

SANTOSH SNEHI MANN
Special Judge (PC Act), CBI-08
Room No. 511, Rouse Avenue Court Complex
New Delhi

Delhi 2

**IN THE COURT OF MS. SANTOSH SNEHI MANN,
SPECIAL JUDGE (PC ACT), CBI-08, RADC, ND**

**Criminal Revision No. 01/2022
CIS No. 08/2022**

Central Bureau of Investigation Revisionist/petitioner

Versus

Aakar Patel
S/o Shri Anil Kuberbhai Patel
R/o G/1, Serenade,
23/5, Bensen Cross Road,
Bangalore-560046

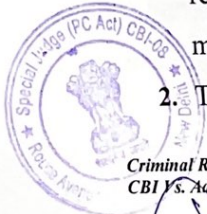
.....Respondent

**Date of Institution : 08.04.2022
Arguments heard : 12.04.2022
Order pronounced : 16.04.2022**

ORDER

1. The criminal revision petition is filed under Section 397 CrPC against the order of the Trial Court dated 07.04.2022, in Criminal Case No. CBI/09/2022 arising out of FIR RC No. 220/2019/E/006, under Section 120-B IPC r/w Section 11 r/w 35 & 39 of the Foreign Contribution Regulation Act, 2010 (*FCRA*), vide which Look-out Circular (LOC) issued by the petitioner agency (CBI) against the respondent accused has been quashed and adverse remarks have been made against the CBI.

2. Trial Court record reveals that FIR was registered on 05.11.2019 on



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the complaint of the Under Secretary to the Government of India, Ministry of Home Affairs, Foreigners Division, dated 12.06.2019 on the allegations that an amount of Rs. 36 Crores was remitted by Amnesty International U.K and other U.K. based organizations to Amnesty International India Pvt. Ltd. (AIIPL) without approval of Ministry of Home Affairs in violation of FCRA. Though respondent accused is not named in the FIR, investigation revealed that he was the Executive Director/C.E.O of AIIPL from 2015 – 2019, and the foreign remittance was received during the period 2016 – 2018. Respondent accused was found to be responsible for the affairs of AIIPL, hence responsible for the violation of FCRA. On completion of investigation, final report under Section 173 CrPC in the form of charge-sheet has been filed in the Court of Learned ACMM on 31.12.2021, which is pending consideration for cognizance for want of sanction, under Section 40 FCRA.

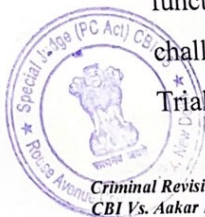
3. In order to ensure presence of respondent accused to face the trial, and under apprehension that taking benefit of *hiatus*, he may flee from the jurisdiction of the Trial Court, LOC was issued in his name in terms of the Office Memorandum dated 22.02.2021 issued by the Foreigner's Division of Ministry of Home Affairs, Government of India.

4. On 06.04.2022 in the morning, respondent accused was stopped at the immigration check at Bangalore International Airport and was not allowed to board flight to Boston on account of LOC opened by CBI



against him. He filed an application for withdrawal/recall of the LOC in the Court of learned ACMM, RADC, New Delhi, which was allowed vide impugned order dated 07.04.2022, resulting in quashing of LOC and some observations against the petitioner agency about the manner in which LOC was issued, besides some other directions.

5. During arguments on the revision petition, Special PP for CBI informed this Court that sanction for prosecution has now been received on 08.04.2022, which has been filed in the Trial Court on 11.04.2022 and charge-sheet is now fixed for consideration for the purpose of cognizance on 18.04.2022.
6. The impugned order vis-à-vis quashing of LOC is challenged on the grounds – that it is perverse and deserves to be set-aside because the Trial Court failed to take note for the purpose for which O.M empowers the CBI to issue LOC; that Trial Court has failed to appreciate the apprehension that accused may not be available to face the trial; that finding of the Trial Court that accused was not arrested during investigation and so LOC could not be issued/opened against him, is erroneous; and that observation of the Trial Court that there are provisions in the Cr.P.C to ensure presence of accused during the trial, is wrong.
7. The impugned order vis-à-vis remarks by the Trial Court on the functioning of the petitioner Agency and consequential directions are challenged on the grounds – that they are without any reason; that the Trial Court did not have any supervisory power on the administration



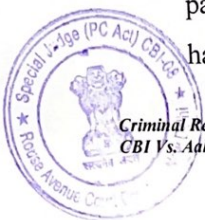
of the petitioner Agency; that while permitting the respondent accused to claim monetary compensation, Trial Court ignored the fact that the respondent accused was going abroad to deliver lectures on invitation and the host Universities had offered to pay the travel and stay cost; and lastly that petitioner acted in the interest of investigation and prosecution, without any personal bias, so cannot be subjected to public humiliation. Relevant judgments relied upon are:

- i. ***Pankaj Jain Vs. Union of India & Anr. (2018) 5 Supreme Court Cases 743;***
- ii. ***In the matter of 'K' A Judicial Officer Vs. In the matter of 'K' A Judicial Officer, (2001) 3 Supreme Court Cases 54;***
- iii. ***Asian Resurfacing of Road Agency Pvt. Ltd. & Anr. Vs. Central Bureau of Investigation, (2018) 16 Supreme Court Cases 299;***
- iv. ***Sunil Tyagi Vs. Govt. of NCT of Delhi & Anr. And Tanmay Kumar Vs. State, 2021 SCC OnLine Del 3597;***

8. Reply has been filed by the respondent accused. Revision petition is contested on the grounds – that LoC was opened in complete derogation of law and in violation of O.M and CBI Manual; that there is irreconcilable anomaly in the stand taken by CBI in opening LOC; and lastly that criminal Courts/Trial Courts have as much responsibility in safe-guarding the fundamental rights of the citizens as the highest Court of the country. Relevant judgments relied upon are:



- i. *Sumer Singh Salkan Vs. Asstt. Director & Ors, 2010 SCC OnLine Del 2699;*
 - ii. *Vikas Chaudhary Vs. Union of India and Ors. 2022 SCC OnLine Del 97;*
 - iii. *Rana Ayyub Vs. Union of India; W.P. Crl. 714 of 2022 dated 04.04.2022;*
 - iv. *Satish Chandra Verma Vs. Union of India & Ors., 2019 SCC OnLine SC 2048;*
 - v. *Krishna Lal Chawla & Ors. Vs. State of Uttar Pradesh & Anr., (2021) 5 SCC 435;*
 - vi. *Siddharth Vs. State of Uttar Pradesh & Anr., (2022) 1 SCC 676.*
 - vii. *Maneka Gandhi Vs. Union of India and Anr. (1978) 1 SCC 248*
9. I have heard Advocate Nikhil Goel, Special PP for the petitioner CBI and Advocate Tanvir Ahmed Mir, counsel for the respondent accused. I have carefully perused the Trial Court record.
10. During the arguments, a hesitant passing reference was made by the counsel for the respondent accused that order of the Trial Court with respect to quashing of LOC is an interim order and so revision petition is not maintainable, which argument has been controverted by the Special PP for CBI. Nevertheless it is deemed necessary to deal with the argument since it touches upon the very fundamental power and jurisdiction of this Court, which is a legal issue.
11. Scope of the powers of this court under Section 397 CrPC is very limited. It is a settled legal position that this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in the proceedings (*State of Rajasthan v. Fatehkaran*



Mehdu, AIR 2017 SC 796).

12. In *Madhu Limaye Vs. State of Maharashtra (1977) 4 Supreme Court Cases 551*, it was held by the Apex Court that for the purpose of Section 397(2) Cr.P.C, the real intention of the Legislature was not to equate the expression “interlocutory order” as invariably being converse of the words “final order”. It was held that there may be an order passed during the course of proceedings which may not be final but yet it may not be an interlocutory order pure and simple. It was further held that by rule of harmonious construction of sub-section (1) and (2) of Section 397 Cr.P.C, the bar in sub-section (2) is not to be attracted to such kinds of intermediate orders.

13. In *Asian Resurfacing of Road Agency Private Limited & Another Vs. Central Bureau of Investigation (2018) 16 Supreme Court Cases 299*, the principles laid down in *Madhu Limaye (Supra)* were held to be holding the field.

14. In view of the law laid down in *Madhu Limaye (Supra)*, an order quashing LOC will fall in the category of “intermediate order”, since it may lead to irreversible consequences, so bar in sub-section (2) will not be attracted. Hence this revision petition is maintainable.

15. Coming to the merits of the impugned order, the reasons given by the Trial Court for setting aside Look-out Circular and related directions are reproduced as under :



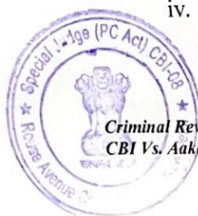
On perusal of the application filed by the

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 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 the 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.

16. Before parting with the order, following remarks and directions are given by the Trial Court:

- i. Act of the investigation agency has caused monetary loss to the applicant/accused;
- ii. Director, CBI is expected to sensitize the officials who were part of issuance of LOC and accountability of the concerned officials in the case be fixed;
- iii. Applicant/accused is at liberty to approach the appropriate forum for compensation for the loss caused to him;
- iv. Applicant has suffered mental harassment as he was not allowed to visit on the scheduled time. A written apology from the



Director, CBI to the applicant, acknowledging the lapse on the part of his subordinate would go a long way in not only healing wounds of the applicant but also upholding the trust and confidence of the public in the premier institution.

17. Quashing of LOC is challenged on the ground that it is erroneous and is based on misconstrued preposition of law. Observations/remarks and directions given in the later part of the impugned order to compensate the respondent accused for monetary loss and mental harassment are challenged on the ground that they are beyond the purview of the matter before the Trial Court, which is otherwise not a supervisory authority of the petitioner.

18. There is no provision in the CrPC for issuance/opening of LOC. It finds mention in the CBI Crime Manual (2020 Edition), which as per the disclaimer attached is intended to be a reference book only for the investigating officers and is not to be treated as substitute for laws, rules, orders etc of various authorities. Chapter XI of the Manual is on – Arrest, Custody, Bail, Remand, Test Identification and Absconders. Para 11.52 of this Chapter, under the heading – “**ABSCONDING OFFENDERS**”, talks about issuance of Look-out Circulars (LOC), relevant portion of which is reproduced as under:

Issuance of Look Out Circulars (LOC)

11.52 In case it is suspected that the absconding accused may flee the country, Lookout Notices/ Circulars may be got issued by the Head of Branch (not below rank of SP), by



making a direct reference to Bureau of Immigration (BOI). The Branches will directly deal with the BOI regarding the opening/review of the existing LOCs under intimation to Deputy Director (IPCU). The guidelines issued by Ministry of Home Affairs (Foreigners Division) vide OM No. 25016/31/2010-Imm dated 27.10.2010 and updated addendums may be followed while making request for issue of Look Out Circulars.....

.....
(emphasis supplied)

19. In **Sumer Singh Salkan (Supra)**, one of the questions raised in the reference before Hon'ble Delhi High Court was –

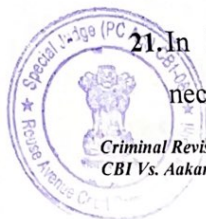
“A. What are the categories of cases in which the investigating agency can seek recourse of Look-out-Circular and under what circumstances?”

The above question has been answered as under:

“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.”

(emphasis supplied)

20. Office Memorandum dated 22.02.2021 issued by Director, CBI, New Delhi on the subject – “Consolidated guidelines for issuance of Look Out Circulars (LOC) in respect of Indian Citizens and Foreigners”, in para 3 and 4 refers to the judgment passed by Hon'ble Delhi High Court in **Sumer Singh Salkan's case (Supra)**, to be followed as guidelines by all concerned Agencies.



21. In **Vikas Chaudhary (Supra)** it was held that issuance of LOC necessarily curtails the rights of an individual to travel abroad and

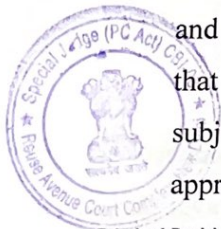
therefore, for invocation of this clause, which, in any event, is meant to be used only in exceptional circumstances.

22. In *Rana Ayyub (Supra)* it was held that 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.

23. Coming to the facts of the present case, the reason given for issuance for LOC by the CBI in 'its' application dated 31.12.2021 to the competent authority, a copy of which was filed during the course of arguments, is reproduced as under:

"During investigation it has emerged that Sh. Aakar Patel is an influential person and well connected with the entities outside India. There are apprehensions that he may leave country to evade the process of law."

24. Learned Special PP for CBI argued that necessity to issue LOC arose due to a "hiatus" which had arisen between completion of investigation and taking of cognizance by the Court, pending sanction for prosecution under Section 40 FCRA. It was argued that respondent accused is actively connected with Amnesty International and has sufficient contacts outside India, giving rise to apprehension that he may evade the process of law, with respect to which subjective satisfaction of the officer concerned needs to be appreciated. In this context reference was made to the judgment of

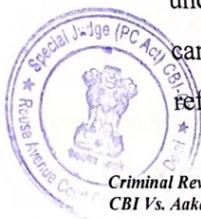


Hon'ble Delhi High Court in *Sunil Tyagi (Supra)*, wherein guidelines have been passed to manage the menace of absconding accused declared as Proclaimed Offenders. It was argued that observation of the Trial Court that there are provisions in the CrPC to ensure presence of accused in the Court during trial, are wrong.

25. Per contra, the counsel for the respondent accused argued that LOC was opened in complete derogation of law and there is irreconcilable anomaly in the stand taken by the CBI. It was argued that the Investigating Officer in his wisdom did not consider the respondent accused as a flight risk at any point of time during the course of investigation, and there is no material change in the circumstances after completion of investigation so as to give cause to the CBI to issue LOC at the time of filing of the charge-sheet.

26. In the scheme of CBI Crime Manual, provision and procedure for LOC is introduced to deal with absconders. It is with respect to the absconding accused that when suspicion arises that the absconding accused may flee from the country, LOC can be issued to thwart any such attempt. So a wanted accused, absconding to join investigation is the pre-condition for issuance of LOC during investigation.

27. In *Sumer Singh Salkan (Supra)* one of the reference points was as to under which category of cases and under what circumstances LOC can be issued. Hon'ble Delhi High Court has answered this point of reference very specifically and categorically, which can be summed



up point-wise as under:

- i. LOC can be issued only in cognizable offences; and
- ii. Accused is deliberately evading arrest or not appearing in the Trial Court despite NBWs and other coercive measures, ; and
- iii. There is likelihood of the accused leaving the country to evade trial/arrest.

While points 1 and 2 above are factual pre-conditions, point 3 is about assessment of the Investigating Officer, in the facts and circumstances of a case. These 03 conditions must co-exist to make a ground for issuance/opening of LOC.

28. Accused had joined investigation, whenever called and it is not the case of the CBI that accused in any manner either tried to hamper the investigation or tamper with the evidence. Investigation is complete and the matter is at the stage of consideration of the charge-sheet by the Trial Court for cognizance. Once the matter is in the Court, circumstances warranting opening of LOC will arise only when the respondent accused does not appear in the Trial Court despite NBWs and other coercive measures. LOC in this case was issued on completion of investigation for the reason that being an influential person and well connected with the entities outside India, respondent accused may leave the country to evade the process of law. This reason does not fall in the situations and circumstances required for opening/issuance of LOC as per law and thus has no force of law to



support and sustain. Subjective satisfaction of the IO to assess the situation for issuance of LOC must flow from the objective criteria laid down in the law. Reliance on the judgment of Hon'ble Delhi High Court in **Sunil Tyagi (Supra)** by the Ld. Spl. PP for the CBI is misplaced, as the factual matrix of the said case was totally different.

29. Apprehension and concern of the CBI about the respondent accused not appearing before the Trial Court for prosecution could have been very well addressed by taking recourse to Section 170 CrPC. CBI could have presented the respondent accused before the Trial Court under this provision while filing the charge-sheet. Reliance in this regard is placed on **Siddharth (Supra)**.

30. LOC issued/opened against the respondent accused is bad in law, hence cannot sustain. Order of Learned Trial Court quashing/set-aside the LOC does not suffer from any infirmity and is a well reasoned order based on principles of law. Though a balance should have been struck qua the apprehension of the prosecuting agency that respondent accused may flee from the country and the fundamental right of the respondent accused to travel abroad, by putting conditions taking recourse to Section 88 of Cr.P.C, which empowers the Trial Court to take bond for appearance. Reliance is placed on **Pankaj Jain (Supra)**.

31. The remarks and observations made by the Trial Court in the impugned order before parting with the order, with respect to the



monetary loss caused to the respondent accused; liberty to the respondent accused to approach the appropriate forum to claim compensation; to sensitize and fix accountability of the officials involved in issuance of LOC; and direction to Director, CBI to give written apology to the respondent accused acknowledging the lapse on the part of his subordinate, are challenged on the grounds that there are no basis to return these findings and the Trial Court cannot exercise power of superintendence over the functioning of the CBI.

32. Per contra it was argued by the counsel for the respondent accused that LOC is a coercive action which directly attacks on the fundamental right of a citizen. It was argued that due to act of the CBI, valuable fundamental right of the respondent accused was violated when he was stopped at the airport from boarding the flight.

33. In *Prempal and Ors. Vs. The Commissioner of Police & Ors., 2010 SCC OnLine Del 1315*, it was held that if fundamental right of a person under Article 21 has been violated, State is liable to pay compensation for such violation.

34. In *Krishan Lal Chawla (Supra)*, it was held that criminal courts have as much responsibility in safeguarding the fundamental rights of the citizens as the Hon'ble Supreme Court of India under Article 32 of the Constitution.

35. In *Maneka Gandhi (Supra)* it was held that no fundamental right, including right to travel, can be impinged by the State action without



following due process of law.

36. In *Satish Chandra Verma (Supra)* it was held that freedom to go abroad has much social value and represents the basic human right of great significance.

37. It is a settled legal proposition that Trial Court can step in to compensate for police excesses and illegal action of the State when fundamental rights are violated. In the present case, on account of wrongly issued LOC, respondent accused was stopped at the Airport and he could not take the scheduled flight. So observation of the Trial Court about right of the respondent accused to file claim for compensation is not out of context. Though, whether the respondent accused would be held entitled to get compensation, would be a subject matter of a separate independent trial before the Court of competent jurisdiction.

38. In this case, the manner in which LOC has been issued by the CBI shows lack of understanding of the relevant law, and hence need for orientation of the concerned officers of CBI, not only for sensitization but also to bring objectivity in the actions, is not out of context. These observations of the Trial Court are not of the nature of exercising power of superintendence, they are out of concern and the petitioner is expected to take them in the right spirit.

39. Power of CBI to investigate and prosecute is not an unbridled power. In glaring cases of excesses committed in actions, there may arise the

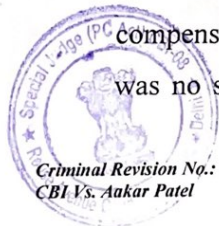


need for fixing accountability. In the present case, LOC was issued on wrong interpretation and understanding of law, and not out of any malice or ill will. Hence, it is not a fit case to call for fixing the accountability for issuance of LOC.

40. Now I shall examine merit of the direction given by the Trial Court to the Director, CBI to give written apology to the respondent accused, acknowledging the lapse on the part of his subordinate, to compensate mental harassment caused to the respondent accused. Learned Trial Court has relied on the Delhi High Court Judgment in ***Prempal & Ors. (Supra)*** while passing the impugned direction.

41. In ***Prempal & Ors. (Supra)***, it was proved and established by way of trial that accused was arrested and falsely implicated in a rape case, in which he remained incarcerated unjustifiably for nearly 02 years and 05 months. The judgment about false implication had attained finality and it was in this backdrop that in addition to the monetary compensation, concerned police officers were directed to tender written apology for causing mental harassment to the accused. In the facts and circumstances of this case, ratio of ***Prempal & Ors. (Supra)*** is not applicable.

42. "Mental Harassment" will be a component for consideration by the Court for determination of compensation. Since determination of the compensation was not a subject matter before the Trial Court, there was no scope to venture into the aspect of "Mental Harassment".



Therefore direction of the Trial Court to the Director, CBI to give written apology to the respondent accused, acknowledging the lapse on the part of his subordinate, to compensate for mental harassment, cannot sustain and is liable to be set-aside.

CONCLUSION

43. In view of the above discussion, observations and findings, the revision petition is disposed of as under:

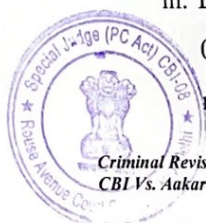
i. The impugned order of the Trial Court dated 07.04.2022 setting aside the LOC issued against the respondent accused Aakar Patel is up-held, subject to the following conditions:

(a) respondent accused will appear before the Trial Court within a week and shall furnish a bond for his appearance under Section 88 Cr.PC to the satisfaction of the Trial Court; and

(b) respondent accused will not leave the country without permission of the Trial Court.

ii. Direction given by the Trial Court in the impugned order dated 07.04.2022 to fix accountability of the CBI officials for issuance of LOC is set-aside.

iii. Direction given by the Trial Court in the impugned order dated 07.04.2022 to the Director, CBI to give written apology to the respondent accused, acknowledging the lapse on the part of his



subordinate, is set-aside.

44. Trial Court record be sent along with the copy of this order.
45. Copy of the order be given dasti to both the parties.
46. Revision file be consigned to Record Room.



**Announced in the open Court
on 16.04.2022**

Handwritten signature and date:
16/4/22

Handwritten signature: sd L ✓

**(Santosh Snehi Mann)
Special Judge (PC Act), CBI-08,
Rouse Avenue District Court, ND**