



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF SEPTEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE HEMANT CHANDANGOUDAR

WRIT PETITION NO. 17027 OF 2023 (GM-RES)

Between:

Sri. Sudarshan Ramesh

...Petitioner

(By Sri. Sandesh J. Chouta, Senior Counsel for
Sri. Gaurav N., Advocate)

And:

1. Union of India
By Ministry of Home Affairs,
Jai Singh Marg, Hanuman Road Area,
Connaught Place, New Delhi - 110 001
Represented by its Home Secretary.
2. Bureau of Immigration,
Ministry of Home Affairs,
5th Floor, A Bock, TTMC,
BMTB Bus Stand Building,
K.H.Road, Shanti Nagar,
Bengaluru - 560027.
3. Directorate of Enforcement,
Ministry of Finance,
Government of India,
Bengaluru Zonal Office,



BMTC B Block, 3rd Floor,
Shanti Nagar, K.H.Road,
Wilson Garden,
Bengaluru - 560027
Represented by its Deputy Director.

...Respondents

(By Sri. Sundareshan, Addl. Solicitor General of India,
Sri. Madhukar M.Deshpande, Advocate for R3;
Sri. H.Shanthi Bhushan, Deputy Solicitor General of India,
for R1 & R2)

This Writ Petition is filed under Article 226 of the Constitution of India, 1950 read with section 482 of the Code of Criminal Procedure, 1973 praying to call for records pertaining to the LOC issued by the R2 Bureau of Immigrations (BOI) against the petitioner herein, at the request made by Originating Agency that is the R3 (Enforcement Directorate) and etc.

This Writ Petition, coming on for further hearing, this day, the court made the following:

ORDER

The order dated 09.06.2023 passed by the 3rd respondent at Annexure 'A', by which, the petitioner's request to revoke the Look Out Circular ('LOC' for short) against him has been rejected.

2. The Crime Investigation Department registered the FIR in Cr.No.9/2019 against 19 accused alleging that they had hacked the E-Procurement Portal of Government of Karnataka, and in the said crime the petitioner's brother is arrayed as accused No.1. The police after investigation laid the charge sheet for the offences under Sections 120B, 201, 204, 384,



419, 420 r/w Sections 34, 35 and 37 of IPC and Sections 43, 66, 66(C) and (D) of the Information Technology Act, 2000.

3. The respondent No.3 initiated proceedings in ECIR.No.4/2020 under the provisions of Prevention of Money Laundering Act, 2002 ('Act' for short) against the petitioner's brother and other accused.

4. On 27.11.2020, the Central Crime Branch registered the FIR in Cr.No.153/2020 against the petitioner's brother and other accused for the offence punishable under Section 120B, 384, 419, 420 and 471 IPC alleging that the accused had hacked the inter poker games. Based on the registration of the FIR in Cr.No.153/2020, respondent no.2 initiated proceedings in ECIR No.1/2021 under the provisions of the Act against the petitioner's brother and other accused.

5. The petitioner who was working at Netherlands came to India on 12.08.2021, and he was issued with summons under Section 50 of the Act to appear before the 3rd respondent in ECIR.No.1/2021 and pursuant to the same he appeared on 29.12.2021, 30.12.2021 and 01.01.2022 and his statements were recorded on the said dates of his appearance. On 13.01.2022, when the petitioner was to board his flight to Netherlands, at that time, the respondent - authorities restrained the petitioner from proceeding to Netherlands and affixed an endorsement on the petitioner's passport with the seal 'Cancelled'. However the copy of the LOC was not furnished to the petitioner.



6. The petitioner filed W.P.No.1730/2022 for quashing the endorsement on his passport. During the pendency of the petition, the 3rd respondent issued summons under Section 50 of PML Act to appear in ECIR 1/2021, and in furtherance thereto, the petitioner appeared on 05.05.2022, and his statements were recorded. On 31.05.2022, the petitioner was again issued with summons under Section 50 of the PML Act in ECIR 1/2021 and in furtherance thereto the petitioner appeared and his statements were recorded on 01.06.2022. The W.P.No.1730/2022 was rejected and liberty was reserved to the petitioner and it was left open to the petitioner to cooperate with the investigation and convince the investigating agency that he had no role in the money laundering case registered against his brother, and thereafter request for withdraw of the LOC issued against him.

7. The petitioner filed writ appeal, and in the said writ appeal, the petitioner filed an application for withdrawal of the writ appeal. However, the writ appeal was dismissed for want of prosecution. The petitioner having not received any summons from the 3rd respondent submitted representation to revoke the LOC. Since the petitioner's request was not acceded to, the petitioner was compelled to approach this court in W.P.No.30/2023. During the pendency of the writ petition, the petitioner was issued with summons to appear on 24.02.2023. The W.P.No.30/2023 was disposed of reserving liberty as set out in para 15 of the order and direction was issued to complete the investigation insofar it relates to the



petitioner within an outer limit of six weeks, and thereafter the respondent no.3 shall consider the representation submitted by the petitioner for withdraw of the LOC.

8. Despite the order passed by this court, the 3rd respondent did not consider the request of the petitioner. However, the email was sent to the petitioner calling upon him to be present on 11.05.2023. In furtherance of the email received, the petitioner appeared before the court on 11.05.2023 and his further statement was recorded. The six weeks time granted by this court to complete the investigation against the petitioner expired on 30.04.2023. Thereafter the 3rd respondent issued the impugned order rejecting the submitted by the petitioner for withdrawal of the LOC on 09.06.2023.

9. Sandesh J. Chouta, learned senior counsel would make the following submission:

i) In the absence of cognizable offence registered against the petitioner and in the absence of reasonable grounds, the petitioner cannot be repeatedly summoned which would otherwise result in violating the principles of fairness, justice and the Rule of Law, more so when the petitioner has cooperated with the investigation. The Petitioner cannot be expected to give a self incriminating statement which would otherwise result in dilution of rights under Section 50 of the Act. In support, he places reliance on the decision of



Hon'ble Supreme Court in the case of Selvi v State of Karnataka (2010) 7 SCC 263.

ii) The writ petition filed under Article 226 r/w Section 482 Cr.P.C. is maintainable, since the petitioner in this petition is seeking quashment of LOC which has emanated from the proceedings under the PMLA , depriving his right to travel.

10. In support, he places reliance on the decision of the Hon'ble Supreme Court in the case of ASIAN RESURFACING OF ROAD AGENCY PRIVATE LIMITED AND ANOTHER -vs- CENTRAL BUREAU OF INVESTIGATION, reported in (2018) 16 SCC 299.

11. Mr. Sundareshan, learned Additional Solicitor General of India for the respondents would make the following submissions:

i) Firstly, the present petition under Article 226 r/w 482 of Cr.P.C. is not maintainable, since the fundamental rights enshrined in the constitution can be enforced only under Article 226 of Constitution of India.

ii) Secondly, there are reasonable grounds for summoning the petitioner to record his statement for investigation of the offence under PMLA against his brother. Therefore, if the LOC issued against the petitioner is withdrawn, the petitioner in all probability will abscond and not available for further investigation in future.



iii) Thirdly, petitioner is not cooperating in the investigation by providing information with regard to the Password and email I.D. of the transaction that has taken place between his father and third party, wherein a sum of Rs.50,000 GBP (Great Britain Pounds) was transferred from the account of the petitioner to the account of one Mr. Hanish Patel and though the petitioner has the knowledge of the said transaction, he has not divulged the information.

12. In support, he places on the reliance on the decision of the Hon'ble Supreme Court in the case of Vijay Madanlal Choudhary and others - vs - Union of India and others

13. Considered the submissions made by the learned counsel for the parties.

14. The primary issue before this court is whether the summoning of the petitioner under section 50 of PMLA on suspicion alone is legally permissible.

15. The concept to issue Look-out circular is to secure a person against whom the cognizable offence is registered. It is well settled law that the LOC can be issued under the following circumstances:

a) In a cognizable offences under IPC or other penal laws, where the accused was deliberately evading arrest or not appearing before the Trial Court despite Non Bailable Warrant (NBW) and other coercive measures, and the accused



is not participating in the trial, and every likelihood of the accused leaving the country. In exceptional circumstances, the LOC can be issued against the witness, in the event, he does not cooperate with the investigation.

16. In the instant case, there is no cognizable offence registered against the petitioner nor a non-bailable warrant is issued against the petitioner. The petitioner is summoned solely on the ground that his brother has been implicated as an accused in the scheduled offences and under the PMLA, and also alleging that his father had transferred 50,000 GBP which is the proceeds of the crime to a third party.

17. The contention of the learned counsel for the respondents is that though the petitioner had the knowledge of transaction between his father and one Mr.Hanish Patel, he has not divulged the said information, and further the information given by the petitioner is not satisfactory, and the petitioner is deliberately suppressing the material information. Therefore, the Look Out Circular, at this stage, cannot be withdrawn.

18. Section 50 is a crucial provision and states that a person, who is being summoned for investigation must be provided with a written notice specifying the nature and the reasons for it. While the said provision does not explicitly use the term " Probable cause", it emphasizes the importance of providing valid reasons and grounds for summoning an individual. The purpose of this provision is to protect the right



of the person being summoned and ensure that investigation is not arbitrary. The summoning of a person repeatedly without probable cause or reasonable ground and only on the ground of suspicion alone is not in accordance with the principles of due causes and fairness.

19. The Hon'ble Supreme Court in the case of Vijay Madanlal (supra) has held as follows:

"The sweep of Section 5(1) is not limited to the accused named in the criminal activity relating to a scheduled offence. It would apply to any person, if he is involved in any process or activity connected with the proceeds of the crime.

Summon is issued by the Authority under Section 50 in connection with enquiry regarding proceeds of crime which may have been attached and pending adjudication before the adjudicating authority. At the stage of recording of statement for the purpose of enquiring into the relevant facts in connection with the property being proceeds of crime is, in that sense, not an investigation for prosecution as such; and in any case, there would be no formal accusation against the noticee. Such summon can be issued to witnesses in the enquiry so conducted by the authorised officials. However, after further enquiry on the basis of other material and evidence, the involvement of such person is revealed, the authorised official can certainly proceed against him for the commission or omission. Therefore, the noticee cannot claim protection under Article 20(3) of Constitution of India."

(Emphasis supplied)



20. The Petitioner was summoned under Section 50 of the PMLA, 2002, on several occasions, and in pursuance of the same, he appeared and his statement was recorded, and in the statement so recorded, nothing incriminating is elicited to summon him for further investigation. LOC cannot be issued solely on the ground that the petitioner has not provided information to the convenience and satisfaction of the respondent No.2, and in the absence of any material that the petitioner was aware of the transactions between his father and one Mr. Hanish Patel, the petitioner cannot be repeatedly summoned to give information to suit the convenience of the prosecution.

21. It is well established in law that a person can be summoned to give statements during the course of investigation only when there exists a reasonable ground to believe that the said person has knowledge or information with regard to the commission of a crime. The principle of reasonable suspicion/ probable cause is fundamental to the criminal justice system and it ensures that persons are not subjected to investigation or summoned to give statements during the course of investigation which would otherwise result in violating the principles of fairness, justice and the Rule of Law, more so when the petitioner has cooperated with the investigation. The Respondent has not placed any material to substantiate that the suspicion or reasonable ground to summon petitioner is based on credible information, except that he is the brother of the accused.



22. The Hon'ble Supreme Court in the case of SELVI AND OTHERS -VS- STATE OF KARNATAKA, reported in (2010) 7 SCC 263 at para 262 with reference to Article 20(3) and 161(2) Cr.P.C., has held that these provisions protect the accused, suspects and witnesses from being compelled to make self incriminating statements and the person concerned has right to remain silent on questions which may incriminate him.

23. Therefore, in the absence of any reasonable suspicion leave alone probable cause, the LOC issued for securing the presence of the petitioner for recording further statements would be arbitrary and violate the fundamental rights enshrined under Article 21 of the Constitution of India.

REGARDING MAINTAINABILITY

24. The petitioner has challenged the order rejecting the request for withdrawal of LOC on the ground that he cannot be subjected to investigation indefinitely on the ground of suspicion alone, since the petitioner is not prosecuted for any cognizable offence or non-bailable Warrant is issued to secure his presence. The proceedings initiated under the provisions of PMLA against the brother of the petitioner is the basis for issuing LOC and any action taken or order passed under PMLA can be challenged by invoking inherent jurisdiction under Section 482 Cr.P.C or under Article 226 r/w Section 482 Cr.P.C to prevent the abuse of the process of law/or to secure the ends of justice. Hence, the fundamental right of the petitioner



to travel abroad as enshrined in Article 21 of the Constitution of India is infringed by the respondent No.1 in the course of investigation under the provisions of PMLA. The petitioner has been restrained from travelling abroad for a period of 1 year 10 months spreading over from January 2021 till date. Therefore, the contention of the learned ASG that the LOC can only be challenged under Article 226 and not under 482 Cr.P.C. is not acceptable

25. In view of the preceding analysis, I am of the considered view that the continuation of the LOC against the Petitioner indefinitely on the ground of suspicion alone will be an abuse of process of law and also the object of LOC. Accordingly, I pass the following:

ORDER

- i) The writ petition is allowed;
- ii) Impugned order dated 9.6.2023 bearing No.ECIR/BGZO/01/2021 [Unit-(3)-(2)] passed by the 3rd respondent stands quashed.
- iii) It is declared that the LOC issued against the petitioner by respondent No.2 is unenforceable and respondent No.2 to delete the endorsement CANCELLED affixed on the passport of the petitioner forthwith.



iv) It is needless to state that the petitioner shall appear before the respondent No.3, as and when summoned, in the event, any incriminating material is uncovered during the course of investigation, and also furnish his official email ID as well as contact details and the permanent residential address.

Sd/-
JUDGE

SD/HR