reads as under:

“Subject: Empowerment of heads of Public Sector Banks to issue requests for opening Look Out Circulars (LOCs)”

Dear Sir / Madam,

Kindly find enclosed the following, for necessary



action:

"(a) A copy of Department of Financial Services (DFS)'s OM No. 6/3/2018-BO.II dated 04.10.2018 to the Ministry of Home Affairs (MHA), vide which DFS had requested MHA to empower the heads of Public Sector Banks (PSBs) to issue requests for opening of Look Out Circulars (LOCs).

(b) A copy of MHA's OM No. 25018/10/2017-Imm dated 12.10.2018, vide which MHA has now made the desired amendment to paragraph 8 (b) of their OM No.25016/31/2010-Imm dated 27.10.2010 by adding sub-paragraph (xv), namely "Chairman/ Managing Directors/ Chief Executives of all Public Sector Banks" in the list of officers competent to request opening of LOCs, thereby empowering the heads of PSBs also, as requested by DFS.

2. In this context, it may kindly be noted that:

"(a) Issuance of LOCs in respect of Indian citizens and foreigners is governed by the instructions contained in MHA's OM dated 27,10.2010, as amended from time to time.

(b) Paragraph 8 (b) of MHA's OM dated 27.10.2010 lists those authorities of minimum rank, with whose approval the request for opening of LOC must be issued. Pursuant to the amendment vide MHA's OM dated 12.10.2018, the list now includes the Chairman/ Managing Directors/ Chief Executives of all Public Sector Banks.

(c) Paragraph 8 (j) of MHA's OM dated



27.10.2010 (amended through MHA's OM dated 05.12.2017) states that “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 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.”

3. It is requested that the instructions contained in MHA's OM dated 27.10.2010 (as amended by MHA's OMs dated 05.12.2017 and 12.10.2018), vide which the heads of PSBs have now been empowered to issue requests for opening of Look Out Circulars, may be strictly complied with henceforth, so that all persons who are covered under the said amended OM of MHA, including fraudsters and persons who wish to take loans and wilfully default or launder money and then escape to foreign jurisdictions to avoid paying back, are restricted from escaping from the country. MHA's Proforma for issue of LOCs is also enclosed.”

(emphasis supplied)

17. In 2021, an Office Memorandum bearing No. 25016/10/2017-Imm (Pt.) dated 22.02.2021 which now holds the field was issued by the Ministry of Home Affairs for issuance of Lookout Circulars. 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)

18. 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.

19. 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.

20. 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.

21. A perusal of the abovementioned Clause L of the Office Memorandum shows that in exceptional circumstances Lookout Circulars can be issued even in such cases which are not covered by the said guidelines which can be issued even when there is no criminal case against the person and person against whom investigation is pending and if it appears to the authorities based on the inputs that the departure of such person is detrimental to the sovereignty or security or integrity of India or bilateral relations or the strategic and/or economic interests of India. The term ‘detrimental to the economic interests of India’ has been well defined in several judgments.

22. A Coordinate Bench of this Court in Prateek Chitkara vs. Union of India and Others, **2023 SCC OnLine Del 6104**, has held 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)

23. The judgment passed by a Coordinate Bench of this Court in Prateek Chitkara vs. Union of India and Others, **2023 SCC OnLine Del 6104**, has been cited by several Coordinates Benches of this Court.

24. It is also pertinent to mention the Division Bench judgment of the High Court of Bombay wherein the Division Bench of the High Court of Bombay *vide* its 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.

25. Lookout Circular has been issued against the Petitioner only because of the inability of the company to repay its debts for which the Petitioner stood guarantee. There are no criminal proceedings against the Petitioner and there is no allegation that the Petitioner was instrumental in defalcation or siphoning off the money. The Bank has already initiated steps against the Petitioner and the company by taking steps under the RDDB Act, SARFAESI Act and under the IBC. This Court is of the opinion that after resorting to all the remedies available in law, the Bank cannot open a Lookout Circular as an arm-twisting tactic to recover debt from a person who is otherwise unable to pay more so when there are no allegations that he was engaged in any fraud or in any siphoning off or defalcation of the amounts given as loan.

26. Lookout Circular is a major impediment for a person who wants to travel abroad. There is plethora of judgments which states that no person can be deprived of his right to go abroad other than for very compelling reasons. In Maneka Gandhi v Union of India, (1978) 1 SCC 248, 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....”

27. In view of the above, the Lookout Circular (LOC) issued against the Petitioner is hereby quashed.

28. The writ petition is allowed. Pending application(s), if any, stand disposed of.

SUBRAMONIUM PRASAD, J

MAY 28, 2024

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