

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

(Appellate Side)

MAT 406 of 2022

with

CAN 1 of 2022

(Through Video Conference)

Reserved on : 24.03.2022

Pronounced on: 18.05.2022

Mritunjay Singh

...Appellant

-Vs-

Union of India & Ors.

...Respondents

Present:-

Mr. Kishore Datta, Senior Advocate,

Mr. D.R. Mukherjee,

Mr. Nilratan Banerjee,

Mr. Arijit Dey, Advocates

.... for the Appellant

Mr. Pramit Kumar Ray, Senior Advocate,

Mr. Somnath Ghoshal, Advocate

..... for the Respondent Nos. 1 & 2

Mr. R. C. Pursti,

Mr. Sanjib Dey, Advocates

....for the Respondent Nos. 3 & 4

**Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE**

**THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE**

Rajarshi Bharadwaj, J:

1. By this appeal, correctness of the order of the Learned Single Judge dated 16.03.2022 passed in W.P.A No. 3928 of 2022 (Mritunjay Singh v. Union of India & Ors) has been questioned by the appellant.
2. The facts in a nutshell are that the appellant/ writ petitioner is employed as a Captain in Merchant Shipping and by virtue of which he is required to be on high sea across the globe for at least six months every year. During a time period of 19.03.2009 to 11.07.2012, appellant was made one of the directors of Kaushik Global Logistic Limited (KGLL) which, as contested by the Learned Counsel for the appellant had defaulted in repaying a loan of Rs.30 crores availed by it from Dena Bank, now Bank of Baroda. Although as per the impugned order, the account of the said KGLL became non-performing asset within nine months of availing and the current dues are in excess of Rs. 60 crores.
3. Owing to the default in payment of loan, criminal proceedings were initiated by the Central Bureau of Investigation (CBI) against all the directors of the said company on the complaint of Dena Bank. The appellant had obtained an un-conditional bail in the said criminal proceeding by an order dated 02.07.2014 from the Ld. Special (CBI) Court No.2, Kolkata and his application under section 205 of the Code of Criminal Procedure had also been allowed by an order dated 01.09.2014. No appeal was preferred by the respondent Bank from either of the said order.
4. The appellant/ writ petitioner had participated in all the investigations and had never evaded any summons or process. Moreover, he has duly returned to India upon the completion of every voyage undertaken by him over the past nine years in the course of the aforesaid criminal proceedings. Furthermore, respondent no.3, Bank, has instituted a recovery proceeding under the SARFAESI Act, 2002 which is pending before the Hon'ble High Court.
5. Under such facts, on 18.10.12 when the appellant landed in Kerala upon completion of his latest voyage, he was astonished to note that a Look-Out Circular (LOC) had been issued against him by the immigration authorities. On inspection made by the Learned Counsel for the appellant, it was revealed that the LOC was issued at the request of the Bank of Baroda, vide letter dated 05.06.2020 and subsequently extended on the request made by the said Bank, by its letter dated 22.08.2021.

6. Contesting the aforesaid Look-Out Circular, including the extension thereof, and seeking necessary orders to travel abroad for earning a living, the appellant/writ petitioner filed a writ petition before the Learned Single Judge praying for withdrawing/canceling/ revoking the Lookout Circular being no. BCC:IWR:112/116.

7. Learned Single Judge while passing the order had taken the view that diluting the LOC would seriously hamper and prejudice not only the pending proceedings instituted by the CBI but also the recovery process of the Bank. Thus, neither was the appellant allowed to leave the country nor was any interim order passed. Hence, being aggrieved by the order passed by the Learned Single Judge the appellant files an appeal before this Hon'ble Court.

8. Submissions of Learned Counsel for the appellant/ petitioner are as follows:

- I. Refusing to grant an order of injunction regarding the operation of the Lookout Circular that would have enabled the appellant to travel overseas for the purpose of earning his livelihood and fulfilling his employment contract would certainly create a cloud of uncertainty over the service and reputation of the appellant.
- II. The three essential ingredients for passing an interim injunction- (i) strong prima facie case, (ii) irreparable loss, injury and prejudice and (iii) balance of convenience - were and are satisfied in the instant case and yet the Learned Single Judge refused to exercise his discretionary power in passing an interim order.
- III. The criminal proceedings instituted by the CBI have been continuing since 2013, during which time the appellant has travelled overseas innumerable times and duly returned to the country upon completion of his voyage. Therefore, there is no prospect of the appellant being a "flight risk" or the said criminal proceedings being hampered in any manner. Likewise, the recovery process of the bank being affected owing to this reason is also not feasible since all the immovable and movable properties have been attached by the Enforcement Directorate pursuant to proceedings under the Prevention of Money Laundering Act (PMLA), 2002.
- IV. The appellant have been granted an unconditional Bail by the Ld. Special (CBI) Court No.2, Kolkata in the criminal case filed by the CBI.

9. Submission of Learned Counsel for the Respondent No.1, herein the Union of India and Respondent No.3, herein Bank of Baroda is that:

- I. The prayer for interim stay or dilution of the Lookout Circular cannot be allowed under any circumstance, given the gravity of charges against the appellant. Furthermore, the appellant did not annex any document on the basis of which an interim relief can be granted.

10. Therefore, the question that arises before this Court is:

- A. Whether the Lookout Circular initiated by the Bank and acted upon by the immigration authority as its agent is legal and was issued considering all the applicable guidelines?

11. Having heard the Learned Counsel for the parties and on perusal of the record, this Court is of the view that the appellant/writ petitioner was a director as it appears and the application for loan, as well as day to day conduct of business of the said company was done by the accused, one Dhananjay Singh, the Managing Director of KGLL. Moreover, the name of the appellant did not appear in the Charge-sheet. Thus, the issuance of the impugned LOC and the consequential subsequent extension thereof would effect the livelihood of the appellant and the means to repay the bank loan.

12. Furthermore, as held in *Manoj Pushkar Toshniwal Vs. Union of India* (2021) 88 GST 857 (Calcutta) "Recourse to LOC can be taken by investigating agency in cognizable offences under Indian Penal Code (IPC) or other penal laws, where the accused is deliberately evading arrest or not appearing in the trial court despite using coercive measures and there is a likelihood of the accused leaving the country to evade trial/arrest." In the present matter the appellant/writ petitioner had travelled overseas countless times and on each occasion returned to the country after the accomplishment of his voyages. Moreover, appellant never evaded any summons or process and had aptly cooperated in all the investigations.

13. This Court is of the view that the Lookout circular issued against the appellant/writ petitioner would interfere with the departure from and arrival at the airports across India, leading to curtailing the appellant's right to travel abroad for livelihood. However, as held in *Chandran Ratnaswami v. K.C. Palanisamy & Ors* 2013 (6) SCC 740 the appellant is directed to file an affidavit of undertaking before this Court.

14. For the forgoing reasons, the impugned order of the Learned Single Judge is modified to the extent that the appellant would file an affidavit of undertaking before the Learned Registrar General of this High Court and the the Lookout Circular being no. BCC:IWR:112/116 is stayed.

15. Let this matter again appear on 30th June, 2022.

**(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE**

**(RAJARSHI BHARADWAJ)
JUDGE**

Kolkata

18.05.2022

PA(BS)