

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF JUNE, 2022

BEFORE

THE HON'BLE MR.JUSTICE S.G.PANDIT

WRIT PETITION No.1730/2022 [GM-PASS]

BETWEEN:

SUDARSHAN RAMESH

...PETITIONER

(BY SRI.VIKRAM S. HUILGOL, SR. COUNSEL FOR
SRI.S.SUDHARSAN, ADV.)

AND:

1. UNION OF INDIA
MINISTRY OF HOME AFFAIRS
JAI SINGH MARG, HANUMAN ROAD AREA
CONNAUGHT PLACE, NEW DELHI
DELHI-110001
REPRESENTED BY ITS HOME SECRETARY.
2. BUREAU OF IMMIGRATION
MINISTRY OF HOME AFFAIRS
5TH FLOOR, 'A' BLOCK, TTMC,
BMTc BUS STAND BUILDING
K.H. ROAD, SHANTINAGAR
BANGALORE-560027

3. DIRECTORATE OF ENFORCEMENT
MINISTRY OF FINANCE
GOVERNMENT OF INDIA
BANGALORE ZONAL OFFICE
BMTC B BLOCK, 3RD FLOOR
SHANTINAGAR, K.H. ROAD
WILSON GARDEN, BANGALORE-27
REPRESENTED BY ITS DEPUTY DIRECTOR.

....RESPONDENTS

(BY SRI.M.B.NARAGUND, ASG A/W.
SRI.MADHUKAR M. DESHPANDE, SR. CGC FOR R-1 TO
R-3.)

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THIS WRIT PETITION IS FILED UNDER ARTICLES
226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING
TO QUASH THE IMPUGNED ENDORSEMENT DATED
13.01.2022 BY R-3 PRODUCED HEREWITH AS
ANNEXURE-G AND ALL ACTIONS TAKEN PURSUANT
THERE TO WHICH CAN HAVE THE EFFECT OF
CREATING HINDRANCE IN THE PETITIONERS
EMPLOYMENT PROSPECTS; AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND
RESERVED ON **06/06/2022** COMING ON FOR
PRONOUNCEMENT THIS DAY, THE COURT MADE THE
FOLLOWING:

ORDER

The petitioner is before this Court under Articles 226 and 227 of Constitution of India praying to quash the endorsement dated 13.01.2022 [Annexure-G] whereby the petitioner's passport is cancelled for travel; to quash the look out circular issued against the petitioner; and for a direction to the respondents to permit the petitioner to travel and also direct an enquiry into the actions taken by the respondents and direct the officials responsible to compensate the petitioner in such sum as this Hon'ble Court may determine.

2. Heard the learned senior counsel Sri.Vikram S. Huilgol for Sri.S.Sudarsan, learned counsel for the petitioner, learned Additional Solicitor General Sri.M.B.Naragund for Sri.Madhukar M. Deshpande, learned Senior Central Government Counsel for respondents. Perused the entire writ petition papers.

3. Learned senior counsel for the petitioner would submit that the petitioner who is working in Netherlands for the last 8 years came to India on 12.08.2021 to see his ailing father who was suffering from hypertension as well as Parkinson's disease. The petitioner is holder of Dutch residence permit which is a condition precedent for his employment at Netherlands. It is submitted that in the interregnum, on 26.11.2021, petitioner received summons issued under Prevention of Money Laundering Act, 2002 [for short, PML Act] from respondent No.3, directing him to appear before the third respondent-authority on 29.11.2021. Accordingly, it is stated that petitioner appeared before the third respondent on 29.12.2021, 30.12.2021 and 01.01.2022. The above stated summons to the petitioner was in relation to a criminal case registered against one Mr.Sri Krishna, the brother of petitioner under the provisions of PML Act and also for the offences punishable under Sections 120B, 384, 419, 420

and 471 of IPC. The allegations against the brother of the petitioner are that he is involved in hacking of crypto exchanges and poker website in India as well as overseas from the year 2013 till this date. Further, one more crime in ECIR bearing No.4/2020 dated 09.01.2020 was also registered against the brother of the petitioner for hacking of e-procurement portal of Government of Karnataka and theft of Rs.11.55 Crores from the Government portal bank account. Further, it is submitted that the petitioner after appearing before the third respondent and having submitted his statement was to fly back to Netherlands and when the petitioner was in Bengaluru Airport, he was not allowed to fly and his passport was stamped as cancelled. The petitioner was also informed that at the instance of third respondent, the second respondent issued look out circular. Initially, the petitioner was before this Court by filing writ petition on 24.01.2022 praying to quash the cancellation affixed on his passport as well as for a writ of mandamus directing the respondents to

permit the petitioner to travel. Subsequently, petitioner amended writ petition to include the prayer to quash look out circular.

4. Learned Senior Counsel for the petitioner would contend that no FIR is registered nor any crime is registered against the petitioner. Because of a case which is registered against brother of the petitioner, respondents cannot restrict the petitioner to travel to Netherlands where he is eking out his livelihood. Learned Senior Counsel would submit that restricting the petitioner's travel would be violative of Articles 19 and 21 of the Constitution of India and hence requires interference by this Court.

5. Learned Senior Counsel would submit that there is no law in respect of issuance of look out circular and look out circulars are issued on the basis of the Office Memorandum dated 22.02.2021 (for short "OM") which is produced as Annexure-R1 to the statement of objections. Learned Senior Counsel would invite attention of this

Court to Clause [L] of the OM and submits that respondents appeared to have invoked the said clause of the O.M. against the petitioner. But he submits that the respondents can issue look out circular against a person under Clause [L] if it appears to such authority based on inputs received that 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 stranger and/or economic interests of India or potentially indulge in an act of terrorism or offences against the State. Learned Senior Counsel would submit that in the instant case, circumstances do not justify issuance of look out circular against the petitioner. Right to travel is a fundamental right and it can be curtailed or restricted only as per procedure established by law.

6. Learned Senior Counsel further contends that no cognizable offences alleged are registered against the

petitioner and all allegations and registration of case is against his brother and in that circumstances, respondent Nos.2 and 3 are not justified in issuing look out circular against the petitioner. Learned Senior Counsel would submit that the respondents have not made out either in their statement of objections or in the course of their investigation whether there were exceptional circumstances which necessitated the respondents to issue look out circular. The petitioner has co-operated with the respondents in their investigations and the petitioner has made available all the information which was available with him including e-mail password and key. There being no criminal case nor any other case registered or pending against the petitioner, there is no necessity to detain the petitioner in India, moreover the petitioner has his roots in Bengaluru and he would not fly away from investigation.

7. Learned Senior Counsel placing reliance on the decision of the Division Bench of High Court of Madras reported in **2018 SCC OnLine Mad 2229 [Karti P. Chidambaram V/s. Bureau of Immigration, Ministry of Home Affairs and Others]** submits that request for issuance of look out Circular by respondent No.3 would necessarily have to contain reasons for such request and unless the reasons are disclosed in the request for issuance of LOC, it would not be in compliance with requirement of law. Learned Senior Counsel would submit that in the instant case also, no reasons are forthcoming nor have respondents disclosed reasons for issuing look out circular against the petitioner. The condition precedent for issuance of LOC, such as registration of a case; absence of financial irregularity; acting against the interest of the State are absent, the impugned look out Circular is liable to be set aside.

8. Learned Additional Solicitor General Sri.M.B.Naragund referring to the statement of objections filed on behalf of the respondents submits that the presence of the petitioner is necessary for investigation to ascertain role of the petitioner in the offences of money laundering and also to ascertain all the transactions leading to proceeds of crime. It is submitted that Crime No.153/2020 dated 27.11.2020 was registered against one Mr.Sri Krishna and others under Sections 120B, 384, 419, 420 and 471 of IPC and as those offences were the offences under PML Act, the respondent No.3 recorded ECIR bearing No.1/2021 dated 04.01.2021 and commenced investigation. It is also submitted that one more crime in ECIR bearing No.4/2020 dated 09.01.2020 was registered with regard to hacking of e-procurement portal of Government of Karnataka and theft of Rs.11.55 Crores from Government Portal Bank account. Both the above crimes were registered against Mr.Sri Krishna, the brother of the petitioner and others. Mr.Sri Krishna,

brother of the petitioner is the prime accused who had hacked poker websites and Crypto exchanges, thereby making high value transactions within and outside the country. It is alleged that said Mr.Sri Krishna has converted certain crypto currencies into other crypto currencies and traded in international platforms and thereafter converted for his own illegal gains.

9. Learned Additional Solicitor General further submits that for the purpose of ascertaining the role of petitioner in the crime, the petitioner was issued with summons under Section 50 of the PML Act to appear before the third respondent. In pursuance of the summons, even though the petitioner appeared before the third respondent on 29.12.2021, 30.12.2021 and 01.01.2022, he has failed to co-operate with the investigation. It is further stated that the petitioner failed to furnish the temporary e-mail password and also key to certain correspondences. It is submitted that the

petitioner received 50,000 pounds out of the crime proceeds from his brother Mr.Sri Krishna and had transferred the same to one Mr.Hanish Patel residing in UK owning an entity by name, GCP UK Ltd., in May 2021. Further, referring to paragraph 9 of the statement of objections, learned Additional Solicitor General would submit that look out circular was issued by following the procedure prescribed under Office Memorandum dated 22.02.2021 at Annexure-R1. It is his submission that it was necessitated to issue look out circular as there was serious apprehension of the petitioner escaping the jurisdiction of this Court. Referring to e-mails of the petitioner, it is submitted that the petitioner is making hectic efforts to settle at Netherlands, outside the territory of India. If the petitioner flees from the territory of India, it is stated that investigation itself would get hampered. As such, it is stated that look out circular was issued against the petitioner in compliance with the procedure prescribed under Official Memorandum stated above. With regard to

the contention of the petitioner that action of the respondents is violative of Articles 14, 19 and 21 of Constitution of India, learned Additional Solicitor General would submit that there is no absolute right as contended by the petitioner and the same could be restricted by following the prescribed procedure. Further, it is submitted that petitioner has failed to co-operate by not providing the material as sought by the respondents. It is submitted that it is open for the petitioner to co-operate with the investigation and convince the respondents that his presence is not necessary for the investigation and seek permission to travel. Further, he submits that petitioner is not taken to custody and his right is not curtailed as contended.

10. Learned Additional Solicitor General submits that contention of the petitioner with regard to violation of Articles 14, 19 and 21 of Constitution of India and that no reasons are assigned were the contentions raised before

the Division Bench of this Court in W.A.No.315/2021 and the Division Bench, by judgment dated 12.05.2021 rejected all those contentions and held that national interest is paramount and all other interest including the individual interest will have to yield or kneel before the national interest.

11. Learned Additional Solicitor General inviting attention of this Court to memo dated 05.04.2022 submits that even on 23.03.2022, the petitioner instead of appearing before the third respondent, sent a letter through his advocate and the said letter is also silent on the aspect of receipt of 50,000 pounds from his brother Mr.Sri Krishna through bank transfer. It is submitted that unless petitioner explains satisfactorily the receipt of 50,000 pounds and further transfer of the same to one Mr.Hanish Patel and furnishes the password of the temporary e-mails and certain keys, his presence for investigation with regard to money laundering case

registered against his brother would be absolutely necessary. It is his submission that the economic interest of the country is involved. It is also submitted that conversation between the petitioner and his father revealed that certain Great Britain Pounds (GBP) were transferred to a Swiss Account, details of which are yet to be known. Since the respondents are yet to ascertain the role of petitioner in the offence of money laundering and thereby ascertaining all the transactions leading to proceeds of crime, the presence of petitioner is absolutely necessary. Hence, issuance of LOC is justified.

12. It is an admitted fact that no crime nor FIR is registered for any office against the petitioner. It is also an admitted fact that one Mr.Sri Krishna is the brother of the petitioner and it is a matter of record that two FIRs in Crime No.9/2019 and Crime No.153/2020 are registered against Mr.Sri Krishna, brother of petitioner. Crime No.153/2020 is registered against Mr.Sri Krishna and

Others for the offences punishable under Sections 120B, 384, 419, 420 ad 471 of IPC. The respondent No.3 recorded ECIR bearing No.1/2021 dated 04.01.2021 and commenced investigation against the brother of petitioner Mr.Sri Krishna for money laundering under PML Act. The allegation against Mr.Sri Krishna is that he hacked poker websites and Crypto currency exchanges, making high value transactions within and outside the country; converted certain crypto currencies into other crypto currencies and traded in international platforms; thereafter converting the same for his own illegal gains. For the purpose of investigation, summons was issued under Section 50 of PML Act to Mr.Sri Krishna and his father and other persons. It is the case of respondent No.3 that Mr.Sri Krishna in his statement has categorically admitted his involvement in hacking of crypto exchanges and poker website in India as well as overseas from the year 2013 till date. Crime No. 9/2019 was registered by the CID Police, Government of Karnataka with regard to

hacking of e-Procurement Portal of Government of Karnataka and theft of Rs.11.55 Crores from the Government Portal bank account.

13. The third respondent during the course of investigation of crime against brother of the petitioner Mr.Sri Krishna, to ascertain the role of petitioner in the offense of money laundering and to find out with regard to proceeds of crime, issued summons to the petitioner under Section 50 of PML Act to appear before the third respondent. There is reasonable apprehension for the respondents that petitioner being brother of the Mr.Sri Krishna is involved in acquiring the proceeds of crime. During the course of investigation, it was found that petitioner had received a sum of 50,000 pounds from his brother Mr.Sri Krishna and had further transferred the same to one Sri.Hanish Patel, residing in UK, owning an entity by name GCP UK Ltd., in May 2021. The third respondent has made a categorical statement before the

Court that petitioner is not co-operating in the investigation and has failed to furnish username and password of temporary e-mails which were used by the petitioner for certain transactions and also certain keys to e-mail. In this background, petitioner was rightly not permitted to travel outside the country and when the petitioner intended to leave the country, LOC was issued.

14. LOC was issued by following the procedure prescribed under Office Memorandum dated 22.02.2021. The said Office Memorandum lays down guidelines for issuance of LOC under the circumstances stated therein. Look out notice against the petitioner is issued under Clause 6[L] which reads as follows:

“In exceptional cases, LOCs can be issued even in such cases as 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 stranger 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 of time.”

A reading of the above Clause makes it clear that LOC could be issued wherein the departure of a person from India, if it appears to such authority based on inputs received that 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 stranger and/or economic interests of India and for the reasons stated therein. LOC against the petitioner is issued on the ground that if he is permitted to leave India, it would affect the economic interest of India.

15. The e-mails of the petitioner which is reproduced in the statement of objections of the respondents reveals that petitioner is intending to take permanent Dutch residence and Dutch citizenship. Therefore, respondents are right in apprehending that petitioner may not be available for further investigation of crime registered against brother of the petitioner. The apprehension of the respondents that the petitioner being brother of Mr. Sri Krishna might have involved in acquiring the proceeds of crime at this stage is to be respected, since the investigation is still under progress. As stated above, LOC was issued based on the Office Memorandum dated 22.02.2021 [Annexure-R1] and the said Office Memorandum is not under challenge. No right is absolute. Rights could be restricted or curtailed by following the procedure prescribed under law. Admittedly, respondent No.3 is empowered to issue LOC in terms of Office Memorandum dated 22.02.2021. The Division Bench of this Court in **W.A.No.315/2021**

(Dr.Bavaguthuraghuram Shetty V/s. Bureau of Immigration and Others), disposed of on 12.05.2021, relying on the decision of the Hon'ble Apex Court in the case of **Mrs.Maneka Gandhi Vs. Union of India and Another [(1978) 1 SCC 248]**, at paragraphs 21, 22, 23, 25, 33 and 36, held thus:

“21. Though Sri.Mukul Rohatgi, learned Senior Counsel has vehemently contended that right to travel is a fundamental right and the restriction imposed on the petitioner from leaving the territory of India, amounts to infringement of the rights guaranteed under Articles 14, 19 and 21 of the Constitution of India, looks attractive at first blush, is not so on deeper examination for reasons more than one. Firstly, the petitioner has not challenged the constitutional validity of the Official Memorandum (OMs) dated 27.10.2010, 05.12.2017, 19.07.2018, 19.09.2018, 04.10.2018, 12.10.2018 (Annexures-AA to AE and Annexures-R1 and R2) whereunder it enables the authorities to impose restriction on a Indian citizen from leaving the territory of India.

As such neither the Single Judge was required to examine the said issue nor we are inclined to delve upon this aspect.

*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 Bhagawati, 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).....*

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.....*

33. It would be apt and appropriate to note that Courts exercising extraordinary jurisdiction, while examining the claim of a person who is alleged to have committed an economic offence, would not treat him with kid gloves. Non pendency of any criminal case, by itself would not be a ground on which the Look Out Notice/Circular not being issued. The extant circular in the instant case would clearly indicate that if it appears to the authorities based on inputs received that departure of a person is detrimental to the bilateral relations with any country or to the strategic and/or economic interests of India or if such person if allowed to leave the country, 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 of time, then in such circumstances his right to go abroad can be curtailed or restricted.....

36. Thus, the national interest is paramount and all other interests including the individual interest will have to yield or kneel

before the national interest. In fact, the economic offences constitute a class by itself and the approach to said issue has to be from a wider angle, as economic offence if it goes unchecked, it would lead to serious consequences affecting the economy of the country as whole and it would pose a serious threat to the financial stability of the country. This Court cannot lose sight of the fact that cause of the community deserves equal treatment at the hands of the Courts.....”

16. In **Dr.Bavaguthuraguram Shetty** (supra), there was no FIR or crime registered against him and a look out notice was issued at the request of respondent Nos.3 and 4/Banks therein, against the petitioner in that case as he was due in a sum of Rs.2,800 Crores to those two Banks. In that case, the Division Bench has held that passport may be impounded without giving prior opportunity and subsequently hearing must be provided. Hence, it held that question of violation of Article 14 of Constitution of India would not arise. It is further held

that pendency of a criminal case need not be a ground to issue LOC but in the larger public interest and the economic interest of the Country, LOC could be issued in accordance with the Office Memorandum dated 22.02.2021. Ultimately, the Division Bench has held that national interest is paramount and all other interests including individual interests will have to yield or kneel before the national interest. The Court will have to weigh the individual interests with that of the Country. Thus, I am of the view that action of the respondents would not violate Articles 19 or 21 of the Constitution of India.

17. The petitioner relying upon the decision of Division Bench of the High Court Madras in **2018 SCC Online MAD 2229 ((2018) 2 SWC 609 (Karti P. Chidambaram v. Bureau of Immigration, Ministry of Home Affairs)** states that reasons must be recorded atleast in the request letter. The third respondent in a sealed cover has made available the request letter of the third respondent issued to second respondent and also

note sheet leading to issuance of the said request letter. On going through the same, this Court is satisfied with the reasons recorded in note sheet, while requesting the second respondent to issue LOC against the petitioner. Those reasons at this stage need not be disclosed to the petitioner since investigation is under progress.

18. In the instant case, investigation of money laundering against brother of the petitioner is in progress and also investigation with regard to role of petitioner along with his brother in money laundering is also being investigated. Further, the apprehension of respondents that petitioner may settle down at Netherlands and he may not be available for further investigation has to be respected in view of extract of e-mails reproduced in their statement of objections.

19. It is for the petitioner to co-operate with investigation being conducted by the third respondent and to convince the third respondent that he has no role to

play in money laundering case registered against his brother and request for withdrawal of LOC issued against him.

20. For the reasons recorded above, at this stage, I do not find any merit in the writ petition and accordingly, writ petition stands rejected.

**Sd/-
JUDGE**

NC.
mpk/-*