

(2022) 10 BOM CK 0101

In the Bombay High Court

Case No : Criminal Writ Petition No. 1098 Of 2022, Interim Application No. 1815 Of 2022

Roshini Kapoor

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 18-10-2022

Acts Referred:

Indian Penal Code, 1860 — Section 468, 471

Citation : (2022) 10 BOM CK 0101

Hon'ble Judges : A.S. Gadkari, J;Milind N. Jadhav, J

Bench : Division Bench

Advocate : Pranav Badheka, Aditya Mithe, Siya Chaudhry, D.P. Singh, Aditya Thakkar, Hiten S. Venegaonkar, Bharat Mirchandani

Final Decision : Disposed Of

Judgement

Milind N. Jadhav, J.

1. By the present Petition, Petitioner has prayed for the following reliefs:-

"(b) An appropriate writ, order or direction may be issued directing Respondent No.2 to disclose and produce the purported Look Out Circulars, if any, issued and operating against the Petitioner, before this Hon'ble Court;

(c) An appropriate writ, order or direction may be issued directing Respondents No.3, 4 and 5 to provide records maintained by them pursuant to which a request was made by Respondents No.3, 4 and 5 to Respondent No.2 to issue the purported Look Out Circulars against the Petitioner, before this Hon'ble Court;

(d) An appropriate writ, order or direction be issued directing the Respondents to recall, rescind, quash or cancel the purported Look Out Circular(s) if any, issued to operating against the Petitioner and/or not to give any effect or further effect to the same in future;

(e) During the pendency of the present Writ Petition, Respondent No.2 be

directed to temporarily suspend the operation of any subsisting Look Out Circular(s) if any, issued and operating against the Petitioner for the time period between 13.04.2022 to 05.05.2022 enabling the Petitioner to travel outside India and return without any difficulty.”

2. Petitioner has raised the following three grievances:-

(i) that passport of Petitioner is seized by CBI on 09.03.2020. She is arraigned as Accused No.7 in RC No.219 of 2020 E 0004 CBI/EO-I/Delhi registered on 07.03.2020. In the same case, Supplementary chargesheet has been filed on 13.07.2021 and the case has been numbered as Special CBI Case No. 830 of 2021. She reasonably apprehends that CBI, may have requested issuance of a Look Out Circular (for short “LOC”) against her;

(ii) that she is arraigned as Accused No.2 before the Special Judge for Prevention of Money Laundering Act, 2002 (for short “PMLA”) cases by the Enforcement Directorate in Special Case Nos.452 of 2021 @ 571 of 2021. Petitioner once again reasonably apprehends that the Enforcement Directorate may have requested issuance of a LOC against her;

(iii) that the Bureau of Immigration (BOI) has issued a LOC against her at the instance of the Income Tax Department, however she is unaware, if the same still subsists.

3. The aforesaid three apprehensions against the LOCs’ issued against Petitioner emanate from the pending proceedings and certain Orders passed by the learned Trial Court, by a single Judge of this Court and the Supreme Court. On 08.03.2020, Petitioner was scheduled to travel from Mumbai to London, but was detained by the Immigration Authorities at the Mumbai International Airport and thereafter taken to the office of Income Tax Department. It is stated in the Petition that between 2017 and 2020 Petitioner has travelled outside India to foreign locations on as many as 17 occasions. However Petitioner’s father stands arrested by the Enforcement Directorate in respect of the aforementioned ECIR - PMLA Special Case Nos.452 of 2021 @ 579 of 2021 and is in judicial custody till date. Petitioner is also an accused in the said case. Petitioner has co-operated with the Income Tax Department as and when summoned. Petitioner being apprehensive about the LOCs’ against her, has filed the Petition seeking the desired reliefs.

4. We have heard Mr. Badheka, learned Advocate for Petitioner and Mr. Venegaonkar, Advocate for Respondent Nos. 4 and 5. Perused entire record produced before us.

5. At the outset, it will be worthwhile to refer to and reproduce some of the relevant Orders passed by the Courts in the Petitioner’s case which are germane to the issue at hand i.e. if the Petitioner desires to travel abroad.

6. The Petitioner is Accused No.7 in Bail Application 86/BA/2020 in Criminal Case No.355 of 2020. This case is registered by the Central Bureau of Investigation

(for short "CBI") under the provisions of Indian Penal Code, 1860 (for short "IPC") read with the provisions of Corruption Act, 1988 (for short "PC Act") against the Petitioner and her family members. By order dated 12.11.2020 Petitioner was enlarged on bail by the learned Trial Court by issuing the following directions regarding her travel:-

"i)

ii)

iii)

iv) Accused No.7 is directed to deposit her passport with the C.B.I.

v) Accused No.7 shall seek prior permission of Court for travel abroad.

vi) She should not tamper with the prosecution evidence and witnesses and co-operate with the Investigation Officer as and when required."

7. The Petitioner is Accused No.2 in PMLA Special Case No.452 of 2020. This case is registered by the Directorate of Enforcement under the provisions of PMLA Act. By order dated 11.12.2020 Petitioner was enlarged on bail by the learned Trial Court by issuing the following directions regarding her travel:-

".....

Accused No.2 shall not leave India without prior permission of this Court.

.....

Accused No.2 shall furnish her detailed residential address and mobile number to the Complainant."

8. It is seen that on 04.09.2021 CBI moved an Application in the pending case against Petitioner praying that she may be taken into judicial custody since certain new offences were added against her under Sections 468 and 471 IPC in the Supplementary chargesheet. Petitioner filed Bail Application on 08.09.2021 seeking her release on bail. On 18.09.2021, Petitioner was arrested and remanded to judicial custody. Petitioner thereafter filed Criminal Bail Application No.3326 of 2021 in this Court. On 28.09.2021 the learned Single Judge of this Court rejected the Bail Application of Petitioner alongwith three other accused on various grounds. Petitioner filed Special Leave to Appeal in the Supreme Court against the above Order. By Order dated 07.10.2021, the Supreme Court granted interim bail to the Petitioner and passed the following order:-

".....

In the meantime, the petitioners are granted interim bail with no specific conditions at this stage as the petitioners were granted originally bail/interim bail subject to certain terms and conditions by the trial Court which would naturally equally apply here."

9. From the above, it is clearly discernible that the Supreme Court has granted interim bail to the Petitioner with no specific conditions since the Petitioner was originally granted bail/interim bail subject to certain terms and conditions stipulated by the Trial Court. The reference in the Supreme Court Order is obviously to the terms and conditions mentioned in the twin Orders dated 12.11.2020 and 11.12.2020 alluded to hereinabove. In short, if the Petitioner desires to travel abroad, she needs to seek permission of the Trial Courts.

Both learned Advocates are ad-idem with this position.

10. We may also note that in so far as the Income Tax Department is concerned, by letter dated 25.05.2022 the Deputy Director of Income Tax (Inv.) FAIU-1(1), Mumbai has notified that at present there is no LOC issued by his office in respect of the Petitioner. In this context, reliance is also placed by the Petitioner on the Order dated 06.04.2022 passed below Exh.175 in PMLA Special Case Nos.452 of 2020 and 579 of 2020 wherein Petitioner's Application to travel to USA from 13.04.2022 to 05.05.2022 was allowed by the Special Court under PML Act after stipulating conditions stated therein. For the sake of convenience, we may reproduced the said order which reads thus:-

"1. Application (Exh.175) is allowed.

2. Applicant Ms. Roshini Kapoor, accused No.2, is permitted to travel New York, USA from 13.04.2022 to 05.05.2022, as prayed.

3. Applicant Ms. Roshini Kapoor shall furnish itinerary of her travel with address of her residence at New York, her phone numbers, which are reachable at USA and working E-mail ID to the Investigating Officer before leaving India.

4. Applicant Ms. Roshini Kapoor shall deposit Rs.2,00,000/-as security deposit in this Court.

5. Applicant shall undertake not to indulge in any activity, which will affect the case of the prosecution by influencing prosecution witnesses as well as tampering with the evidence/record and pressurizing the persons connected to the case.

6. The moment applicant Ms. Roshini Kapoor arrives India, she shall report the Investigating Officer and shall also report the complaine to this Court.

7. Respondent-ED to note that, if any activity on the part of applicant Ms. Roshini Kapoor as apprehended by them is noticed, it should be immediately informed to the Court.

8. The applicant shall undertake not to make any contact with Rakhi Kapoor, at London and also not to misuse this permission for travelling to London, during the aforesaid period."

11. Mr. Badheka, learned Advocate appearing for Petitioner has a raised a concern that Petitioner is apprehensive to travel abroad since she anticipates that

due to the subsisting LOC, she may once again be prevented from travel.

12. Mr. Venegaonkar has submitted that in so far Income Tax Department is concerned there are no directions issued for any LOC against the Petitioner. That in so far as the PMLA case is concerned, Petitioner was permitted to travel abroad with imposition of conditions as stated in the Order dated 06.04.2022. However, in so far as the CBI case is concerned, he has drawn our attention to the Affidavit-in-reply dated 26.09.2022 filed by Respondent No.3, CBI and contended that the LOC issued against the Petitioner is still continued and is in subsistence to ensure compliance of the Order dated 12.11.2020 (supra) read in conjunction with the Supreme Court Order granting interim bail dated 07.10.2021 (supra), as the Petitioner is facing grave charges. He submitted that since the Petitioner is not on regular bail as yet and since further investigation is under progress, the said LOC is prevalent. He has drawn our attention to CBI letter dated 09.03.2020 addressed to the BOI, New Delhi requesting opening of LOC against Petitioner since it is apprehended that in case the LOC issued against the Petitioner is withdrawn, she may leave the country and not return back to face proceedings instituted against her. Mr. Venegaonkar, however fairly submitted that considering the Orders passed by the learned Trial Courts, the interim bail Order granted by the Supreme Court and the direction contained therein, in so far as the issue relating to CBI's LOC is concerned, this Court may pass appropriate directions / clarification if so required for travel of Petitioner reserving right of CBI to place its objection for consideration before the trial Court.

13. We have carefully perused the above Orders passed by the learned Trial Court which categorically require the Petitioner to seek its permission before any travel abroad. Similarly the Supreme Court while granting interim bail to the Petitioner has also clarified that the terms and conditions granted by the learned Trial Court would naturally apply to its Order granting interim bail to Petitioner. On a conjoint reading of the two Orders passed by the learned Trial Court, viz; Orders dated 12.11.2020 and 11.12.2020 read with the Order dated 07.10.2021 passed by the Supreme Court, it is further clarified as under :-

(i) If the Petitioner desires to travel abroad she is at liberty to seek prior permission of the appropriate/concerned Trial Court, wherein she is charged as an accused;

(ii) As and when the Petitioner makes any such application for travel abroad, the prosecution/prosecuting agency therein shall be at liberty to press any such ground, including the ground of existence/subsistence of LOC against the Petitioner;

(iii) In the event if any such ground is raised, the Trial Court shall be at liberty to decide any such objection regarding LOC on its own merits and strictly in accordance with law;

(iv) The Trial Court at the time of deciding such an application may consider to

direct to suspend LOC for a limited period as may be permissible under the Rules in that behalf.

14. We hasten to clarify that the Petitioner has been granted interim bail with no specific conditions imposed by the Supreme Court other than the conditions imposed by the trial Courts.

15. With the above clarification, we dispose of the Writ Petition.

16. In view of disposal of the Writ Petition, Interim Application does not survive and is accordingly disposed of.