

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25<sup>TH</sup> DAY OF JUNE 2021

BEFORE

THE HON'BLE MR. JUSTICE S VISHWAJITH SHETTY

**CRIMINAL PETITION No.1479 OF 2021**

BETWEEN:

CENTRAL BUREAU OF INVESTIGATION,  
BANKING SECURITIES FRAUD BRANCH,  
NO. 36, BELLARY ROAD,  
GANGANAGAR,  
BANGALORE - 560032  
REP BY ITS INSPECTOR OF POLICE

... PETITIONER

(BY SRI P.PRASANNA KUMAR, SPL. SPP)

AND:

ASIF KHADER,  
DIRECTOR,  
M/S. CRANES SOFTWARE INTERNATIONAL LTD.,  
R/O FLAT NO. CG - 01,  
H.M. GLADIOUS APARTMENTS,  
NO. 34, AGA ABBAS ALI ROAD,  
ULSOOR  
BENGALURU- 560008.

... RESPONDENT

(BY SRI SANDESH CHOUTA, SR. COUNSEL  
FOR SRI ISMAIL M. MUSBA, ADV.)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482  
OF CR.P.C. PRAYING TO QUASH THE ORDER DATED 19.01.2021  
PASSED BY THE XXI ADDITIONAL CITY CIVIL AND SESSIONS

JUDGE AND PRINCIPAL SPECIAL JUDGE FOR CBI CASES (CCH-4), BENGALURU IN RC.NO.8/(E)/2017 AND CONSEQUENTLY ALLOW THIS CRL.P.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 10.06.2021 AND COMING ON FOR 'PRONOUNCEMENT OF ORDERS' THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

The Central Bureau of Investigation has filed this petition under Section 482 of the Code of Criminal Procedure, challenging the order dated 19<sup>th</sup> January 2021 in R.C.No.8(E)/2017 passed by the court of XXI Additional City Civil and Sessions Judge and Principal Special Judge for CBI Cases, Bengaluru (CCH-24).

2. Brief facts of the case as revealed from the records are:

On the complaint of the Zonal Manager of Bank of India, Bangalore, dated 12.05.2017 and 24.05.2017, the petitioner-CBI have registered a FIR in R.C.No.8(E)/2017 against M/s.Cranes Software International Limited and its Directors and also unknown public servants. In the

complaints, it was averred that the accused persons named in the complaint had approached the complainant-Bank with a request for sanctioning of loan of Rs.30 Crores towards working capital and another sum of Rs.40 Crores towards short term loan. Both these loans were sanctioned and disbursed by the Bank. Subsequently the said accused persons requested the Bank for a corporate loan of Rs.100 Crores stating that they required the amount for the purpose of acquiring a Software Company and also for clearing high cost loan availed by them from J & K Bank, Bengaluru. After the said loan of Rs.100 Crores was sanctioned and disbursed, the accused persons within a short span of ten days diverted the loan amount to different accounts and it was not utilized for the purpose for which it was sanctioned. Thereafterwards the accused-Company and its Directors have failed to repay the loan amounts and an outstanding amount of nearly Rs.200 Crores was due from them. On

the allegations that, the accused persons had induced the complainant-Bank by making false assurances for the purpose of obtaining the loans and accordingly, the Company and its Directors, who are the accused, had defrauded the Bank, a complaint was lodged, based on which FIR was registered by the petitioner for the offences punishable under Sections 120-B read with Section 420 of IPC, Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

3. Having regard to the gravity of the offence, a Look-Out Circular (for short "LOC") was issued against the respondent and it was being extended from time to time. The respondent had challenged the LOC before this court in Writ Petition No.55157/2018 and the said petition was disposed of by this court with a direction to approach the competent authority by filing necessary application for withdrawal of the LOC. The representation thereafterwards made by the respondent

for withdrawal of the LOC was rejected by the petitioner and the said order was challenged by the respondent before the trial court and a prayer was also made to rescind the LOC. The application was opposed by the petitioner herein by filing objections. The trial court vide the order impugned has declared that the LOC issued against the respondent herein in connection with the case registered in R.C.No.8(E)/2017 had lapsed and therefore, respondent is entitled to move freely inside and outside the country without reference to the Look Out Circular dated 11.07.2017, which was extended on 22.05.2019.

4. Learned Special Public Prosecutor for the petitioner submits that the trial court has proceeded to pass the impugned order on the ground that the LOC was issued without assigning proper reason and the LOC was not placed on record. He submits that the trial court ought to have called for the relevant record and thereafter satisfy itself whether there were sufficient grounds for

issuance of LOC. He submits that the respondent herein has not availed bail and his anticipatory bail application was already dismissed. He submits that admittedly the respondent's family is settled abroad and he has got business interest abroad and therefore, it could be difficult to secure him during the course of trial and the trial court has erred in unconditionally allowing the respondent to travel abroad. He also submits that the trial court has erroneously held that the LOC has already expired and it has not been renewed after 22.5.2019. He submits that the LOC was last renewed on 24.7.2020 and it is valid upto 10.07.2021 and a copy of the said document has been produced by him at Annexure-H. He submits that having regard to the huge amount of Rs.200 crores outstanding, which is a public money, it is not safe to allow the respondent to travel abroad unconditionally and there are all chances that he may flee from justice.

He has relied upon the judgments passed by the Division Bench of this court in Writ Appeal No.315/2021 (GM-RES) DD 12.5.2021 (*Dr.Bavaguthu Raghuram Shetty -vs- Bureau of Immigration, New Delhi and Others*) and the order in W.P.No.51087/2019 (GM-RES) DD 21.4.2021 (*Sri.C.Shivakumar Reddy and Others -vs- The Central Bureau of Investigation and Another*) in support of his arguments.

Learned counsel for the petitioner has also filed a memo before this court wherein it is stated that the respondent had appeared before the petitioner on 22.02.2018 and 02.03.2018 and on both the said occasions, his statement was recorded. It is further stated in the memo that a notice was issued to the respondent by the petitioner to appear on 06.11.2018 and produce documents/information related to the foreign acquisition and diversion of funds. However, the respondent had not appeared before the petitioner on the

said date. In the memo, it is also stated that investigation has been completed and charge sheet has been filed. But during the course of submission, it is stated that the charge sheet has been returned on technical grounds.

5. Per contra, learned senior counsel Sri.Sandesh Chouta appearing for the respondent would submit that the trial court has passed a detailed reasoned order which does not suffer from any illegalities or infirmities. He submits that the respondent has throughout cooperated with the Investigating Officer and he has appeared before the Investigating Officer on multiple occasions and his statement has already been recorded. He also submits that investigation in the case is complete and charge sheet was also filed but the same was returned to the Prosecutor on the ground that sanction was not obtained for prosecuting the Bank officers, who were also accused in the case. He submits that in the charge sheet, there is no mention that the respondent is

absconding. He submits that the case is registered in the year 2017 and the charge sheet is filed in the month of December 2020 and during the said period, the respondent has throughout cooperated with the Investigating Officer and he has not been arrested and therefore the present apprehension of the petitioner that the respondent is likely to flee from justice is ill-founded. He also submits that the LOC was last extended on 22.5.2019, which would be valid for one year and therefore the extension of the said LOC ought to have been done on or before 21.5.2020. However, the LOC now relied upon by the petitioner is dated 24.07.2020 and since the LOC was not renewed within the period of one year, the LOC dated 24.7.2020 is not a valid document and the said document was not produced by the petitioner before the trial court. He submits that there are prescribed guidelines for issuance of LOC and the respondent's case does not come under any of the

requirements of the guidelines and therefore, there is no justification on the part of the petitioner in issuing a LOC which has the effect of restricting the movement of the respondent and thereby violating the right guaranteed to the respondent under Article 21 of the Constitution of India.

In support of his arguments, he has relied upon the following judgments:

1. *W.P.(Crl.)No.1315/2008 DD 11.8.2010 Sumer Singh Salkan & Ors. -vs- Asst.Director and Others;*
2. *Crl.O.P.No.27741/2013: E.V.Perumal Samy Reddy and Others -vs- State and Others;*
3. *W.P.Nos.21305 & 20798/2017 DD 23.07.2018; Karti P.Chidambaram -vs- Bureau of Immigration and others;*
4. *W.P.(C) No.5382/2020 DD 02.12.2020 : Deept Sarup Aggarwal -vs- Union of India and Others.*

6. During the course of hearing, the learned counsel for the respondent has also filed I.A.No.3/2021 with a prayer to allow the respondent to travel abroad with prior

intimation to this court notwithstanding the prayer of the respondent to quash the LOC against him.

7. Learned Senior Counsel for the respondent has submitted that as and when the respondent intends to travel abroad, he will file necessary application seeking permission of the court and without prior permission of this court, the respondent will not travel abroad. He also submitted that the respondent is ready and willing to surrender the Passport before the competent authority and only as and when he intends to travel abroad, necessary travel documents could be arranged for the purpose of his travel as per the orders of this court.

8. The undisputed facts of this case are that, a criminal case has been registered in the year 2017 against the respondent, who is the Managing Director of the first accused Company. The allegations in the complaint are that the respondent and other Directors

had induced the complainant Bank for sanction of a loan and after the loan was sanctioned and disbursed, the said amount of loan was diverted by the accused persons and not utilized for the purposes for which the loan was availed. The investigation in the case is complete and as per the final report, the offences alleged against the respondent are punishable under Section 120-B read with Section 420 of IPC and Sections 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

9. Petitioner-C.B.I has filed a memo stating that on two occasions, the respondent had appeared before the petitioner for the purpose of investigation and they have recorded the statement of the respondent on the said dates. In the final report that is made available to the court, it is seen that the respondent is not shown as "absconding accused". The petitioner has not disputed that the family of the respondent is settled abroad and respondent has got business interests abroad.

10. With this background, the question that needs to be considered is, *whether the trial court was justified in declaring that the LOC issued against the respondent has lapsed and ceased to have any effect and further holding that the respondent was entitled to move freely inside and outside the country without reference to the LOC issued against him.*

11. A Coordinate Bench of this court in **W.P.No.51087/2019** (supra) having considered that the petitioners therein had fully cooperated with the C.B.I. for the purpose of investigation and that this court had stayed the further proceedings in the criminal cases pending before the jurisdictional court against the petitioners therein while quashing the LOC issued against the said petitioners had directed them to furnish security to the satisfaction of the Trial Judge and the petitioners

were also directed to intimate the travel itinerary to the Trial court from time to time.

12. In the case of **Dr.Bavaguthu Raghuram Shetty**, the Division Bench of this court in Writ Appeal No.315/2021 (supra), taking into consideration the fact that the appellant therein was involved in number of cases and the indebtedness of the appellant therein was nearly to the tune of Rs.2800 crores, having regard to the paramount national interest had upheld the order of the learned Single Judge of this court refusing to interfere with the LOCs issued to the appellant therein.

13. The High Court of Delhi in the case of **Sumer Singh Salkan** (supra) at paragraph-11 has observed as follows:

*"11. Look-out-Circular has also been issued against the petitioner as the petitioner is an accused before the Court of M.M. and he has not appeared before the Court of M.M. If the petitioner gives an*

*undertaking before the court for his appearance on a particular date, through his counsel, the Lookout-Circular issued against the petitioner shall be withdrawn within 24 hours of giving undertaking by the petitioner.*

*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 Lookout-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."*

14. In the case of ***E.V.Perumal Samy Reddy*** (*supra*), the High Court of Madras at paragraphs-8 and 9

has observed as follows:

*"8. It is basic that merely because a person is involved in a criminal case, he is not denude of his Fundamental Rights. It is the fundamental of a person to move anywhere he likes including foreign countries. One's such personal freedom and liberty cannot be abridged.[See: Article 21 Constitution of India]. In the celebrated in MENAKA GANDHI Vs. UNION OF INDIA MANU/SC/0311/1978 : [AIR 1978 SC 597], the Hon'ble Supreme Court upheld the constitutional right of persons to go abroad. The phrase no one shall be deprived of his "life and liberty" except procedure established by law employed in Article 21, had deep and pervasive effect on fundamental right and human right. MENAKA GANTHI (supra) ushered a new era in the annals of Indian Human Rights Law. It had gone ahead of American concept of 'Due Process of Law'.*

*9. But, the fundamental right to move anywhere including foreign countries could be regulated. Where persons involved in criminal cases are wanted for investigation, for court cases, persons, who are anti-social elements their movements can be regulated. Need may arose to apprehend persons, who have ability to fly, flee away the country. So, L.O.C. orders are issued. It is an harmonious way out between a person's fundamental right and interest of the society/ state. But, in any case, it must be fair and reasonable. It should not be indiscriminate without any reason or basis."*

15. In the case of **Karti P.Chidambaram** (*supra*), the High Court of Madras at paragraphs-70 to 73 has observed as follows:

*"70. The legality and/or validity of a Look Out Circular has to be adjudged having regard to the circumstances prevailing on the date on which the request for issuance of the Look Out Circular had been made.*

*71. As observed above, the FIR against the petitioner was lodged on 15.05.2017. Notice was issued on 15.6.2017 calling upon the petitioner to appear before the Station House Officer/Investigation Officer on 29.6.2017. On the very next day i.e., 16.6.2017, the impugned Look Out Circular was issued. As on the date of issuance of the Look Out Circular, there could have been no reason to suppose that the petitioner would not appear before the Station House Officer/Investigation Officer.*

*72. On behalf of the respondents, it has been contended that the petitioner did not appear on 29.6.2017 as directed, but only appeared pursuant to the directions of the Supreme Court. However, as argued by Mr.Subramaniam, the very fact that after issuance of the first notice dated 16.06.2017, which was returnable on 29.06.2017, a further notice was issued on 04.07.2017 granting the petitioner time till 21.07.2017, shows that there was no immediate apprehension of his evading investigation, at least on 04.07.2017. There was, thus, no justification for*

*issuance of the impugned LOC on 16.06.2017, the validity whereof has expired, in any case, after one year.*

*73. As observed above, the issuance of Look Out Circulars is governed by executive instructions as contained in the Office Memoranda Nos.25022/13/78-F1 dated 05.09.1979 and 25022/20/98-FIV dated 27.12.2000, as modified by Office Memorandum dated 27.10.2010. Such LOCs cannot be issued as a matter of course, but when reasons exist, where an accused deliberately evades arrest or does not appear in the trial Court. The argument of the learned Additional Solicitor General that a request for Look Out Circular could have been made in view of the inherent power of the investigating authority to secure attendance and cooperation of an accused is contrary to the aforesaid circulars and thus, not sustainable."*

16. In the case of **Deept Sarup Aggarwal** (*supra*), the High Court of Delhi at paragraph-14 has observed as follows:

*"14. In the present case, there is no doubt that the allegations made against the petitioner are of a grave nature. The petitioner has submitted that the same are false and unsubstantiated, however, this Court need not detain itself on the examination of such allegations. For the purposes of the Impugned LOC, what is relevant to be noted is that the FIR was registered on 08.10.2018. Based thereon, the*

*Enforcement Directorate registered ECIR on 02.07.2019. In undue haste, on 25.07.2019, the Impugned LOC was issued against the petitioner. The petitioner has asserted that prior thereto, the petitioner had joined investigation on 26.12.2018 and 07.01.2019. It is not asserted in the counter affidavit or in the sur-rejoinder filed by the respondents that the petitioner is a flight risk having no roots in India or that there is a likelihood of the petitioner absconding from the WP(C) No.5382 /2020 Page 9 country. The only allegation made is that the conduct of the petitioner is evasive and non-cooperative. In my opinion, this cannot be a ground for issuance of a LOC."*

17. From the reading of the aforesaid judgments relied upon by the learned Senior Counsel for the respondent, it is very clear that recourse to LOC can be taken only when the accused was deliberately evading arrest or not appearing in the trial court inspite of coercive measures being taken against him and if there is a likelihood of the accused traveling abroad and trying to flee from justice, the LOC can be issued as a coercive measure to make a person surrender/cooperate with the

investigating agency or with the court before which his case is pending.

18. The issuance of LOC against an individual has got very serious consequences, which would curtail the free movements of a person and therefore, such a right which is guaranteed under Article 21 of the Constitution of India cannot be curtailed other than in accordance with law. Therefore, when a LOC is being issued, there has to be a proper application of mind by the competent authority and it cannot be issued on a mere request of the Investigating Officer, unless he makes out a case for a need to issue LOC.

19. In the case on hand, the respondent has appeared before the Investigating Officer and has cooperated for the investigation and his statement has also been recorded on two occasions. It is not the case of the petitioner that they are required to further investigate

the respondent and even according to them, the investigation in the case is already complete and the final report is ready. The respondent is not shown as an absconding accused in the final report. The trial court considering the fact that the LOC issued against the respondent had already expired and also considering the fact that the petitioner has not made out a case for a need to issue LOC against the respondent, has passed an order observing that the LOC issued against the respondent has lapsed and ceased to have any effect and consequently the respondent is free to travel in and out of the country. Though the said order cannot be termed as illegal, having regard to the nature of the case filed against the respondent and his indebtedness to the tune of nearly Rs.200 Crores, to my mind, the trial court was not justified in unconditionally allowing the respondent to travel in and out of the country. Since the respondent has now filed an application I.A.No.3/2021 before this court

stating that he shall travel abroad only after seeking necessary prior permission from this court, I am of the opinion that the matter could be disposed of without interfering with the order passed by the trial court and without going to the validity or otherwise of the LOC dated 24.07.2020 by imposing suitable conditions on the respondent and this will take care of the apprehension of the petitioner that there is likelihood of the respondent fleeing away from justice.

20. Under the circumstances, this Criminal Petition is disposed of, with the following observations:

- 1) The respondent shall forthwith surrender his Passport before the Passport Authority;
- 2) The respondent shall make an application before this court in the event of he intending to travel abroad for personal or business reasons by furnishing the travel itinerary and specifying the period of travel and also the date of his return, so as to

enable the Passport Authority to issue necessary travel documents to him;

- 3) In the event of the petitioner filing a charge sheet in the meanwhile, such an application seeking permission to travel shall be filed by the respondent before the trial court.

**Sd/-  
JUDGE**

KNM/-