

RC No.220 2019 E0006

AAKAR PATEL V. CBI

U/s 11,35 and 39 of FCRA, 2010 r/w 120B IPC

07.04.2022

(Pawan Kumar)
ACMM-02-cum-ACJ
Rouse Avenue District Court
Court Room No. 205
New Delhi

ORDER

Vide this order, I will dispose off the application moved on behalf of the applicant/accused Aakar Patel for cancellation/setting aside of the look out circular (LOC) got issued by the Investigating Agency.

Reply filed by the CBI.

Arguments heard and record perused.

The relevant facts in brief for the disposal of this application are as follows -

The present case was registered against M/s Amnesty India Pvt. Ltd, M/s Indians for Amnesty International Trust, M/s Amnesty International India Foundation Trust, M/s Amnesty International South Asia Foundation on the allegation that in order to evade Foreign Currency Regulation Act, 2010 Amnesty (U.K) has remitted Rs.10 Crore to Amnesty Indian entities, classified as FDI without approval of Ministry of Home Affairs. Further, Rs.26 Crore was remitted to Amnesty India primarily from U.K based entities without MHA's approval. The aforesaid receipts alleged to have been expended on Amnesty's NGO activities in India in violation of FCRA 2010. After the investigation, the charge sheet was filed against the accused Aakar Patel and M/s Amnesty International India Pvt. Ltd. As per the charge sheet, the accused Aakar Patel was then Executive Director of the company and was looking after the day to day affairs of the company. On the basis of the aforesaid facts, the charge



sheet was filed against both the accused for the commission of offences u/s 11 r/w 35 and 39 of FCRA 2010. The charge sheet was filed without arrest of the accused and the same is pending for consideration on the point of cognizance as the mandatory sanction u/s 40 of FCRA, 2010 has not been obtained so far.

As per the application, apart from this case, the applicant / accused is also facing the trial before the Court of Sixth Additional District and Sessions Judge, Surat, Gujarat and the Ld. Trial court vide order dated 19.02.2022 allowed the applicant / accused to travel abroad after releasing the passport for a period from 01.03.2022 to 30.05.2022.

The cause of action for moving this application arose when the applicant / accused reached the Bengaluru International Airport to board a flight with British Airways at 06.50 am on 06.04.2022. The applicant / accused was stopped by the immigration authorities on the ground that there was look out circular (LOC) issued against him by the investigating authorities of the present case FIR. The applicant / accused was scheduled to visit USA as he was invited by number of institutions like New York University, University of Michigan, Berkeley University and other institutions to indulge in the interactive programmes.

It is argued by the Ld. Counsel for the applicant that this LOC was got issued with mala fide intention in violation of the guidelines laid down by various High Courts and the office circulars of the Ministry of Home Affairs. It is further argued that during the course of investigation in this case, applicant joined the investigation on receiving the notice issued by the IO u/s 160 Cr.P.C.

It is also argued that he was not arrested in this case and charge sheet was filed without arrest. Further more, even at the time of filing charge sheet, the accused was not asked for furnishing the security u/s 170 Cr.P.C.



In the reply filed by the CBI, it is stated that the accused being an influential person who is well connected outside India and there was probability of him leaving the country to evade the prosecution. In order to avoid any attempts by the applicant / accused to escape the process of law, the LOC was got opened by CBI.

In order to substantiate his claim, the Ld. Counsel for the applicant relied upon the following judgments -

- (i) **Sumer Singh Salkan vs. Asstt. Director & Ors. (2010 SCC Del 2699)**
- (ii) **Vikas Chaudhary v. Union of India & Ors.(2022 SCC Online Del97)**
- (iii) **Rana Ayyub v. Union of India & Anr. WP (Crl.) 714 of 2022, decided on 04-04-2022.**

In the case of "**Sumer Singh Salkan vs. Asstt. Director & Ors (Supra)**", the High Court while answering the questions raised in the reference passed following remarks:-

"A. Recourse to LOC can be taken by investigating agency on cognizable offences under IPC or other penal laws, where the accused was deliberately evading arrest or not appearing in the trial court despite NBWs and other coercive measures and there was likelihood of the accused leaving the country to evade trial/arrest.

B. The investigating Officer shall make a written request for LOC to the officer as notified by the circular of Ministry of Home Affairs, giving details & reasons for seeking



LOC. The competent officer alone shall give directions for opening LOC by passing an order in this respect.

C. The person against whom LOC is issued must join investigation by appearing before I.O or should surrender before the court concerned or should satisfy the court that LOC was wrongly issued against him. He may also approach the officer who ordered issuance of LOC & explain that LOC was wrongly issued against him. LOC can be withdrawn by the authority that issued and can also be rescinded by the trial court where the case is pending or having jurisdiction over concerned police station on an application by the person concerned.

D. The LOC is a coercive measure to make a person surrender to the investigating agency or court of law. The subordinate courts jurisdiction in affirming or cancelling LOC is commensurate with the jurisdiction of cancellation of NBWs or affirming NBWs."

Ld. counsel for the applicant argued that as per the office memorandum bearing no. 2506/31/2010-IMM dated 27.10.2010, the office memorandum made the reference of the judgment of the Delhi High Court in "**Sumer Singh Salkan vs. Asstt. Director & Ors. (Supra)**" case. The said memorandum was issued after the observation of High Court of Delhi in the above said case. As per the office memorandum, the LOC will remain in force for one year and has to be renewed thereafter.

In the case of "**Vikas Chaudhary v. Union of India (supra)**", it is observed that power of issuance of LOC is meant to be used in exceptional circumstances and not as a matter of routine.



In a recent judgment passed by Hon'ble Mr. Justice Chandra Dhari Singh, in the case of "*Rana Ayyub v. Union of India (supra)*", it is observed that -

"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 Investigating Agency and hence, no case is made out for issuing the impugned LOC.

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 reason 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."



As per the judgment of Delhi High Court in "**Sumer Singh Salkan vs. Asstt. Director & Ors. (Supra)**", it is directed that the person against whom LOC is issued must join investigation by appearing before the IO or surrender the court concerned or should satisfy the court that LOC was wrongly issued against him. As per the judgment, the LOC can be rescinded by the trial court where case is pending on an application of the person concerned. The LOC is a coercive measure to make a person surrender to the investigating agency or court of law. The purpose of the LOC is mainly to ensure the presence of the concerned person before the Investigation Agency or the court. As per the judgment of "**Sumer Singh Salkan vs. Asstt. Director & Ors (Supra)**", the trial court has jurisdiction in affirming or canceling the LOC in commensurate with the jurisdiction of cancellation of NBWs or affirming NBWs.

It is the settled proposition of law as laid down by the Apex Court in various judgments that there cannot be any unfettered control/restriction on the right to travel and it is the part of fundamental rights and enshrined under Article 19 and 21 of the Constitution.

On perusal of the observations made by the High Court in various judgments, it can be said that LOC can be issued by the competent authority on the application moved by the Investigating agency in cognizable offences, where the accused was deliberately evading arrest or not appearing in trial court despite NBWs and other coercive measures and there are apprehensions that the accused may evade trial or arrest.

In the present case, it is admitted that during the investigation, the accused had joined the investigation on the notice issued u/s 160 Cr.P.C. Apart from the notice u/s 160 Cr.P.C, no other process or warrant was issued against the accused for his appearance. It is also admitted that after the investigation, the charge sheet has been filed without arrest of the accused. The only reason stated in the reply for the issuance of LOC is the apprehension that he may



leave the country to evade the prosecution. As per CBI, the LOC was got issued on the suspicion of the accused being the flight risk. In the reply, it is specifically mentioned that "Accordingly, it was decided by CBI to open a look out circular against the accused Aakar Patel to thwart any attempt, if any, by him to escape the process of law, the accused to prevent him from leaving India". Here it is pertinent to mention that if the accused was a flight risk during the investigation or during the trial, he would have been arrested during the investigation. There is an inherent contradiction in the stand taken by CBI, on the one hand, CBI claims that the LOC was got issued as the applicant was a flight risk, and in contradiction to that the accused was not arrested during the investigation and charge sheet was filed without arrest. Further, no explanation is forthcoming from the CBI as to what precaution or measures were taken during the investigation or at the time of filing the charge sheet to ensure the presence of the accused during the trial.

Interestingly, as informed by the IO the application for the issuance of LOC was moved on the day, the charge sheet was complete and dispatched for filing in the court. It shows that it is not the case of oversight or ignorance rather it is a deliberate act of the investigating agency to put restriction on the valuable rights of the accused.

It is not the case of the investigating agency that the accused had evaded his arrest or did not join the investigation. It is important to mention that the LOC was got issued after dispatch of charge sheet on 31.12.2021. In the course of arguments, it is informed by the IO on the query of the court that the application for LOC was moved by the concerned SP after taking the approval of competent authority i.e. Joint Director of CBI to MHA on 31.12.2021. It shows that there was no requirement of LOC till the completion of the investigation. If the argument of the CBI is to be believed, the LOC was got issued merely for the purpose of ensuring the presence of the accused before the Court during the trial.



In the Criminal Procedure Code, 1973, there are provisions for ensuring the appearance of the accused regularly during the trial. In case, the accused is arrested during the investigation, then, he may be released after taking the sufficient security in the form of bail bonds / surety bonds of appropriate amount. In other cases, where the charge sheet is filed without arrest of the accused, the Court may take sufficient security from the accused for appearance during the trial. In the case in hand, the charge sheet has been filed and the cognizance is not taken so far for the reason that the application for grant of sanction u/s 40 of FCRA, 2010 is still pending before MHA.

On perusal of the application filed by the applicant/accused and reply filed by the CBI, it is very much clear that the applicant/accused joined the investigation as and when notice was issued. The accused was never arrested by the agency during the investigation. The apprehension raised by the CBI that he may evade the trial or flee from justice during the trial has no basis and appears to be mere apprehension without any sufficient grounds. The application for issuance of LOC appears to be moved without application of mind and having no justified reason for the same.

Considering the facts and circumstances of this case and the law laid down by the High Court of Delhi, this court is of the considered view that the LOC is liable to be set aside, therefore, the CBI is directed to withdraw / recall the LOC issued against the accused immediately. The CBI is directed to take the appropriate action and give intimation to the concerned authority regarding the same. Compliance report of the withdrawal of LOC be filed on 08.04.2022 at 04.00 pm.

Before parting with the order on the application, it is relevant to note that the recourse of the stringent provisions of issuance of LOC has bearing upon the fundamental rights of the person. It is repeatedly observed by various High Courts that such measure should be taken cautiously and in



exceptional circumstances. In the case in hand, there was no such ground or reason for issuance of LOC. LOC should not have been issued merely on the basis of apprehensions arising out of whims and fancies of the investigating agency. As stated by the IO that moving the application for issuance of LOC was a collective decision and the Supervising Authorities till Joint Director, CBI were involved in it. Before issuance of LOC, the consequences on the rights of the affected person should have been foreseen. The fundamental rights of any person can not be curtailed without any procedure established by law. Apparently, the LOC in the present case was got issued in violation of the guidelines laid down by the High Court of Delhi and office memorandum of the concerned Ministry. This act of the investigating agency has caused monetary loss of around Rs.3.8 lac to the applicant / accused as he has missed his flight and he was not allowed to board because of the LOC issued against him. It is correct that the discretion for moving the application of LOC lies with the investigating agency but the discretion can not be exercised arbitrarily without any justifiable reasons or grounds. In the present scenario, the Director, CBI is expected to sensitize the officials who are part of the issuance of LOC. It is further expected that accountability of the concerned officials in this case be fixed.

Ld. Counsel for the applicant has sought compensation for the loss caused to the applicant due to the action of the investigating agency. The applicant is at liberty to approach the appropriate forum for compensation for the loss caused to him. However, word compensation is a generic term and can not be restricted to monetary compensation only. In the case at hand, apart from the monetary loss, the applicant had suffered mental harassment as he was not allowed to visit on the scheduled time. The applicant can approach the court or other forum for the monetary compensation. This court is of the considered opinion that in this case, a written apology from the head of the CBI i.e. Director, CBI acknowledging the lapse on the part of his subordinate, to the applicant would go a long way in not only healing the wounds of the applicant



but also upholding the trust and confidence of the public in the premier institution. Reliance is placed upon the judgment of High Court of Delhi in the matter of "**Prem pal and Ors. v. Commissioner of police**" WP(C.No.11079/2006) Date of decision – 25.03.2010. It has been observed in the matter of Prem pal (Supra) that -

"if confidence has to be restored among the citizenry that the police is meant to protect their rights, then such expression of contrition by those at the helm is an imperative".

A copy of the order be accordingly sent to Worthy Director, CBI for ensuring compliance. It is expected that this court shall be duly apprised about the compliance of the order.

Accordingly, the application stands disposed off.

Copy of the order be given dasti to the IO and the counsel for the applicant.

Put up for compliance report of Worthy Director, CBI on

30.04.2022.



True copy.

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Reader

-Sd-
(PAWAN KUMAR)
ACMM-2 CUM ACJ,

RADC, NEW DELHI: 07.04.2022
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Rouse Avenue District Court Complex,
New Delhi