

(2022) 01 DEL CK 0197

In the Delhi High Court

Case No : Criminal Writ Petition No. 249 Of 2019

Sathish Babu Sana Vs Central Bureau Of Investigation

Date of Decision : 28-01-2022

Acts Referred:

Prevention Of Money Laundering Act, 2002 — Section 45
Code Of Criminal Procedure, 1973 — Section 164

Citation : (2022) 01 DEL CK 0197

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Siddharth Aggarwal, Stuti Gujral, Sahil Ghai, Rudrali Patil, Sheikh Bakhtiyar, Ripudaman Bhardwaj, Kushagra Kumar

Final Decision : Disposed Of

Judgement

Mukta Gupta, J

W.P.(CRL) 249/2019

CRL.M.A.1700/2019 (stay)

1. By this petition, petitioner seeks a writ of certiorari quashing the lookout circular (in short "LOC") issued by respondent against the petitioner

in relation to RC No.224/2017/A-001.

2. Learned counsel for the petitioner contends that the above noted RC was registered against four named accused namely Moin Akhtar Qureshi,

Aditya Sharma, Pradeep Koneru and A.P. Singh and other unknown persons/ public servants. The petitioner was not named in the RC however, was

summoned as witness number of times, which the petitioner joined. Petitioner was a witness in this case is evident from the fact that his statement

was recorded under Section 164 Cr.P.C. Till date, the investigation of the respondent is not complete and the petitioner has not been sent as an

accused for trial. It is submitted that the LOC qua the two named accused in the FIR, i.e. Moin Akhtar Qureshi and Pradeep Koneru have been

quashed by the learned Special Court and this Court respectively however, it subsists qua the petitioner. It is contended that the petitioner has always

cooperated in the investigation and in terms of the decision of the Division Bench of this Court reported as ILR 2010 VI Delhi 706 Sumer Singh

Salkan vs. Assistant Director & Ors. and other decisions no ground for opening of the LOC or the continuation thereof is made out. According to the

petitioner he is a businessman and has huge investment in India and for the purpose of his business, he has to often travel overseas. Between October,

2017 to October, 2018 the petitioner joined the investigation with the respondent approximately 9-10 times however, when he was at the immigration at

Hyderabad Airport on 25th September, 2019 he was stopped when he came to know that a LOC had been opened against him.

3. It is contended that the petitioner being a victim is a complainant in another FIR lodged by the CBI being RC No.13(A)/2018/CBI/AC-III despite

the fact that the petitioner is a victim and till date neither arrested nor charge-sheeted and has joined the investigation, the LOC was opened in a most

casual manner without following the principles of law laid down by this Court. Even if the petitioner is required for investigation, the same does not

permit the investigating agency to destroy the personal freedom of a citizen as held by the Honâ??ble Supreme Court in the decision reported as

2013 (6) SCC 740 Chandran Ratnaswami vs. K.C. Palanisamy.

4. Learned Spl.P.P. for CBI refuting the arguments of the learned counsel for the petitioner states that even though no charge-sheet has been filed

however, the petitioner is required for investigation. No prejudice has been caused to the petitioner due to the LOC, as the petitioner has travelled

abroad after seeking necessary permission from the competent Court. It is further stated that the LOC of the two named accused Moin Akhtar

Qureshi and Pradeep Koneru was quashed subject to stringent conditions.

5. As per the reply filed by the CBI, the aboveâ??noted FIR was registered on the basis of a complaint dated 31st August, 2016 received from the

Assistant Director, Delhi Zonal Office, Directorate of Enforcement duly forwarded by the Director of Enforcement alleging that Moin Akhtar Qureshi

had been liaisoning and obtaining illegal money from various persons for getting

their work done through public servants. Analysis of the records and BBM chat data for the year 2011 to 2013 reveals that Moin Akhtar Qureshi had taken huge amount of money from different persons for obtaining undue favours from the public servants. The chats and messages have revealed that Aditya Sharma received the money on behalf of Moin Qureshi. During the course of investigation, role of the petitioner also came up as an accomplice/accused for which an arrest proposal was mooted by the investigating agency and LOC was also opened on 16th May, 2018 as there was reasonable apprehension that he may abscond from India and may not return back. As per the investigation, the petitioner made a payment of ₹ 1.50 crores to the prime accused Moin Qureshi through his employee Aditya Sharma in November, 2012. The petitioner is one of the Directors of Vanpic Ports Pvt. Limited, a subsidiary of Vanpic Projects Pvt. Ltd. for which an investigation was going on by the Anti Corruption Branch of CBI, Hyderabad and the petitioner was also examined being one of the Directors and in this regard the petitioner made the statement before the Enforcement Directorate in connection with bail matter of one Sukesh Gupta.

6. This Court in *Sumer Singh Salkan* (supra) dealing with a reference on the issues regarding the category of cases in which the investigating agency can seek recourse to LOC, under what circumstance, the procedure to be followed before opening the LOC, the remedy available to the person and the role of the concerned Court answered the issues as under:

The questions raised in the reference are as under:

- A. What are the categories of cases in which the investigating agency can seek recourse of Lookout-Circular and under what circumstances?
- B. What procedure is required to be followed by the investigating agency before opening a Look out-circular?
- C. What is the remedy available to the person against whom such Look-out-Circular has been opened?
- D. What is the role of the concerned Court when such a case is brought before it and under what circumstances, the subordinate courts can intervene?

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. The competent officer alone shall give directions for opening LOC by passing an order in this

respect.

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.??

7. LOC was opened by the respondent against Moin Akhtar Qureshi who is admittedly the main accused in the above-noted RC who had sought

quashing of the LOC and vide order dated 8th August, 2018 the learned Special Judge recalled the directions of issuing LOC against him, applying the

law laid down by this Court in Sumer Singh Salkan (supra). The said order directed Moin Akhtar Qureshi to file an application seeking permission to

visit abroad as and when required so that considering the basis of the status of investigation liberty could be granted. Thereafter, Moin Akhtar Qureshi

sought permission to travel abroad before the learned Special Judge, and while permitting to travel abroad, imposed condition of furnishing an

additional security in the form of a bank guarantee of ₹2 crores was imposed. The said decision dated 1st February, 2019 was challenged before this

Court when this Court in CrI.M.C. No.760/2019 enhanced the condition of FDR/

bank guarantee to ₹6 crores however, by the order dated 1st April, 2019 the Honâble Supreme Court reduced the condition to ₹2 crores.

8. Thereafter Pradeep Koneru also filed a petition before this Court seeking quashing of the LOC opened against him wherein this Court in W.P.

(Crl.) 2962/2018 vide order dated 2nd April, 2019 directed the respondent to recall the lookout circular inter-alia imposing conditions that the petitioner

will seek permission of the learned Trial Court before travelling abroad and join the investigation besides provide other details as also imposed the

condition to deposit ₹6 crores. The condition of deposit of ₹6 crores was modified to ₹2 crores vide order dated 21st October, 2020 of this Court.

9. As noted above, Moin Akhtar Qureshi and Pradeep Koneru are the main accused against whom lookout circulars have been recalled, whereas

statement of the petitioner in the above-noted FIR was recorded under Section 164 Cr.P.C. as a witness. Though in the reply affidavit, the respondent

claims that the petitioner is an accused however, till date neither he has been arrested nor any charge-sheet filed against the petitioner. The petitioner

was arrested in the ECIR recorded by the Enforcement Directorate wherein while granting bail to the petitioner, passport of the petitioner has already

been deposited with the Court. Even if the petitioner is charge-sheeted in the above-noted FIR, the trial in the complaint filed by the Enforcement

Directorate and the charge-sheet filed pursuant to the above-noted FIR would have to be conducted together in terms of Section 45 of the Prevention

of Money Laundering Act, 2002, and the petitioner would be bound to seek permission before travelling abroad.

10. The petitioner thus satisfies the test laid down by this Court in Sumer Singh Salkan (supra) as he has neither deliberately evaded arrest nor failed

to appear before the Trial Court despite the non-bailable warrants nor has any coercive action been taken against him and he has travelled abroad

number of times with the permission of the Court, which concession he did not misuse and therefore there is no justification in continuing with the

LOC opened against the petitioner. Hence the respondent is directed to recall its request for opening the LOC against the petitioner. It is further

directed that that the petitioner will continue to join the investigation as and when directed by the Investigating Officer and any condition that is

imposed by the learned Special Judge in the complaint lodged pursuant to the

ECIR, when the petitioner seeks permission to travel abroad will also be applicable in the abovenoted RC No.224/2017/A-001, till the charge-sheet is filed and thereafter, if the petitioner is charge-sheeted and summoned as an accused.

11. Petition and application are accordingly disposed of.

12. Order be uploaded on the website of this court.