*   **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%   Reserved on: 14th February, 2022
                                                          Decided on: 4th July, 2022

\+   **W.P.(CRL) 2227/2021 & CRL.M.A.17965/2021 (Stay)**

DHRUV TEWARI ..... Petitioner

Represented by: Mr.Madhav Khurana, Adv. with Ms.Trisha Mittal, Adv.

versus

DIRECTORATE OF ENFORCEMENT ..... Respondent

Represented by: Mr. Zoheb Hossain, Spl. Counsel for R-1/ED with Mr. Vivek Gurnani and Mr. Kartik Tayur, Advs.
Mr. Anurag Ahluwalia, CGSC for R-2/FRRO with Mr. Danish Faraz Khan and Mr. Rishab Narayan, Advs.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. By this petition, the petitioner seeks a writ of mandamus directing the Directorate of Enforcement to withdraw the Look Out Circular (LOC) issued against the petitioner in ECIR No. 02/DLZO/2016.

2. Learned counsel for the petitioner contends that in the seven RCs registered by the CBI against the petitioner's grandfather, late father and late uncle on the allegations of commission of offences under the IPC and Prevention of Corruption Act, 1988 in the year 2012-2013, the petitioner was not made an accused, since admittedly at the time of alleged offence i.e. from the year 2005 to 2011, the petitioner was a minor being 8 to 14 years old and was not involved in the family business. In the ECIR recorded by

the Enforcement Directorate against the petitioner's relatives including his grandmother, the petitioner was never arrayed as an accused nor any complaint has been filed against him. Even in the second ECIR recorded in the year 2016 against the petitioner's relatives, the petitioner was neither named as an accused nor complaint filed against him. Petitioner pursued his Bachelors in Mechanical Engineering from Purdue University, Indiana, USA from April 2016 to February 2021. Petitioner's father expired on 25th October, 2019. On 23rd February, 2021 upon his return to India, petitioner was detained at the airport for three hours on account of the LOC opened against him in the second ECIR. Petitioner was asked to join investigation on 24th February, 2021 and since that date no summons have been issued to the petitioner. Petitioner thus seeks quashing of LOC in terms of the decision of this Court reported as ILR (2010) VI DELHI 706 *Sumer Singh Salkan Vs. Assistant Director & Ors*.

3. Learned counsel for the petitioner further contends that vide Provisional Attachment Order No. 2/2020 respondent has attached four bank accounts, five mutual funds, one insurance policy and the Dhruv Family Private Trust Bank Account which are held in the name of the petitioner. The said Provisional Attachment Order has been confirmed by the adjudicating authority vide orders dated 21st September, 2020 and 23rd September, 2021. Respondent further identified assets in the form of a PPF account and equity holdings held by M/s ADA Family Trust & Dhruv Family Private Trust which were also provisionally attached, which order has also been confirmed by the adjudicating authority vide the order dated 25th September, 2020. Thus all the assets in the name of petitioner and allegedly connected with the proceeds of the crime generated from the

commission of the predicate offences stand attached by the respondent. Learned counsel for the petitioner further contends that knowing fully well that the petitioner was a minor at the time of alleged commission of offence between the year 2005 to 2011 the respondent insists on continuing with the LOC against the petitioner, which is illegal and arbitrary.

4. In response to the petition, a status report was filed by the respondent stating that seven FIRs were registered by the CBI on the basis of written complaint of bank officials under the provisions of IPC and Prevention of Corruption Act wherein charge-sheet was filed against Prabodh Kumar Tewari, Anand Tewari and Abhishek Tewari and others. Based on the predicate offence, two ECIR were recorded and the second ECIR/02/DZ/2016 was recorded on 20th July, 2016 against M/s Pixion Media Pvt. Ltd., Pearl Media Pvt. Ltd., M/s Mahuaa Media Pvt. Ltd., M/s. Pixion Vision Pvt. Ltd., M/s. Pearl Studio Pvt. Ltd., M/s. Pearl Vision Pvt. Ltd., M/s. Century Communication Ltd. It is contended that all the group companies of the Century Communication Ltd. adopted a common *modus operandi* of defrauding the public sector banks and caused a loss of ₹2671 crores approximately by availing term loans and cash credit facilities. By rotating the funds through a maze of transactions, to conceal the source of ill-gotten, tainted money, a new identity was sought to be given to the proceeds of the crime. It is stated that the proceeds of the crime were utilized for acquiring insurance policy with a huge premium, luxury vehicles, fixed deposit receipts, purchase of gold, jewellery, mutual fund and other investments including in the family trust. During the course of investigation huge amounts were found to be diverted abroad by the accused and a Letter Rogatory has been sent by the investigating agency in this regard to United

Kingdom, reply whereof is still awaited. It is claimed that the petitioner has no independent source of income and is totally dependent on his parents for his life style. The late father of the petitioner Anand Tewari invested the proceeds of the crime in a maze of transactions and also opened a trust, namely, '*Dhruv Family Trust*'. Thus the properties existing in the name of petitioner are proceeds of crime. It is stated that the petitioner was non-cooperative and thus LOC was opened to secure the presence of petitioner for investigation. Further investigation to trace the remaining proceeds of crime and to ascertain the involvement of other persons in violation of the provisions of PMLA is in progress. LOC was modified vide order dated 15th November, 2021 to the extent that the petitioner may be allowed to travel abroad and come back to India under intimation to the office and no restriction has been put on the movement (departure/ arrival) of the petitioner.

5. When this writ petition came up before this Court on 12th November, 2021, learned counsel appearing on behalf of the respondent informed that he has instructions to state that the LOC against the petitioner is in the process of being withdrawn and a necessary status report in this regard will be filed. On 17th November, 2021, the adjourned date, though no status report was filed, copy of the letter dated 15th November, 2021 duly signed by the Deputy Director Delhi Zonal Office-1, Directorate of Enforcement addressed to the Assistant Director, SIC Branch, FRRO, R.K. Puram, New Delhi was e-mailed to this Court. As per the said letter, office of the respondent is conducting investigation against M/s. Pixion Media Pvt. Ltd. &Ors. in regard to the commission of offence under the provisions of Money Laundering Act, 2002 (in short PMLA Act) and during the course of

investigation a Look Out Circular was opened in the name of Dhruv Tewari S/o late Anand Tewari with passport No. T5199110. In the letter a request has been made to the Assistant Director, SIC Branch, FRRO to modify the LOC of the petitioner to the extent that petitioner may be allowed to go abroad and come back to India under intimation to the office of respondent.

6. However, the issue which still remained was that when the petitioner was not an accused in either of the two ECIRs, one ECIR recorded in the year 2013 in which complaint was filed in the year 2018 and in the other ECIR recorded in the year 2016, wherein no complaint has been filed, whether it is justifiable to open and then continue a LOC against the petitioner. Till date the petitioner has not been arrayed as an accused thereby justification of carrying on of the LOC, for the reason even in the modified LOC for monitoring the movement of the petitioner though the petitioner was not required to be detained, however on his arrival and departure intimation was to be given. In the meantime complaint was also filed in the ECIR of the year 2016 where again the petitioner was not arrayed as an accused but has been made a witness and whether the guidelines permitted the respondent to open and continue an LOC of intimation as well. Thus the matter was heard after impleading FRRO as respondent No.2.

7. Learned Standing Counsel who appears for the FRRO on 7th February, 2022 submitted that for opening a LOC the Requesting Agency files a performa on the basis whereof action is taken. The respondent No.2/FRRO thus placed on record a status report in a sealed cover. As per the status report on 30th April, 2019 a reference was received from the respondent No.1 with the action "*detained and informed originator*". This LOC action was modified on the request of respondent No.1 vide its letter dated 15th

November, 2021 with the action "*allow the subject to go abroad and come back to India under intimation of this office*". Based on this modification the contention of respondent No.1 is that the LOC of the petitioner have been modified from a detentive LOC to an intimative LOC. It is further stated that the request dated 15th November, 2021 has been further modified by the communication dated 11th February, 2022 requesting, "*subject should not be stopped at the airport at the time of his departure and arrival, Discrete information about his departure and arrival may be shared with the department*". Thus, pursuant to the modification sought by communication dated 11th February, 2022 the petitioner now faces an intimative LOC.

8. This Court vide the judgment dated 11th August, 2010 in W.P.(CRL) 1315/2008 *Sumer Singh Salkan Vs. Assistant Director & Ors*. and Crl. Ref. 1/2016 - Court on its own motion Re: *State Vs. Gurnek Singh etc*., noted the four questions raised by the Trial Court on the LOC raised in the reference as under:

> *"a) What are the categories of cases in which the investigating agency can seek recourse of Look-out-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-our-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?"*

9. Answering the reference in relation to the questions noted above, vide the judgment dated 11th August, 2010 it was held:

"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."

10. Based on the various judgments including in terms of Sumer Singh Salkan (*supra*), respondent No.2/FRRO issued Office Memorandum dated 27th October, 2010 for issuance of Look Out Circular (LOC) in respect of Indian citizens and foreigners, copy whereof has been filed by the petitioner, wherein para 8 it noted as under:

"8. In accordance with the order dated 26.7.2010 of the High Court of Delhi, the matter has been discussed with the

concerned agencies and the following guidelines are hereby laid down regarding issuance of LOCs in respect of Indian citizens and foreigners:

a) The request for opening an LOC would be made by the originating agency to Deputy Director, Bureau of Immigration (BoI), East Block-VIII, R.K. Puram, New Delhi – 66 (Telefax: 011-2619244) in the Proforma enclosed.

b) The request for opening of LOC must invariably be issued with the approval of an officer not below the rank of

i. Deputy Secretary to the Government of India; or

ii. Joint Secretary in the State Government; or

iii. District Magistrate of the District concerned; or

iv. superintendent of Police (SP) of the District concerned; or

v. SP in CBI or an officer of equivalent level working in CBI; or

vi. Zonal Director in Narcotics Control Bureau (NCB) or an officer of equivalent level (including Assistant Director (Ops.) in Headquarters of NCB); or

vii. Deputy commissioner or an officer of equivalent level in the Directorate of Revenue Intelligence or Central Board of Direct Taxes or Central Board of Excise and Customs; or

viii. Assistant Director of IB/BoI; or

ix. Deputy Secretary of R&AW, or

x. An officer not below the level of Superintendent of Police in National Investigation Agency; or

xi. Assistant Director of Enforcement Directorate; or

xii. Protector of Emigrants in the office of the Protectorate of Emigrants or an officer not below the rank of Deputy Secretary of the Government of India; or

xiii. Designated officer of Interpol

Further, LOCs can also be issued as per directions of any Criminal Court in India.

c) The name and designation of the officer signing the Proforma for requesting issuance of an LOC must invariably be mentioned without which the request for issuance of LOC would not be entertained.

d) The contact details of the originator must be provided in column VI of the enclosed Proforma. The contact telephone/ mobile number of the respective control room should also be mentioned to ensure proper communication for effective follow up action.

e) Care must be taken by the originating agency to ensure that complete identifying particulars of the person, in respect of whom the LOC is to be opened, are indicated in the Proforma mentioned above. It should be noted that an LOC cannot be opened unless a minimum of three identifying parameters, as given in the enclosed Proforma, apart from sex and nationality, are available. However, LOC can also be issued if name and passport particulars of the person concerned are available. It is the responsibility of the originator to constantly review the LOC requests and proactively provide additional parameters to minimize harassment to genuine passengers.

f) The legal liability of the action taken by the immigration authorities in pursuance of the LOC rests with the originating agency.

g) Recourse to LOC is to be taken in cognizable offences under IPC or other penal laws. The details in column IV in the enclosed Proforma regarding 'reason for opening LOC' must invariably be provided without which the subject of an LOC will not be arrested/ detained.

h) In cases where there is no cognizable offence under IPC or other penal laws, the LOC subject cannot be detained/ arrested or prevented from leaving the country. The originating agency can only request that they be informed about the arrival/ departure of the subject in such cases.

i) The LOC will be valid for a period of one year from the date of issue and name of the subject shall be automatically removed from the LOC thereafter unless the concerned agency requests for its renewal within a period of one year. With effect from 1.1.2011, all LOCs with more than one year validity shall be deemed to have lapsed unless the agencies concerned specifically request BoI for continuation of the names in the LOC. However, this provision for automatic deletion after one year shall not be applicable in following cases:

a. Ban-entry LOCs issued for watching arrival of wanted persons (which have a specific duration);

b. loss of passport LOCs (which ordinarily continue till the validity of the document);

c. LOCs regarding impounding of passports;

d. LOCs issued at behest of Courts and Interpol

j) In exceptional cases, LOCs can be issued without complete parameters and/ or case details against CI suspects, terrorists, anti-national elements, etc in larger national interest.

k) The following procedure will be adopted in case statutory bodies like the NCW, the NHRC and the National Commission for Protection of Children's Rights request for preventing an Indian/ foreigner from leaving India. Such requests along with full necessary facts are first to be brought to the notice of law enforcement agencies like the police. The S.P. concerned will then make the request for issuance of an LOC upon an assessment of the situation, and strictly in terms of the procedure outlined for the purpose. The immigration/ emigration authorities will strictly go by the communication received from the officers authorized to open LOCs as detailed in the para 8(b) above."

11. From clause (h) of para 8 of the O.M. dated 27th October, 2010, it is evident that unless a citizen is suspected to be involved in the commission or facing investigation or trial on the accusation of offences which are cognizable under the Indian Penal Code or other Statutes, the citizen can neither be detained, arrested or prevented from leaving the country and the

originating agency can only seek intimation of his arrival and/or departure. Further in LOC of intimation the authorities at the airport/ or any other port of departure or arrival cannot restrain or detain the person on the pretext that intimation of his arrival or departure is required to be given to the originating agency which would indirectly serve as a detentive/ preventive LOC. It is well settled that what cannot be done directly, cannot be done indirectly.

12. In the present case the petitioner was not an accused either in the predicate offence nor the 2 ECIRs as he was admittedly a minor at the time of commission of the transactions purportedly resulting in the alleged offences under IPC, PC Act or even under PMLA. Thus, a preventive/ detentive LOC leading to the detention of the petitioner was clearly unwarranted. It is only when the petitioner filed the present writ petition that this preventive/ detentive LOC was converted into an intimative LOC. Since the respondent no.1 has already taken remedial action, no further directions are required to be passed in this petition. Needless to note that in the garb of LOC of intimation, the petitioner will not be detained or prevented at the airport or any other port on the pretext that first intimation has to be given to the originating agency.

13. The writ petition and application are disposed off with the hope and expectations that respondents will abide by the terms as laid down in the O.M. dated 27th October, 2010 issued by the respondent No.2.

(MUKTA GUPTA)
JUDGE

JULY 04, 2022
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