

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF MARCH, 2023

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BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPPASANNA

WRIT PETITION No.24074 OF 2022 (GM - RES)

BETWEEN:

MR.HIMAYATH ALI KHAN
S/O GULZAR ALI KHAN
AGED 57 YEARS
RESIDING AT NO.393,
2ND MAIN ROAD, 1ST BLOCK,
R.T.NAGAR
BENGALURU - 560 032.

... PETITIONER

(BY SRI K.SHASHIKIRAN SHETTY, SR.ADVOCATE A/W
SRI KIRAN J., ADVOCATE)

AND:

1. MINISTRY OF HOME AFFAIRS
GOVERNMENT OF INDIA
REPRESENTED BY ITS
COMMISSIONER (IMMIGRATION)
EAST BLOCK - VIII,
LEVEL-V, SECTOR - 1
R.K.PURAM
NEW DELHI - 110 066.
2. BANK OF BARODA
HAVING ITS STRESSED ASSETS

MANAGEMENT BRANCH AT
17/B, FIRST FLOOR, HOMJI STREET,
HORNIMAN CIRCLE, FORT
MUMBAI – 400 023
MAHARASHTRA
REPRESENTED BY DY. GENERAL MANAGER.

3. FOREIGN REGIONAL REGISTRATION OFFICER
(FRRO), BANGALORE
BUREAU OF IMMIRGATION
MINISTRY OF HOME AFFAIRS
GOVERNMENT OF INDIA
5TH FLOOR, 'A' BLOCK, TTMC
BMTc BUS STAND BUILDING
K.H.ROAD, SHANTINAGAR
BENGALURU – 560 027.

... RESPONDENTS

(BY SRI H.SHANTI BHUSHAN, DSG FOR R-1 AND R-3;
SRI NAGARAJ DAMODAR, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR RECORDS OF THE RESPONDENTS RELATING TO THE ISSUANCE OF LOOK OUT CIRCULAR/COMMUNICATION 07.03.2022 NO.BOB/SAMMUM/ADL/03/102 ISSUED BY THE R2 BANK, BASED ON WHICH THE PETITIONER WILL BE PREVENTED FROM TRAVELLING OUT OF COUNTRY ANNEXURE-A; DECLARE THAT THE ACTIONS OF THE RESPONDENT BANK IN ISSUING LOOK OUT CIRCULARS/COMMUNICATION DTD 07.03.2022 NO.BOB/SAMMUM/ARL/03/102 RESPECTIVELY ARE HIGHLY ARBITRARY, ILLEGAL AND IN VILATION OF ARTICLE 14, 19 AND 21 OF THE CONSTITUTION OF INDIA ANNEXURE-A AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question a Lock Out Circular ('LOC' for short) dated 07-03-2022 issued by the 2nd respondent/Bank of Baroda ('the Bank' for short) and executed by the 1st respondent/Bureau of Immigration and has sought a consequent direction by issuance of a writ in the nature of mandamus or declaration declaring that the action of the 2nd respondent/Bank in issuing LOC to be arbitrary and illegal and also for other consequential reliefs.

2. Heard Sri K.Shashikiran Shetty, learned senior counsel appearing for the petitioner, Sri H.Shanti Bhushan, learned Deputy Solicitor General appearing for respondents 1 and 3 and Sri Nagaraj Damodar, learned counsel appearing for respondent No.2.

3. Brief facts that lead the petitioner to this court in the subject petition, as borne out from the pleadings, are as follows:-

The petitioner claims to be having certain business operations at Bangalore in wood products for over 35 years. A Company by name Associate Décor Limited ('Company' for short) comes to be registered in the year 2007 under the provisions of the Companies Act, 1956, a company that would deal with wood products in the State of Karnataka. The petitioner claims to have assets and businesses both in India and abroad particularly in United Arab Emirates ('UAE') and the Kingdom of Saudi Arabia ('SA') for which purpose the petitioner frequently travels both to UAE and SA. The Company had obtained finance from the 2nd respondent/Bank mortgaging a property worth Rs.199/- crores. The petitioner was at the relevant point in time Director of the Company and had not stood as a guarantor to the loan obtained by the Company. According to the averment in the petition the petitioner was only a non-functional Director and there were number of guarantors who stood guarantee to the loan advanced to the Company.

4. When the loan became sticky, consortium of Banks initiated various proceedings against the petitioner as the Company had defaulted in repayment after obtaining finance from several

Banks. One such proceeding was instituted before the Debts Recovery Tribunal, Bengaluru ('DRT') in O.A.No.629 of 2021 by the Bank against the Company for recovery of the amount that was due to be paid to the Bank. The petitioner was not a party to the proceedings. The averment in the entire petition is that the petitioner is a non-Executive Director of the Company as he has nothing to do with the borrowals of the Company. Things standing thus, the petitioner wanted to travel to UAE and SA for business purpose. At that point in time, LOC is issued by the 2nd respondent/Bank on the ground that recovery proceedings before the DRT are pending consideration against the petitioner and the petitioner, if permitted to travel is likely to escape from those proceedings.

5. The petitioner on coming to know that his right to travel has been curtailed by the act of the Bank approached the Bank seeking to withdraw the LOC by bringing to its notice that he has nothing to do with the loan account or the loan amount that was sought and granted to the Company. The LOC, as observed hereinabove, has originated from the 2nd respondent and the reason

for such generation of LOC is that DRT proceedings are pending against the Company. On receipt of a requisition from the 2nd respondent/Bank for issuance of LOC, the 1st respondent/Bureau of Immigration issues LOC against the petitioner on 07-03-2022 and curtails his travels. The curtailment of his travel is what drives the petitioner to this Court raising a challenge to the LOC so issued by the 2nd respondent and executed by the 1st respondent.

6. The learned senior counsel Sri K.Shashikiran Shetty, appearing for the petitioner would contend with vehemence that the petitioner is noway concerned with the finance that is borrowed by the Company from the 2nd respondent/Bank. The petitioner is only a non-functional Director. He would take this Court through the documents appended to the petition and seeks to demonstrate that the petitioner is only a non-functional Director, he is not the borrower, he is not the decision maker/taker at the time of borrowing the amount and he is not the guarantor. He would submit that curtailment of right of the petitioner to travel would violate fundamental right of the petitioner. He seeks quashment of the LOC and all further proceedings taken thereto.

7. On the other hand, the learned counsel appearing for the 2nd respondent/Bank which is the originator of the LOC would seek to contend that if the petitioner is permitted to travel abroad he would escape consequences of the proceedings before the DRT against the Company which is pending adjudication and, therefore, the LOC is rightly sought to be issued against the petitioner, as he is one of the decision makers at the time when the finance was borrowed from the 2nd respondent/Bank.

8. The Deputy Solicitor General of India representing respondents 1 and 3 would contend that it was on a request made by the 2nd respondent/Bank the LOC had to be issued against the petitioner, failing which, he would run away and not be available for trial. Therefore, no fault can be found with the Bank, the originator and seeking its execution. He would place reliance upon the judgment rendered by the Division Bench of this Court in **DR. BAVAGUTHURAGHURAM SHETTY v. BUREAU OF IMMIGRATION AND OTHERS - Writ Appeal No.315 of 2021** decided on **12.05.2021**.

9. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

10. The issue lies in a narrow compass namely, "***whether the 2nd respondent/Bank could have otherwise curtailed fundamental right of the petitioner to travel abroad, except in accordance with law?***"

11. The Company is the borrower from the Bank. The petitioner claims to be a non-functional Director. The Bank undertakes review of credit facility extended to the Company on 19-05-2016. While so reviewing the following persons are shown to be persons who stood as guarantors to the loan advanced by the 2nd respondent/Bank to the Company:

<i>Security</i>	<p style="text-align: center;"><u>Primary</u></p> <p>a. <i>Pari-passu first charge on factory land and building</i></p> <p>b. <i>Pari-passu first charge on P&M and other moveable assets.</i></p> <p><u>Collateral:</u> <i>Pledge of 50% of the Promoters share holding in the Company.</i></p> <p><u>Personal Guarantee If:</u> " <i>Mr.Manohar Agicha</i></p>
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	" Mr. Mohammed Farouk Suleman Darvesh.
	" Mr. Farooq Khan
	" Mr. Srichand Agicha
	" Mrs. Shabana Usman Darvesh
	" Mr. Nooruddin Khan
	" Mr. Ashok Agicha

The name of the petitioner does not figure here. The claim of the petitioner is that he is a non-functional Director, to demonstrate that, a document at Annexure-E is appended to the petition. The names of Directors as on 27-02-2017 of the borrower Company are as follows:

Directors/Signatory Details:

DIN/PAN	Name	Begin Date	End Date	Surrendered DIN
00364297	Mohammed Farouk Suleman Darvesh	17-01-2007	-	
00364370	Srichand Satramdas Agicha	19-02-2007	-	
00364630	Ebrahim Suleman Darvesh	17-01-2007	-	
00364700	Manoharlal Satramdas Agicha	19-02-2007	-	
00481804	Sidarrtha Agicha	17-01-2007	-	
01087814	Farooq Ali Khan	17-01-2007	-	
01087889	Nooruddin Khan	17-01-2007	-	
01087959	Himayath Ali Khan	17-01-2007	-	
ABJPB9144N	Ami Bhandari	18-02-2015	-	
02053549	Yahya Mohamed Farouk Darvesh	04-07-2008	-	
AJQPR7863R	Kavita Ramesh Rathi	04-09-2013	-	

(Emphasis added)

The name of the petitioner figures as a Director with effect from 17-01-2007.

12. The amount that was borrowed by the Company had become sticky. The Bank initiated proceedings against the Company before the Debts Recovery Tribunal, Bengaluru in O.A.No.629 of 2021. A perusal at the cause title therein would indicate that the petitioner is not even made a party to those proceedings. The facts of the case as narrated before the Tribunal would indicate that the petitioner had no role to play in the borrowing of the amount by the Company from the 2nd respondent/Bank *albeit, prima facie*. The issue now is, in the teeth of the aforesaid facts, where the petitioner is yet to be shown to be involved in any case of embezzlement of funds or fraud played with the Bank being Director of the Company, could lead to issuance of LOC curtailing travel of the petitioner abroad.

13. To consider the said issue, it is germane to notice relevant guidelines operating for issuance of LOC. The Government of India has from to time issued certain official memoranda in the

form of guidelines for issuance of LOC. The guidelines are issued from time to time in supersession of earlier guidelines or in furtherance of earlier guidelines. The latest of the guidelines operating in the field is the one issued on 22-02-2021. The guidelines read 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 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:-*

- (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.**
- (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 -**
- (i) *Deputy Secretary to the Government of India; or*
 - (ii) *Joint Secretary in the State Government; or*
 - (iii) *District Magistrate of the District concerned; or*
 - (iv) *Superintendent of Police (SP) of the District concerned; or*
 - (v) *SP in CBI or an officer of equivalent level working in CBI; or*

- (vi) *Zonal Director in Narcotics Control Bureau (NCB) or an officer of equivalent level [including Assistant Director (Ops.) in Headquarters of NCB]; or*
 - (vii) ***Deputy Commissioner or an officer of equivalent level in the Directorate of Revenue Intelligence or Central Board of Direct Taxes or Central Board of Indirect Taxes and Customs; or***
 - (viii) ***Assistant Director of Intelligence Bureau/Bureau of Immigration (BOI); or***
 - (ix) ***Deputy Secretary of Research and Analysis Wing (R & AW); or***
 - (x) ***An officer not below the level of Superintendent of Police in National Investigation Agency; or***
 - (xi) ***Assistant Director of Enforcement Directorate; or***
 - (xii) ***Protector of Emigrants in the office of the Protectorate of Emigrants or an officer not below the rank of Deputy Secretary to the Government of India; or***
 - (xiii) ***Designated officer of Interpol; or***
 - (xiv) ***An officer of Serious Fraud Investigation Office (SFIO), Ministry of Corporate Affairs not below the rank of Additional Director (in the rank of Director in the Government of India); or***
 - (xv) ***Chairman / Managing Directors / Chief Executive of all Public Sector Banks.***
- (C) ***LOC can also be issued as per directions of any Criminal Court in India. In all such cases, request for opening of LOC shall be initiated by the local***

police or by any other Law Enforcement Agencies concerned so that all parameters for opening LOCs are available.

(D) The name and designation of the officer signing the Proforma for requesting issuance of an LOC must invariably be mentioned without which the request for issuance of LOC would not be entertained.

(E) The contact details of the Originator must be provided in column VI of the enclosed Proforma. The contact telephone/mobile number of the respective control room should also be mentioned to ensure proper communication for effective follow up action. Originator shall also provide the following additional information in column VI of the enclosed Proforma to ensure proper communication for effective follow up action:-

(i) Two Gov/ NIC email IDs

(ii) Landline number of two officials

(iii) Mobile numbers of at least two officials, one of whom shall be the originator

(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 Bol 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 in Bol 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 Bol 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, 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.***
- (M) ***The following procedure will be adopted in case statutory bodies like the NCW, the NHRC and the National Commission for Protection of Children's Rights request for preventing any Indian/ foreigner from leaving India. Such requests along with full necessary facts shall be brought to the notice of law enforcement agencies like the police. The Superintendent of Police (S.P.) concerned will then make the request for issuance of an LOC upon an assessment of the situation, and strictly in terms of the procedure outlined for the purpose. The immigration/emigration authorities will strictly go by the communication received from the officers authorized to open LOCs as detailed in Clause (B) above.***
- (N) *For effective and better interception of LOC subjects, following guidelines shall be followed by the Originator:-*

- (i) *Specific action to be taken by the Immigration authorities on detection must be indicated in the filled LOC proforma.*
- (ii) *In case of any change in parameters / actions / investigating officer/ Originator contact details or if any court order is passed in the case, the same should be brought to the notice of the BoI immediately by the originating agency concerned for making necessary changes in the LOC.*
- (iii) ***For LOCs originated on court orders, the concerned PS / IC should send the identifying parameters of the subject to the BoI as court orders contain only name and parentage of the subject./***
- (iv) ***In case an LOC is challenged and stayed by the concerned court or a court issues any directive with regard to the LOC, the Originator must inform the BoI urgently and accordingly seek amendment/deletion of the LOC..***
- (v) ***Whenever the subject of LOC is arrested or the purpose of the LOC is over, a deletion request shall be sent by the Originator immediately to the BoI.***
- (vi) *The Originator must respond promptly whenever the subject / likely match is detected at the ICP. The confirmation regarding the identity of the subject and action to be taken must be informed immediately to the ICP.*
- (vii) *The BOI would form a team to coordinate matters regarding the LOC. This team would contact the LOC issuing agencies to get the status of LOC updated.*
- (viii) *Each LOC Originating Agency referred in para 6 (B) above will appoint a Nodal officer as indicated in Annexure - I for coordination/ updation of LOC*

status with BoI. The said team of BoI [as mentioned in para 6(N) (vii)] would remain in constant touch with this Nodal Officer.

7. *It is requested that the consolidated guidelines as contained in this O.M. may be brought to the notice of all concerned for strict compliance."*

In the recitals of the guidelines it is clearly indicated that LOC is to be opened in the proforma under certain circumstances. Recourse to LOC can be taken in cognizable offences under the IPC or other penal laws. In exceptional cases LOC can be issued regarding economic offences as well. LOC once issued shall remain in force until and unless a deletion request is made by the originator. The originator in the case at hand is the 2nd respondent/Bank. The request dated 25-02-2022 for issuance of LOC against the petitioner reads as follows:

"Bank of Baroda

BCC:SAM:LOC:114/309

25-02-2022

*The Deputy Director,
Bureau of Immigration (BoI),
East Block-VIII, Sector-1,
R.K.Puram, NewDelhi-110 066
Ph.011-26192796, 011-26192883 (Fax).*

Dear Sir,

Re: Request for issuance/opening of Look Out Circulars against (1) Mr.Mohamed Farouk Suleman Darvesh @

Mohamed Farook Suleman Darvesh, (2) Mr. Manoharlal Satramdas Agicha, (3) Mr. Farooq Ali Khan, (4) Mr. Sidarrtha Srichand Agicha, (5) Mr. Ebrahim Suleman Darvesh, (6) Mr. Nooruddin Khan, (7) Mr. Yahya Mohamed Farouk Darveh, (8) Mr. Srichand Satramdas Agicha, (9) Mr. Himayath Ali Khan, (10) Mrs. Sabana Oosman Darvesh @ Shabana Usman Darvesh, Director and/or Guarantors in M/s Assciate Décor Limited.

This is with reference to the consolidated guidelines dated 22-02-2021 issued by the Government of India, Minsitry of Home Affairs, Foreigners Division (Immigration Section), and Letter dated 22-11-2018 of the Department of Financial Services (DFS) whereby the "Chairman/Managing Director/Chief Executives of all Public Sector Banks" are also empowered to make request for opening of Look Out circular (LOC) against Indian Citizens and Foreigners.

In terms of the same our Managing Director and CEO, Mr. Sanjiv Chadha has given his sanction for issuance of request for opening of LOC against (1) Mr.Mohamed Farouk Suleman Darvesh @ Mohamed Farook Suleman Darvesh, (2) Mr. Manoharlal Satramdas Agicha, (3) Mr. Farooq Ali Khan, (4) Mr. Sidarrtha Srichand Agicha, (5) Mr. Ebrahim Suleman Darvesh, (6) Mr. Nooruddin Khan, (7) Mr. Yahya Mohamed Farouk Darveh, (8) Mr. Srichand Satramdas Agicha, (9) Mr. Himayath Ali Khan, (10) Mrs. Sabana Oosman Darvesh @ Shabana Usman Darvesh.

We enclose herewith the proforma/request for issuance of Look Out Circular (LOC) in the name of (1) Mr.Mohamed Farouk Suleman Darvesh @ Mohamed Farook Suleman Darvesh, (2) Mr. Manoharlal Satramdas Agicha, (3) Mr. Farooq Ali Khan, (4) Mr. Sidarrtha Srichand Agicha, (5) Mr. Ebrahim Suleman Darvesh, (6) Mr. Nooruddin Khan, (7) Mr. Yahya Mohamed Farouk Darveh, (8) Mr. Srichand Satramdas Agicha, (9) Mr. Himayath Ali Khan, (10) Mrs. Sabana Oosman Darvesh @ Shabana Usman Darvesh duly signed (DIGITALLY) by our Managing Director and CEO and request you to issue/open LOCs against (1) Mr.Mohamed Farouk Suleman Darvesh @ Mohamed Farook Suleman Darvesh, (2) Mr. Manoharlal Satramdas Agicha, (3) Mr. Farooq Ali Khan, (4) Mr. Sidarrtha Srichand Agicha, (5) Mr. Ebrahim Suleman Darvesh, (6) Mr. Nooruddin Khan, (7) Mr. Yahya Mohamed Farouk Darveh, (8) Mr. Srichand Satramdas Agicha, (9) Mr. Himayath Ali Khan, (10) Mrs.

Sabana Oosman Darvesh @ Shabana Usman Darvesh at the earliest.

Yours faithfully

*Sd/-
A.S.Chakma,
Assistant General Manager,
Stressed Asset Management Vertical."*

(Emphasis added)

The Bank requests the Bureau of Immigration to issue LOC against the petitioner and several others. The reason for seeking issuance of LOC is conspicuously absent in the communication. The Managing Director of the 2nd respondent Bank has sanctioned issuance of request for opening a LOC against the petitioner and others is all that the communication mentions. The said request for LOC leads issuance of one which the 1st respondent seeks to execute. The communication made by the Bank reads as follows:

"Bank of Baroda

BOB:SAMMUM/ADL/03/102

7th March 2022

Letter to the LOC Subjects

*Mr. Himayath Ali Khan,
393, 2nd Main Road, Near Bank of India,
1st Block, R.T.Nagar,
Bengaluru - 560 032.*

Dear Sir,

Re: A/c M/s ASSOCIATE DÉCOR LIMITED with our Bank.

Please refer to the captioned Loan Account with our Bank. The account is having outstanding of Rs.163.48 Crore.

This is to inform you that bank has requested immigration authorities to issue Look Out Circular against you as you have defaulted in repayment of huge dues to the Bank in the above mentioned account.

Yours faithfully,

Sd/-
(Deputy General Manager)"

(Emphasis added)

The afore-quoted communication is what is communicated to the petitioner by the Bank which reads that the Bank has requested Immigration Authorities to issue LOC against the petitioner for defaulting in repayment of huge dues to the Bank. The petitioner is not an accused in any crime. He is not the Director who had signed on the dotted lines seeking any loan. The petitioner who is described as Director has produced abundant material to demonstrate that he is only non-functional Director. The list of guarantors is also extracted hereinabove. The petitioner is not shown as a guarantor to any kind of loan advanced. If the

petitioner has no role to play in the entire transaction, issuance of LOC against him can hardly be justified.

14. The issuance of LOC which comes about on 07-03-2022 with the 2nd respondent being the originator is bereft of reasons as to why the Bank wants curtailment of travel of the petitioner. The afore-quoted excerpts of the loan document nowhere indicates that the petitioner is the borrower; no criminal proceedings are pending against him; there is an embargo ordered by the Court for him to travel, nor that the petitioner is likely to evade trial if he is permitted to travel to UAE. The petitioner, even if it is construed to be that he is the Director of the Company, the travel of a citizen cannot be curtailed by the Bank on the ground that he is in default of loan amount. Issuance of LOC has serious repercussions, first of which is that he will not be able to move out of the shores of the nation, notwithstanding any embargo placed by any Court of law.

15. The issue whether a LOC can be issued against a Director of a Company against whom no proceedings are initiated or pending before any Court of law is no longer *res integra*, as the Division

Bench of the High Court of Madras in the case of **KARTI P.CHIDAMBARAM v. BUREAU OF IMMIGRATION**¹ has held as follows:

"62. In a Writ Petition (Crl) No. 1315 of 2008 being Sumer Singh Salkan v. Assistant Director, the High Court of Delhi passed a judgment and order dated 11.8.2010 formulating and answering certain questions relating to issuance of Look Out Circulars for the guidance of concerned agencies. In answer to the questions as to what were the categories of cases in which the Investigating agency could seek recourse to Look Out Circular, and under what circumstances, the High Court held that "recourse to Look Out Circular can be taken by the Investigating agency in cognizable offences under Penal Code, 1860 or other penal laws, where the accused was deliberately evading arrest or not appearing in the trial Court despite Non-Bailable warrant and other coercive measures and there was likelihood of the accused leaving the country to evade trial/arrest."

63. Look Out Circulars are coercive measures to make a person surrender to the Investigating agency or the Court of law. In accordance with the order dated 26.7.2017 of the High Court of Delhi, the Ministry of Home Affairs issued Official Memorandum dated 27.10.2010 laying down the guidelines for issuance of Look Out Circulars. The said Circular provided:

"Recourse to Look Out Circular is to be taken in cognizable offences under IPC or other penal laws. The details in column IV in the enclosed proforma or regarding reason for opening LOC's must invariably be provided without which the subject of an LOC will not be arrested/detained."

64. The mandate of the Office Memorandum dated 27.10.2010, that a request for issuance of an LOC would necessarily have to contain reasons for such request makes it clear

¹ 2018 SCC OnLine Mad 2229

that the condition precedent for issuance of an LOC is the existence of reasons, which should be disclosed in the request for issuance of an LOC.

65. Pursuant to the directions of this Court, the respondents have filed their counter affidavit. The counter affidavit does not disclose the reasons for making a request for issuance of an LOC. The impugned LOC is liable to be set aside on that ground alone.

66. Sections 41, 41-A and 41-B of the Code of Criminal Procedure, 1973 are set out hereinafter for convenience:

"41. When police may arrest without warrant.—(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—

- (a) who commits, in the presence of a police officer, a cognizable offence;
- (b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:—
 - (i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;
 - (ii) the police officer is satisfied that such arrest is necessary—
 - (a) to prevent such person from committing any further offence; or
 - (b) for proper investigation of the offence; or
 - (c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or
 - (d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

- (e) *as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing:*

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.

- (ba) *against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence;*
- (c) *who has been proclaimed as an offender either under this Code or by order of the State Government; or*
- (d) *in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or*
- (e) *who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or*
- (f) *who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or*
- (g) *who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or*
- (h) *who, being a released convict, commits a breach of any rule made under sub-section (5) of section 356; or*
- (i) *for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the*

arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Subject to the provisions of section 42, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.

41A. Notice of appearance before police officer.—(1) The police officer shall], in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

- (2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.*
- (3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.*
- (4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.*

41B. Procedure of arrest and duties of officer making arrest.— Every police officer while making an arrest shall—

- (a) bear an accurate, visible and clear identification of his name which will facilitate easy identification;*
- (b) prepare a memorandum of arrest which shall be—*

- (i) attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made;
 - (ii) countersigned by the person arrested; and
- (c) inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend named by him to be informed of his arrest."

67. Section 41(2) clearly provides that subject to the provisions of Section 42, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned is to be arrested except under a warrant or order of a Magistrate.

68. Section 42 provides for arrest of a person who in the presence of a police officer, has committed or has been accused of committing a non-cognizable offence refuses, on demand of such officer to give his name and residence or gives a name or residence which such officer has reason to believe to be false. Even in such cases, when the true name and residence of such person have been ascertained, he is to be released on his executing a bond with or without sureties to appear before a Magistrate if so required.

69. The conditions precedent for arrest under Section 41 of the Code of Criminal Procedure without warrant as set forth in sub-sections (a) to (i) of Section 41(1) were wholly absent atleast as on the date of issuance of the Look Out Circular. In any case, there was no attempt to arrest the petitioner without warrant atleast as on 15.06.2017 when notice under Section 41-A was issued to the petitioner to appear before the Investigating officer on 29.6.2017. A notice under Section 41A of the Criminal Procedure Code is issued directing the accused to appear before the Investigating Officer, when arrest of a person is not required, as observed by the Supreme Court in *Arnesh Kumar*, supra.

70. The legality and/or validity of a Look Out Circular has to be adjudged having regard to the circumstances prevailing on the date on which the request for issuance of the Look Out Circular had been made.

71. As observed above, the FIR against the petitioner was lodged on 15.05.2017. Notice was issued on 15.6.2017 calling upon the petitioner to appear before the Station House Officer/Investigation Officer on 29.6.2017. On the very next day i.e., 16.6.2017, the impugned Look Out Circular was issued. As on the date of issuance of the Look Out Circular, there could have been no reason to suppose that the petitioner would not appear before the Station House Officer/Investigation Officer.

72. On behalf of the respondents, it has been contended that the petitioner did not appear on 29.6.2017 as directed, but only appeared pursuant to the directions of the Supreme Court. However, as argued by Mr. Subramaniam, the very fact that after issuance of the first notice dated 16.06.2017, which was returnable on 29.06.2017, a further notice was issued on 04.07.2017 granting the petitioner time till 21.07.2017, shows that there was no immediate apprehension of his evading investigation, at least on 04.07.2017. There was, thus, no justification for issuance of the impugned LOC on 16.06.2017, the validity whereof has expired, in any case, after one year.

73. As observed above, the issuance of Look Out Circulars is governed by executive instructions as contained in the Office Memoranda Nos. 25022/13/78-F1 dated 05.09.1979 and 25022/20/98-FIV dated 27.12.2000, as modified by Office Memorandum dated 27.10.2010. Such LOCs cannot be issued as a matter of course, but when reasons exist, where an accused deliberately evades arrest or does not appear in the trial Court. The argument of the learned Additional Solicitor General that a request for Look Out Circular could have been made in view of the inherent power of the investigating authority to secure attendance and cooperation of an accused is contrary to the aforesaid circulars and thus, not sustainable.

74. It is, in the view of this Court, too late in the day to contend that whether or not to issue an LOC, being a executive decision, the same is not subject to judicial review. It is now well settled that any decision, be it executive or quasi-judicial, is amenable to the power of judicial review of the writ Court under Article 226 of the Constitution of India, when such decision has adverse civil

consequences. An LOC, which is a coercive measure to make a person surrender and consequentially interferes with his right of personal liberty and free movement, certainly has adverse civil consequences. This Court, therefore, holds that in exercise of power of judicial review under Article 226 of the Constitution, the writ Court can interfere with an LOC. The question is whether the writ Court should exercise its discretionary jurisdiction to interfere with the impugned LOC.

75. In view of the finding of this Court that the conditions precedent for issuance of the impugned LOC were absent, and the impugned LOC is liable to set aside on that ground, we need not go into the questions of whether an LOC could have been issued without statutory sanction, or whether the respondents concerned had jurisdiction to issue the impugned LOC. However, in our view, the Look Out Circular was issued in hot haste when the conditions precedent for issuance of such Circular did not exist. The impugned Look Out Circular is, thus, liable to be set aside.

76. For the reasons discussed above, the impugned LOC is set aside and quashed. It is made clear that the order of this Court setting aside the impugned LOC will not impact the criminal proceedings initiated pursuant to the FIR, referred to above, or any other proceedings initiated against the petitioner.”

(Emphasis supplied)

After the judgment in the case of **KARTI P.CHIDAMBARAM** (*supra*) a fresh set of guidelines are issued by the Union of India. Those guidelines are the ones extracted hereinabove. After the new guidelines coming into force, the Delhi High Court has in the

judgment of **RANA AYYUB v. UNION OF INDIA**² has held as follows:

"12. In the particular facts of the case, it becomes evident that the LOC was issued in haste and despite the absence of any precondition necessitating such a measure. An LOC is a coercive measure to make a person surrender and consequentially interferes with petitioner's right of personal liberty and free movement. It is to be issued in cases where the accused is deliberately evading summons/arrest or where such person fails to appear in Court despite a Non-Bailable Warrant. In the instant case, there is no contradiction by the respondent to the submission of the petitioner that she has appeared on each and every date before the Investigating Agency when summoned, and hence, there is no cogent reason for presuming that the Petitioner would not appear before the Investigation Agency and hence, no case is made out for issuing the impugned LOC.

13. The impugned LOC is accordingly liable to be set aside as being devoid of merits as well as for infringing the Human right of the Petitioner to travel abroad and to exercise her freedom of speech and expression. For the reasons discussed above, the impugned LOC is set aside and quashed. However, a balance has to be struck qua the right of the investigation agency to investigate the instant matter as well as the fundamental right of the petitioner of movement and free speech.

14. Therefore, the instant petition stands allowed in above terms with the conditions that follow hereunder:

- (a) The petitioner shall intimate her travel dates and detailed itinerary to the Investigation Agency forthwith along with the address of the places that the petitioner shall be visiting;**

² 2022 SCC OnLine Del 961

- (b) *The petitioner shall deposit an FDR to the tune of Rs. 1 lakh before the Enforcement Directorate at Mumbai;*
- (c) *The petitioner shall not attempt to tamper with the evidence or influence the witnesses in any manner;*
- (d) *The petitioner shall return to India on the date specified i.e. 11th April 2022; and*
- (e) *The petitioner shall give an undertaking to appear before the Investigation Agency immediately on her return and on dates that might be fixed by the Investigation Agency for interrogation, if any, after the travel period."*

(Emphasis supplied)

The High Court of Delhi in the case of **RANA AYYUB** holds that the LOC is issued against the petitioner therein in the hottest haste as he is not the accused in any crime so registered. The Delhi High Court holds that personal liberty to travel cannot be taken away except in accordance with law permits travel of the petitioner therein. In the light of the afore-quoted judgments of the High Court of Madras and the High Court of Delhi what would unmistakably emerge is, taking recourse to LOC against persons like the petitioner if they have a role to play in the alleged episode of default of payment of loan to the tune of several crores. But, the issue would be whether the 2nd respondent/Bank has demonstrated

that the petitioner has any role to play in the borrowal account and the default.

16. All that the petitioner is now asking is, travel to UAE and Saudi Arabia for the purpose of business and seeks back to the shores of the nation. It is his grievance that the LOC has come in his way. Therefore, in the peculiar facts of this case, I deem it appropriate to permit the petitioner to travel for a brief period and come back to the shores of the nation, after conclusion of his work at UAE and Saudi Arabia. This direction is apt to be issued in the light of the fact that the petitioner is not an accused in any crime registered except the recovery proceedings before the Debts Recovery Tribunal, Bengaluru where he is not a party to the proceedings.

17. For the aforesaid reasons, I pass the following:

ORDER

- (i) Writ Petition is disposed.

- (ii) The petitioner is authorized to travel to United Arab Emirates and Saudi Arabia for a brief period, which is made subject to filing an affidavit of undertaking before this Court that he would complete his work and come back to the shores of the nation within the time as indicated in the said affidavit from the date he starts his journey. The affidavit of undertaking shall be filed before the Registry of this Court, within one week from today.
- (iii) The affidavit of undertaking once filed would be in force so long as the current LOC issued by the 2nd respondent is operating.
- (iv) The petitioner shall intimate his date of travel and arrival to the originating agency who shall communicate it to the Bureau of Immigration on every occasion. It is not permission but information. Such information is to be given by the petitioner so long as the LOC is in operation.

Consequently, pending applications also stand disposed.

**Sd/-
JUDGE**

bkp