



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Miscellaneous (Petition) No. 7989/2024

1. Sunny Jain S/o Shri Sukhveer Jain
2. Bhawana Jain W/o Sukhveer Jain, through counsel Shri Prakash Chandra Jain, S-3, Jyoti Nagar Extension, Sahkar Marg, Jaipur and Sheeshram Yadav, Advocates, Jaipur

----Petitioners

Versus

The State of Rajasthan, through the P.P.

----Respondent



For Petitioner(s) : Dr.Prakash Chand Jain with
Mr.Roshan Vishwakarma
For Respondent(s) : Mr.Vivek Choudhary, PP with
Mr.Manvendra Singh Shekhawat, PP

**JUSTICE ANOOP KUMAR DHAND
Order**

29/11/2024

Reportable

1. The instant misc. petition has been preferred against the impugned order dated 25.09.2024 passed by the Judicial Magistrate No.9, Jaipur Metropolitan-I, Jaipur by which the application filed by the petitioners for withdrawal of Look Out Circular (for short, "the LOC") and return of goods and articles has been rejected.
2. Aggrieved by the aforesaid order, a revision petition was submitted before the Court of Additional Sessions Judge No.5, Jaipur Metropolitan-I, Jaipur, however, the same was also rejected vide impugned order dated 20.11.2024.
3. Aggrieved by both the orders, the petitioners have approached this Court by way of filing of the instant misc. petition.
4. Counsel for the petitioners submits that an FIR bearing No.64/2020 was registered by the complainant against the



petitioners at the Mahila Police Station, Jaipur (East) for the offence under Section 498A and 406 IPC wherein LOC was issued against the petitioners along with standing warrant. Counsel submits that the petitioners are residing at United States and after investigation, a factual report was sent by the Investigating Officer, i.e., SHO Police Station Mahila, Jaipur (East) to the concerned Public Prosecutor that the offence against the petitioner No.2, i.e., Bhawana Jain was not found to be proved and an application was submitted for recalling of the standing arrest warrant issued against her before the Court of Judicial Magistrate No.9, Jaipur Metro-I, Jaipur (City).

5. Counsel submits that when no orders were passed by the Court concerned on the said application submitted by the Investigating Officer, under these circumstances, the petitioners have approached the trial Court with two-fold prayer by way of filing an application, one for returning the goods either to the petitioners or to the complainant and another for withdrawal of the LOC, issued against them.

6. Counsel submits that instead of deciding the application on its merits and demerits, the same was rejected on a technical count that an application for withdrawal of the LOC was submitted by the Investigating Officer and the same would be decided in due course of time. Counsel submits that neither the application filed by the IO was decided by the trial Court nor the application submitted by the petitioners before the trial Court has been decided on its merits, and the same has been rejected on the above technical count.





7. Counsel submits that the goods lying at the warehouse as well as the Police Station are turning into dilapidated condition, therefore, in the interest of justice, goods be released either in favour of the petitioners or in favour of the complainant. Counsel submits that under these circumstances, interference of this Court is warranted.

8. During the course of arguments, counsel for the petitioners does not press his prayer to the extent of petitioner No.1, i.e., Sunny Jain for withdrawal of LOC issued against him and he has confined his prayer qua the petitioner No.2, i.e., Bhawana Jain for withdrawal of her LOC. Counsel submits that under these circumstances, appropriate orders be passed in the interest of justice.

9. *Per contra*, learned Public Prosecutor opposed the prayer, but he is not in a position to controvert the submissions made by the counsel for the petitioners.

10. Heard and considered the submissions made at Bar and perused the material available on the record.

11. Perusal of the record indicates that FIR bearing No.64/2020 was registered against the petitioners by the complainant at the Mahila Police Station, Jaipur (East) under Sections 498A and 406 IPC. It appears that at the time of investigation, LOC as well as standing arrest warrant were issued against both the petitioners.

12. At the later stage, the Investigating Officer came to the conclusion that involvement of the petitioner No.2, i.e., Bhawana Jain was not found to be proved, hence, under these circumstances, a letter was written by him to the concerned Public Prosecutor that an application has to be submitted for recalling of





the aforesaid standing arrest warrant issued against the petitioner No.2 before the Court of Judicial Magistrate No.9, Jaipur Metro-I. The record reveals that an assertion is there with regard to submission of the aforesaid application, but the record does not reveal as to whether that application has been filed or not and whether the said application has been decided or not and under these circumstances, the petitioners approached the trial Court for withdrawal of the LOC issued against them and for withdrawal of the standing arrest warrants issued against them.

13. Since, the Police has confined the involvement of the petitioner No.1-Sunny Jain, hence, there is no reason or occasion available with him to make such prayer for recalling of the LOC and the standing arrest warrant issued against him, but it appears from the facts available on the record that after investigation, Police did not find involvement of the petitioner No.2 and the prosecution is not inclined to prosecute her, hence, under these circumstances, the standing arrest warrant and the LOC, issued against her is liable to be recalled.

14. It is the settled proposition of law that the LOC can be opened against the accused person who is deliberately evading arrest and not appearing in the trial Court despite non-bailable warrants and other coercive measures. Coupled with either of these conditions, should be a likelihood of the accused leaving the country to evade the trial/arrest.

15. None of these conditions exist in the instant case qua the petitioner No.2. The petitioner No.2 is not evading arrest or avoiding any trial. In fact, the Police has not found her involvement in the instant criminal case. Neither any investigation





is pending against her nor any charge-sheet has been submitted against her and the Investigating Officer himself has submitted an application for recalling of her standing arrest warrant, hence under such circumstances, the LOC qua the petitioner No.2 cannot be sustained.



16. Fundamental rights of the citizen in the democratic set up plays a pivotal role. The Hon'ble Supreme Court in the case of **Maneka Gandhi Vs. Union of India** reported in **AIR 1978 SC 597** interpreted the scope of Article 21 of the Constitution of India in the widest possible manner. The Fundamental Rights of a citizen can be curtailed only by a procedure, established by law.

17. In the instant case, when the Police itself is not interested in prosecuting the petitioner No.2, then there is no reason and occasion available with any authority to continue the LOC issued against her. Continuation of LOC against the petitioner No.2 would certainly amounts to violation of her Fundamental Right of personal liberty, contained under Article 21 of the Constitution of India. The petitioner No.2 has her roots in the society and her relatives are residing in India. Her right to travel out of India cannot be curtailed except according to the due process of law.

18. In view of the above, the Court is inclined to quash the Look Out Circular (LOC) issued against the petitioner No.2. However, in case, during the course of criminal proceedings, the petitioner No.2 is arrayed as an accused, it is always open for the State Authorities to make a request to the Bureau of Investigation, to open fresh LOC against her.

19. Now, the next question, remains for consideration of this Court is with regard to the application submitted before the trial



Court to release the goods and articles lying at the warehouse and the police station. It is settled proposition of law that powers under Section 451 Cr.P.C. should be exercised expeditiously by the competent Courts of law. The reason being that the owner of the goods and articles should not be allowed to suffer because of it remaining unused and the Police or the concerned authorities are not supposed to keep the same in safe custody, looking to the large number of cases. The seized articles should not be allowed to become junk day by day. The seized articles can be released in favour of the person who is entitled to get the same on proper security.

20. The petitioners and the complainant would be at liberty to move an appropriate application for getting the articles lying at the warehouse/ police station, either in favour of the complainant or in favour of the petitioners. In case, such an application, is submitted by the petitioners and the complainant, before the trial Court within a period of 15 days from the date of receipt of this order, it is expected from the trial Court to hear and decide the same on its merits, after affording due opportunity of hearing to all the respective parties, expeditiously as early as possible, preferably within a period of one month thereafter.

21. With the aforesaid observations, the criminal misc. petition stands disposed of.

22. Stay application and all application(s), pending if any, also stand disposed of.

(ANOOP KUMAR DHAND),J

Aayush Sharma /43