

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF AUGUST, 2022

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BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPPASANNA

WRIT PETITION No.12185 OF 2022 (GM - RES)

BETWEEN:

SRI HARSHAVARDHANA RAO K.,
... PETITIONER

... PETITIONER

(BY SRI MAHESH S., ADVOCATE)

AND:

1. UNION OF INDIA
MINISTRY OF EXTERNAL AFFAIRS
NO.201, I FLOOR,
PATIALA HOUSE ANNEXE
NEW DELHI - 110 001.
2. CHIEF IMMIGRATION OFFICER
BUREAU OF IMMIGRATION
BANGALORE INTERNATIONAL AIRPORT
DEVANAHALLI
BENGALURU - 560 300.

3. THE STATION HOUSE OFFICER
GIRINAGAR POLICE STATION
BENGALURU – 560 085.
4. DEPUTY COMMISSIONER OF POLICE
BENGALURU SOUTH DIVISION
BENGALURU – 560 001.

... RESPONDENTS

(BY SRI CHANDRACHUD A., CGC A/W
SRI H.SHANTHI BHUSHAN, ASG FOR R1 AND R2;
SRI K.S.ABHIJITH, HCGP FOR R3 AND R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C., PRAYING TO DIRECT THE R4 TO RECALL THE LOOKOUT CIRCULAR UNDER ISSUED IN CONNECTION WITH THE PETITIONER IN CRIME NO.145/2021 FORTHWITH AND PERMIT THE PETITIONER TO TRAVEL ABROAD.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 19.07.2022, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court in the subject petition seeking a direction by issuance of a writ in the nature of mandamus directing the 4th respondent/Deputy Commissioner of Police to recall the Lookout Circular (hereinafter referred to as 'the LOC' for short) issued in connection with Crime No.145 of 2021 and consequently permit him to travel beyond the shores of this nation on consideration of the representation so given for its recall.

2. Heard Sri S.Mahesh, learned counsel appearing for the petitioner, Sri H.Shanthi Bhusan, Additional Solicitor General appearing for respondents 1 and 2 and Sri K.S.Abhijith, learned High Court Government Pleader appearing for respondents 3 and 4.

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

Petitioner and his wife Smt. Navya Bhat got married on 8.04.2009. After about 10 years of marriage a petition is filed by Smt. Navya Bhat under the provisions of the Protection of Women from Domestic Violence Act, 2005 in Criminal Miscellaneous No.89 of 2019 pending before the V Additional Metropolitan Magistrate Traffic Court. Smt. Navya Bhat later seeks custody of the child by initiating proceedings under the Guardians and Wards Act, 1890 in G & WC No. 309 of 2019. The petitioner claims to be in dispute with Smt. Navya Bhat and is a respondent in the aforesaid two cases.

4. Things standing thus, Smt. Navya Bhat, the wife registers a complaint before the jurisdictional Police alleging that the petitioner has sexually abused his son which becomes a crime in

Crime No.145 of 2021 for offences punishable under Sections 376AB of the IPC and Section 3(a), 3(b), 5(m), 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act' for short). Pursuant to said registration of crime, the petitioner was taken into custody and after about 2 months was enlarged on bail by an order of the competent Court in Criminal Miscellaneous No.8707 of 2021. On 15-11-2021 a charge sheet is filed against the petitioner for the aforesaid offences, dropping offence under Section 376 and including offence under Section 377 of the IPC and Sections 4, 5(n), 5(p) and 6 of the POCSO Act. The petitioner in furtherance of his avocation wanted to travel abroad viz., Paris in discharge of his official duty and on the date of travel i.e., 29-05-2022 was stopped by the Immigration Authorities at the International Airport, Bangalore informing him that the 4th respondent had issued a LOC in his name concerning Crime No.145 of 2021 which is now pending as Special C.C.No.1874 of 2021 before the Additional City Civil & Sessions Judge, Fast Track Sessions Court, Bangalore. The petitioner, later, appears to have tendered several representations seeking recall of the LOC in the light of proceedings against him being stayed by this Court.

Notwithstanding the same, the LOC hangs on his head and is, therefore, before this Court in the subject petition, seeking a direction for issuance of writ in the nature of mandamus for recall of the LOC.

5. The learned counsel appearing for the petitioner would contend that cases registered against the petitioner are - one under the Domestic Violence Act, the other under the Guardians and Wards Act and the third one is the subject crime in Special C.C.No.1874 of 2021, all registered by his wife. No doubt, the crimes are registered against the petitioner for the afore-quoted offences but they are all falsely instituted and the proceedings are pending. Right to travel is a fundamental right. The petitioner having obtained his doctoral degree in Statistics from North Carolina State University, USA is working as Chief Data Scientist in Society General Global Solution Center at Bangalore and for his official work he had to travel to Paris. It is at that point in time, the petitioner was prohibited from travelling beyond the shores of India on the ground that a LOC without serving a copy of the LOC or issuing a notice prior to issuance of LOC has been issued. He would

further contend that the representations given have gone unheeded and therefore, he knocks the doors of this Court.

6. On the other hand, the learned High Court Government Pleader would seek to defend the action of originating LOC and the Union of India defending execution of LOC. The Assistant Solicitor General of India Sri.H.Shanthi Bhushan would contend that the Bureau of Immigration which executes LOC has no role to play, as the originator is the State Government; the 4th respondent in the case at hand. He has placed on record all the circulars/official memoranda that are operating with regard to Lookout Circulars.

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

8. The issue in the case at hand is not with regard to merit of cases pending between the petitioner and his wife. The issue is with regard to restriction on travel of the petitioner beyond the shores of this nation on the strength of a LOC. LOC issued by Government of India is required to be noticed for a resolution of the *lis*. Before

considering the issue, it is germane to notice the protagonist that would come about in the execution of LOC. LOC is issued by the Police or the Court in some circumstances. Therefore, they are referred as the originator. LOC is transmitted to the Bureau of Immigration to execute the said LOC and the person against whom LOC is issued is the subject of the LOC. Therefore, originator, originates LOC against the subject and transmits the same to the executant viz., Bureau of Immigration. This is the broad framework and how the LOCs are executed. The manner of execution as quoted hereinabove is not in dispute. Once LOC is issued, the Immigration Authorities are bound by the mandates of the said circular to stop the subject, from travelling beyond the shores of the nation for whatever purpose it would be and the Bureau of Immigration would continue to stop every time he seeks to travel, till subsistence of LOC, as it has to be recalled or withdrawn by the originator, the State Police. It is thus a powerful tool at the hands of the State to direct Bureau of Immigration to stall the march of travel of a subject of LOC beyond the shores of the nation.

9. In effect, right to travel, which is a vested right of Article 21 of the Constitution of India, would be taken away by the act of issuance of LOC. Therefore, it is germane to notice the genesis and progress of LOC issued from time to time. The LOC has no specific legal definition. Statutory sanction for issuance of LOC can be traced to Section 10A and 10B of the Passports Act, 1967. It is this stand that is being taken by Government of India in all the constitutional courts where LOCs have been questioned. The object for issuance of LOC is to ensure that the subject of LOC becomes available for interrogation, trial or any inquiry. The Official Memorandum issued by Government of India on 27-10-2010 was in response to a judgment rendered by the High Court of Delhi in the case of **VIKRAM SHARMA AND OTHERS v. UNION OF INDIA AND OTHERS – (2010) SCC ONLINE DEL 2475** and **SUMER SINGH SALKAN v. ASSISTANT DIRECTOR AND OTHERS – ILR (2010) VI DELHI 706**. The relevant excerpts of the LOC issued on 27-10-2010 as found in para-7, reads as follows:

"7. The High Court has answered these questions in its judgment dated 11.8.2010 which are reproduced below for guidance of all concerned agencies:

- a) ***Recourse to LOC can be taken by investigating agency in 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 case is pending or having jurisdiction over concerned police station on an application by the person concerned.*
- d) *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."*

(Emphasis supplied)

In terms of paragraph-7(a) of the Official Memorandum recourse to LOC can be taken by the investigating agency in cognizable

offences under the IPC or any other penal laws where the accused was deliberately evading arrest or not appearing before the trial Court despite issuance of non-bailable warrant and other coercive measures and there was likelihood of the accused leaving the country to evade trial/arrest. The Investigating Officer who investigates into a crime would make a written request for issuance of LOC to the officer notified in the circular giving details and reasons for seeking LOC. The competent officer alone has the power to give directions for opening LOC by passing an order in that respect. The subject against whom the LOC is issued must join investigation by appearing before the investigating officer or should surrender before the Court concerned or to satisfy the Court that LOC was wrongly issued against him. LOC may be withdrawn by the authority that issued and also can be rescinded by the trial Court where the case is pending or having jurisdiction over the concerned police station on an application by the subject. This is the broad frame work as to how LOC generates.

10. After issuance of the aforesaid official memorandum several official memoranda have been issued by Union Government.

The latest that is said to be in operation is the one issued on 22-02-2021 which is in furtherance of the judgment rendered by the High Court of Delhi in various cases. Therefore, it becomes necessary to notice the conditions stipulated for issuance of LOC in the said official memorandum and relevant clauses of the guidelines stipulated therein 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 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, 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 / IO 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."*

(Emphasis added)

On a coalesce of the afore-quoted clauses of guidelines of the official memorandum of 2010 read with the one issued in 2021, LOC against a subject can be issued in cognizable offences where the accused is deliberately avoiding arrest and not appearing before the trial Court despite non-bailable warrant and other coercive measures being taken; despite all of which there was likelihood of the accused leaving the country to evade trial or his arrest. The guidelines also indicate that in exceptional cases LOC can be issued even in cases where the guidelines do not cover whereby the departure of a person from India may be declined if such a person is detrimental to the sovereignty or security or integrity of India or detrimental to the bilateral relations with any country or economic interest of India, if such person is allowed to leave the shores of the nation. The guidelines cover all the circumstances for issuance, subsistence and deletion of LOC. The guidelines also indicate certain

duties to be performed by the originator. The originator has to inform the Bureau of Immigration if the LOC is challenged, stayed by a concerned Court or a Court issues any directive with regard to the LOC whereby the LOC must be sought to be amended or deleted by the originator. Therefore, issuance of LOC in terms of the official memorandum does take away the right of a person to travel.

11. The contention of the learned counsel appearing for the petitioner, that the petitioner should be afforded an opportunity or a prior notice pursuant to issuance of LOC is unacceptable, as the frame work of LOC itself bars such notice to be issued. Above all, this very contention is urged before a Division Bench of this Court in ***DR. BAVAGUTHURAGHURAM SHETTY v. BUREAU OF IMMIGRATION, MINISTRY OF HOME AFFAIRS, NEW DELHI***¹ wherein this Court answered a specific contention which was urged as follows:

"14.7 He would submit that learned single Judge erred in opining that petitioner ought to have been issued "prior notice" as it would defeat the purpose of LOC, inasmuch as, it is the specific case of the petitioner that after issuance of LOC petitioner ought to have been

¹ ***ILR 2021 KAR 2963***

notified so as to enable the petitioner to exercise his available legal remedies and it is this violation of right which had been canvassed before the learned single Judge, but was not considered. Hence, he prays for allowing the writ appeal by setting aside the order of learned single Judge and consequently prays for allowing the writ petition....."

(Emphasis supplied)

The answer to the contention by the Division Bench is as follows:

22. *It is the specific act emerging from the said OMs, which the petitioner seeks to assail in the writ petition and when examined in this background, it would emerge from the authoritative pronouncement of the Apex Court in the case of MANEKA GANDHI's, wherein the Hon'ble Apex Court (per Hon'ble Mr. Justices Bhagwati, Untwalia and Fazal Ali) have observed that procedure established by law under Article 21 must meet the requirement of Article 14 and it has been further held the right to travel abroad cannot be regarded as forming part of Articles 19(1) (a) or 19(1) (g), since such right is not guaranteed and such right cannot be inferred as a peripheral or concomitant right under Article 19(1). It is further held by the Apex Court to the following effect:*

"34. The right to go abroad cannot, therefore, be regarded as included in freedom of speech and expression guaranteed under Article 19(1) (a) on the theory of peripheral or concomitant right. This theory has been firmly rejected in the All India Bank Employees Association's case and we cannot countenance any attempt to revive it, as that would completely upset the scheme of Article 19(1) and to quote the words of Rajagopala Ayyanger, J., speaking on behalf of the Court in All India Bank Employees Association's case "by a series of ever expanding concentric, circles in the shape of rights concomitant to concomitant rights and so on, lead to an almost grotesque result". So also, for the same reasons, the right to go abroad cannot be treated as part of the, right to carry on trade, business, profession or calling guaranteed under Article 19(1) (g).

The right to go abroad is clearly not a guaranteed right under any clause of Article 19(1) and section 10(3) (c) which authorises imposition of restrictions on the right to go abroad by impounding of passport cannot be held to be void as offending Article 19 (1) (a) or (g), as its direct and inevitable impact is on the right, to go abroad and not on the right of free speech and expression or the right to carry on trade, business profession or calling."

"54. The next question is whether the right to go out of India is an integral part of the right of free speech and expression and is comprehended within it. It seems to me impossible to answer this question in the affirmative as is contended by the petitioner's counsel, Shri Madan Bhatia. It is possible to predicate of many a right that its exercise would be more meaningful if the right is extended to comprehend an extraneous facility. But such extensions do not form part of the right conferred by the Constitution. The analogy of the freedom of press being included in the right of free speech and expression 4-119SCI/78 is wholly misplaced because the right of free expression incontrovertibly includes the right of freedom of the press. The right to, go abroad on one hand and the right of free speech and expression on the other are made up of basically different constituents, so different indeed that one cannot be comprehended in the other.

55. Brother Bhagwati has, on this aspect considered at length certain American decisions like Kent(1), Apthekar(2) and Zemel(3) and illuminating though his analysis is, I am inclined to think that the presence of the due process clause in the 5th and 14th Amendments of the American Constitution makes significant difference to the approach of American Judges to the definition and evaluation of constitutional guarantees. The content which has been meaningfully and imaginatively poured into "due process of law" may, in my view, constitute an important point of distinction between the American Constitution and ours which studiously avoided the use of that expression. In the Centennial Volume. "The Fourteenth Amendment"

edited by Bernard Schwartz, is contained in an article on 'Landmarks of Legal Liberty' by Justice William J. Brennan in which the learned Judge quoting from Yeat's play has this to say : In the service of the age old dream for recognition of the equal and inalienable rights of man, the 14th Amendment though 100 years old, can never be old.

"Like the poor old women in Yeat's play, "Did you see an old woman going down the path?" asked Bridget. "I did not," replied Patrick, who had come into the house after the old woman left it, "But I saw a young girl and she had the walk of a queen."

Our Constitution too strides in its majesty but, may it be remembered, without the due process clause, I prefer to be content with a decision directly in point, All India Bank Employees' Association(4) In which this Court rejected the contention that the freedom to form associations or unions contained in article 19 (1) (c) carried with it the right that a workers' union could do all that was necessary to make that right effective, in order to achieve the purpose for which the union was formed. One right leading to another and that another to still other, and so on, was described in the abovementioned decision as productive of a "grotesque result".

56. I have nothing more to add to what Brother Bhagwati has said on the other points in the case. I share his opinion that though the right to go abroad is not included in the right contained in article 19 (1) (a), if an order made under section 10 (3) (c) of the Act does in fact violate, the right of free speech and expression, such an order could be struck down as unconstitutional. It is well-settled that a statute may pass the test of constitutionality and yet an order passed under it may be unconstitutional. But of that I will say no more because in this branch, one says no more than the facts warrant and decides nothing that does not call for a decision. The fact that the petitioner was not heard before or soon after the impounding of

her passport would have introduced a serious infirmity in the order but for the statement of the Attorney General that the Government was, willing to hear the petitioner and further to limit the operation of the order to a period of six months from the date of the fresh decision, if the decision was adverse to the petitioner. The order, I agree, does not in fact offend against article 19 (1) (a) or 19 (1) (g).

23. *It has also been held by the Hon'ble Apex Court (per Hon'ble the Chief Justice-Mr. Beg and per Hon'ble Mr. Justice Kailasam) that a passport may be impounded without giving prior opportunity and subsequently hearing must be provided. Hence, petitioner cannot be heard to contend that his right of hearing has been taken away and thereby act of the respondents are hit by Article 14 of the Constitution.*

24. *In the instant case, we notice that the extant OMs provide for an opportunity to the petitioner namely, the petitioner being entitled to appear before the third and fourth respondent-Banks and explain the circumstances which forced the Banks for issuing LOC was not prevailing and both the Banks are required to examine, consider and then pass an order on the said plea. Though Sri. Mukul Rohatgi has made an attempt to contend that post decisional hearing is an empty formality we are not inclined to accept the same, inasmuch as, Hon'ble Apex Court in MANEKA GANDHI's case, has held that though prior opportunity at the time of impounding the passport is not required, the subsequent opportunity as to why such impounding is not required to be continued, should be considered as inherent in fair hearing. It has been further held to the following effect:*

"14. Now, as already pointed out, the doctrine of natural justice consists principally of two rules, namely, nemo debet esse iudex propriae causae: no one shall be a judge in his own cause, and audi alteram partem: no decision shall be given against a party without affording him a reasonable hearing. We are concerned here with the second rule and hence we shall confine ourselves only to a discussion of that rule. The learned Attorney General, appearing on behalf of the Union of India, fairly conceded that the audi alteram

partem rule is a highly effective tool devised by the courts to enable a statutory authority to arrive at a just decision and it is calculated to act as a healthy check on abuse or misuse of power and hence its reach should not be narrowed and its applicability circumscribed. He rightly did not plead for reconsideration of the historic advances made in the law as a result of the decisions of this Court and did not suggest that the Court should retrace its steps. That would indeed have been a most startling argument coming from the Government of India and for the Court to accede to such an argument would have been so act of utter retrogression. But fortunately no such argument was advanced by the learned Attorney General. What he urged was a very limited contention, namely that having regard to the nature of the action involved in the impounding of a passport, the audi alteram partem rule must be held to, be excluded, because if notice were to be given to the holder of the passport and reasonable opportunity afforded to him to show cause why his passport should not be impounded, he might immediately, on the strength of the passport, make good his exit from the country and the object of impounding the passport would be frustrated. The argument was that if the audi alteram partem rule were applied, its effect would be to stultify the power of impounding the passport and it would defeat and paralyse the administration of the law and hence the audi alteram partem rule cannot in fairness be applied while exercising the power to impound a passport. This, argument was sought to be supported by reference to the statement of the law in A.S. de Smith, Judicial Review of Administrative Action, 2nd ed., where the learned authors say at page 174 that "in administrative, law a prima facie right to prior notice and opportunity to be heard may be held to be excluded by implication- where an obligation to give notice and opportunity to be heard would obstruct the taking of prompt action, especially action of a preventive or remedial nature". Now, it is true that since the right to prior notice and opportunity of hearing arises only by implication from the duty to act fairly, or to use the words of Lord Morris of Borth-y-Gest, from 'fair play in action, it may equally be excluded where,

having regard to the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provision, fairness in action does not demand its implication and even warrants its exclusion. There are certain well recognised exceptions to the audi alteram partem rule established by judicial decisions and they are summarised by S.A. de Smith in Judicial Review of Administrative Action, 2nd ed., at page 168 to 179. If we analyse these exceptions a little closely, it will be apparent that they do not in any way militate against the principle which requires fair play in administrative action. The word 'exception' is really a misnomer because in these exclusionary cases the audi alteram partem rule is held inapplicable not by way of an exception to "fair play in action", but because nothing unfair can be inferred by not affording an opportunity to present or meet a case. The audi alteram partem rule is intended to inject justice into the law and it cannot be applied to defeat the ends of justice, or to make the law 'lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation'. Since the life of the law is not logic but experience and every legal proposition must, in the ultimate analysis, be tested on the touchstone of pragmatic realism, the audi alteram partem rule would, by the experiential test, be excluded, if importing the right to be heard has the effect of paralysing the administrative process or the need for promptitude or the urgency of the situation so demands. But at the same time it must be remembered that this is a rule of vital importance in the field of administrative law and it must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. It is a wholesome rule designed to secure the rule of law and the court should not be too ready to eschew it in its application to a given case. True rue it is that in questions of this kind a fanatical or doctrinaire approach should be avoided, but that does not mean that merely because the traditional methodology of a formalised hearing may have the effect of stultifying the exercise of the statutory power, the audi alteram partem should be wholly excluded. The court must make every effort to salvage this cardinal rule to the maximum extent

permissible in a given case. It must not be forgotten that "natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances". The audi alteram partem rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. The core of it must, however, remain, namely, that the person affected must have a reasonable opportunity of being heard and the Hearing must be a genuine hearing and not an empty public relations exercise. That is why Tucker, L.J., emphasised in Russel v. Duke of Norfolk (1), that "whatever standard of natural justice is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case". What opportunity may be regarded as reasonable would necessarily depend on the practical necessities of the situation. It may be a sophisticated full fledged hearing or it may be a hearing which is very brief and minimal : it may be a hearing prior to the decision or it may even be a post-decisional remedial hearing. The audi alteram partem rule is sufficiently flexible to permit modifications and variations to suit the exigencies of myriad kinds of situations which may arise. This circumstantial flexibility of the audi alteram partem rule was emphasised by Lord Reid in Wiseman v. Someman, (supra) when he said that he would be "sorry to see this fundamental general principle degenerate into a series of hard and fast rules" and Lord Hailsham, L.C., also observed in Pearl-Berg v. Party (2) that the courts "have taken in increasingly sophisticated view of what is required in individual cases". It would not, therefore, be right to conclude that the audi alteram partem rule is excluded merely because the power to impound a passport might be frustrated, if prior notice and hearing were to be given to the person concerned before impounding his passport, the Passport Authority may proceed to impound the passport without giving any prior opportunity to the person concerned to be heard, but as soon as the order impounding the passport is made, and opportunity of hearing, remedial in aim, should be given to him so that he may present his case and controvert that of the Passport Authority and point out why his passport

should not be impounded and the order impounding it recalled. This should not only be possible but also quite appropriate, because the reasons for impounding the passport are required to be supplied by the Passport Authority after the making of the order and the person affected would, therefore, be in a position to make a representation setting forth his case and plead for setting aside the action impounding his passport. A fair opportunity of being heard following immediately upon the order impounding the passport would satisfy the mandate of natural justice and a provision requiring giving of such opportunity to the person concerned can and should be read by implication in the Passports Act, 1967. If such a provision were held to be incorporated in the Passports, Act, 1967 by necessary implication, as we hold it must be, the procedure prescribed by the Act for impounding a passport would be fair, just and it would not suffer from the vice of arbitrariness or unreasonableness. We must, therefore, hold that the procedure 'established' by the Passports Act, 1967 for impounding a passport is in conformity with the requirement of Article 21 and does not fall foul of that article.

25. *This view also gets fortified from the law laid down by the Apex Court in the matter of Maneka Gandhi v. Union of India, (supra) referred to herein supra where under Justice Krishna Iyer concurring with the opinion rendered by Bhagawati, Untwalia and Fazal Ali, JJ, held that any order passed under Section 10(3) (c) of the Passports Act, 1967, is subject to a limited judicial scrutiny. It is further held:*

"189. In the result, I hold that the petitioner is not entitled to any of the fundamental rights enumerated in Article 19 of the Constitution and that the Passport Act complies with the requirements of Art. 21 of the Constitution and is in accordance with the procedure established by law. I construe section 10(3) (c) as providing a right to the holder of the passport to be heard before the passport authority and that any order passed under section 10(3) is subject to a limited judicial scrutiny by the, High Court and the Supreme Court."

Hence, the contention raised by Sri. Mukul Rohatgi, Learned Senior Counsel appearing for the petitioner that subsequent hearing of the petitioner would be an empty formality or in other words, such post decisional hearing is impermissible cannot be accepted. However, it is needless to state that notwithstanding the conclusion arrived at by respondent Nos. 3 and 4 for issuance of LOC against the petitioner, prayer of the petitioner for revoking the same shall be considered independently and without being influenced by any conclusion already arrived by them and without being influenced by any observations made either by the Learned Single Judge or by this Court."

(Emphasis supplied)

Therefore, the contention of the learned counsel for the petitioner that a notice ought to be issued to the subject of the LOC prior to issuance of LOC deserves to be rejected.

12. Even if it is construed that procedure established by law by way of official memorandum, right to travel being curtailed against the subject of the LOC, he would at least become entitled to a copy of the LOC, not at any time prior to his being stopped from travelling abroad, but only at the time when he is stopped from travelling out the shores of this nation. The subject of the LOC would then become aware as to why his liberty to travel, which is a

facet of fundamental right is being taken away. The contention of Government of India that a copy of the LOC need not be furnished to the subject at any time before getting apprehended is acceptable only upto the point that he gets apprehended. At the time when he is stopped and handed over to the originator, he is, in the considered view of this Court, entitled to know why his travel is being stopped with a copy of the LOC handed over to his hands. This becomes the only requirement of principles of natural justice in the cases that emanate from the LOC.

13. If the facts of the case are considered on the bedrock of what is considered hereinabove, it would depict that, the petitioner wants to travel on account of his official duty. The case registered against him no doubt is for offences punishable under the POCSO Act and the case is not stayed or quashed by any competent court of law, since the impugned crime is neither *eclipsed nor extinguished*, by any competent judicial *fora*, the prayer of the petitioner for a direction to recall the LOC cannot be granted. All that the petitioner would be entitled to, in such a case, would be the knowledge of the reason for stalling his travel i.e., a copy of the

LOC issued against him. This becomes all the more important as the petitioner has been enlarged on bail in Criminal Miscellaneous No.8707 of 2021. The Court granting him bail has imposed the following conditions:

1. *The petitioner has to execute personal bond for Rs.1,00,000/- and to furnish two solvent sureties (out of which 1 should be a Government Employee) for the likesum to the satisfaction of this Court.*
2. *The petitioner shall not tamper with any of the prosecution witnesses either directly or indirectly.*
3. *The petitioner shall appear before the Court regularly in default of which this bail will automatically stand cancelled.*
4. *Issue intimation to the J.C. to release the petitioner forthwith if his presence is not required in any other case."*

There is no condition restricting his travel. An accused who is enlarged on bail should be made known as to why his travel is being interrupted. Therefore, the supply of the copy of LOC along with request from the originator is **sine qua non** for execution of the LOC. Therefore, it is for the originator to furnish the copy and the reasons to the executant and the executant shall furnish the same to the subject of the LOC, not at any time earlier, but at the

time when the subject of the LOC would be subjected to rigors of the LOC.

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

ORDER

- (i) The Criminal Petition is disposed.
- (ii) A direction is issued to the 4th respondent to consider the representation given by the petitioner seeking recall of the lookout circular in connection with Crime No.145 of 2021 and pass appropriate orders in accordance with law, within six weeks from the date of receipt of a copy of this order.

**Sd/-
JUDGE**

bkp
CFMJ