

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) No. 3201/2023
CM No. 7686/2023
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Pronounced on:21.12.2023

Aman Gehlot

.... Petitioner/Appellant(s)

Through:- Mr. Vaibhav Suri, Advocate with
Mr. Arfat Rashid Lone, Advocate

V/s

Anti-Corruption Bureau (Central
Kashmir) & ors.

.....Respondent(s)

Through:- Mr. T. M. Shamsi, DCSI

CORAM : HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

01. The petitioner has approached this Court calling into question the Look Out Circular (LOC) issued against him which restrains him from travelling abroad.

02. The contention of the petitioner is that the ACB, Central Kashmir Srinagar registered an FIR No. 15/2019 under Sections 120-B and 420 of RPC and Section 5(1)(c) & (d) read with Section 5(2) of the Jammu & Kashmir Prevention of Corruption, Act Svt., 2006 (hereinafter to be referred to as 'the PC Act') on 24.07.2019. As per the investigation, the allegation of criminal conspiracy, criminal breach of trust and criminal misconduct by the public servant was established. The allegation in the FIR that the company of the petitioner AHPL (M/s Aman Hospitality Pvt. Ltd) has turned willful defaulter in repaying the loan amount on regular interval for the financial assistance recorded by the Company from J&K

Bank of Rs. 227.01 Crores in the year 2009-10 and there was misappropriation of the loan amount was misappropriated by the Director of M/s Aman Hospitality Pvt. Ltd. in connivance with the other accused persons.

03. The Anti-Corruption Bureau (ACB) after registration of the FIR, conducted search and seizure at the residential premises of the petitioner at A-5, Mayfair Garden, New Delhi and seized the passports of the petitioner and his father-Raj Singh Gehlot along with other documents. ACB filed charge-sheet bearing No.01/2021 dated 20.03.2021 under Section 120B read with Sections 409 & 420 RPC and Section 5(1)(c) & (d) read with Section 5(2) of the PC Act against 10 entities and individuals. The petitioner was not arraigned as an accused in this charge-sheet dated 20.03.2021.

04. The investigation was transferred to respondent No. 2 i.e., CBI vide order dated 23.06.2021. After transfer of the investigation, the CBI re-registered an FIR No. 15/2019 Dated 24.07.2019, PD ACB, Central Kashmir, Srinagar under case Crime No. RCBD12021E0004 dated 02.09.2021 under Section 5(1)(d) read with Section 5(2) of the PC Act. The father of the petitioner questioned the FIR, Charge-sheet and summoning order dated 24.03.2021 by way of CRM(M) No. 504/2022 before this Court. This Court after hearing the parties vide order dated 24.11.2022, stayed the proceedings before the trial Court till next date of hearing.

05. During the investigation of the case, the passports of the petitioner as well as his father were seized. The petitioner and his father-Raj Singh Gehlot filed applications before the trial Court for release of

passports which were retained by respondent No. 1 during the course of investigation. These applications were dismissed and the petitioner filed a petition i.e., CRM(M) No. 309/2023 seeking release of his passport. In the reply filed by the CBI, it was stated by them that they have opened a Look Out Circular against the petitioner as he is named as an accused in the FIR. The passports of the petitioner and his father were directed to be released vide order dated 08.11.2023 passed in CRM(M) No. 235/2023.

06. Learned Deputy Solicitor General of India has filed objections on behalf of the respondents. It is submitted by him that the petitioner has been arraigned as an accused in the FIR filed by the CBI and since the accused is involved in economic offences and is an influential person who has access to the funds, therefore, there is strong apprehension that the accused may abscond to avoid the investigation of this case, hence LOC was opened against him and the same is in operation till date. The role of the petitioner, it is submitted, in criminal conspiracy is high suspicious and investigation is contrary and if he absconds, he may jeopardize the investigation of the case, therefore, it is apprehended that if LOC is recalled or revoked, he may not be available for investigation of the case.

07. It is submitted that the only apprehension of the respondents is that the petitioner may abscond to avoid investigation. There is no reasonable ground for this apprehension. The petitioner has been cooperating with the respondents. There is nothing on record to show that the petitioner is not appearing before the respondents. The petitioner has even booked his return ticket i.e., to travel to Dubai UAE on 23.12.2023 and for return on 29.12.2023.

08. The contention of the petitioner is that he and his family intend

to travel to Dubai, UAE from 23.12.2023 till 29.12.2023 and due to Look Out Circular, the petitioner is unable to exercise his fundamental right to travel. The Look Out Circular issued to prevent the petitioner from travelling, is in violation of the Office Memorandum (OM) dated 22.02.2021 issued by the Ministry of Home Affairs, Foreigners Division (Immigration Section) as well as guidelines issued by the Court in **Sumer Singh Salkan vs. Assistant Director and Ors.**, reported as **ILR 2010 (VI) Delhi 706**. As per the said judgment, the questions are 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.
- 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.
- 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.

09. Heard learned counsels for the parties.

10. FIR No. 15/2019 was registered on 24.07.2019 under Sections 120-B and 420 RPC and Section 5(1)(c) & (d) read with Section 5(2) of the Jammu & Kashmir Prevention of Corruption, Act Svt., 2006. The

investigation was complete as well as the charge-sheet was filed on 20.03.2021 by the ACB. Subsequently, the investigation was transferred to the CBI vide order dated 23.06.2021 and the CBI re-registered the FIR on 02.09.2021 and thereafter the trial has been stayed vide order dated 24.11.2022 in CRM(M) No. 504/2022. The allegations were initially against the father of the petitioner. It is only subsequently that the petitioner was arraigned as an accused by the CBI.

11. There is nothing in the reply filed by the respondent to put forth that the petitioner is evading arrest or not appearing before the Investigating Agency or summons have been issued and the petitioner has not appeared or there was any likelihood of the accused leaving the Country to evade arrest or trial. There is also nothing on record to show that the petitioner has not joined the investigation or has failed to appear before the Court. The trial of the case has been stayed in this case since 24.11.2022.

12. In the facts of the present case, it becomes evident that the LOC was issued despite the absence of any precondition necessitating such a measure. 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. In the instant case, there is no reply to the submission of the petitioner that he is always available for investigation. The respondents have not summoned him and in case, they would do so, he would appear before them. There is, as such, no cogent reason for presuming that the petitioner would not appear before the

Investigation Agency or abscond, the petitioner is available for investigation since the registration of FIR in the year 2019 and hence, no case is made out for issuing the impugned LOC.

13. The Look Out Circular cannot be issued as a matter of course but in exceptional circumstances, after following guidelines, where there are reasons for the same i.e., where the accused deliberately evades arrest or does not appear before the trial Court.

14. The argument of the learned DSGI is that a request for Look Out Circular has been issued in view of the inherent power of the Investigating Authority to secure attendance and cooperation of the accused when the petitioner is cooperating with them is contrary to the guidelines in **Sumer Singh Salkan's case (supra)**, is also not sustainable.

15. The impugned LOC is devoid of merits and infringes upon right of the petitioner to travel abroad. In view of the aforesaid facts and circumstances and for the reasons discussed above, the impugned LOC is set aside and quashed but in order to strike balance qua the right of the investigation agency to investigate the instant matter as well as the fundamental right of the petitioner of movement and free speech.

16. Therefore, the instant petition stands allowed in the above terms with the following conditions:-

- (a) The petitioner shall intimate his travel dates and detailed itinerary to the Investigation Agency forthwith along with the address of the places that the petitioner shall be visiting;
- (b) the petitioner on return shall inform the respondents about his arrival;
- (c) The petitioner shall deposit an FDR to the tune of Rs. 01 lakh before the Investigating Agency;
- (d) The petitioner shall not attempt to tamper with the

evidence or influence the witnesses in any manner.

17. It is made clear that the order of this Court setting aside the impugned LOC will not impact the criminal proceedings or any other proceedings, at any stage, initiated against the petitioner.

(SINDHU SHARMA)
Judge

SRINAGAR

21.12.2023

RAM MURTI/PS

Whether the order is speaking : *Yes/No*
Whether the order is reportable : *Yes/No*

