



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

S.B. Criminal Misc(Pet.) No. 4572/2023

1. Abhayjeet Singh S/o Balvinder Singh, Aged About 41 Years, [REDACTED]
2. Balvinderjeet Singh S/o Shri Sukhdarshan Singh, Aged About 62 Years, [REDACTED]
3. Jaspal Kaur W/o Shri Balvinderjeet Singh, Aged About 61 Years, [REDACTED]



----Petitioners

Versus

1. State of Rajasthan, Through PP
2. The SHO, P.S. Keshringshpur, District Sri Ganganagar.
3. The Superintendent of Police, Sri Ganganagar.

----Respondents

For Petitioner(s) : Mr. Nishant Bora.
For Respondent(s) : Mr. Vikram Rajpurohit, PP

**HON'BLE MR. JUSTICE ARUN MONGA
Order**

18/10/2024

1. Under challenge herein is a Lookout Circular ('LOC') issued against the petitioner in connection with an FIR No.239/2012, dated 09.10.2012 for the offences under Sections 323, 406 and 498-A of IPC, registered at Police Station Keshringshpur, District Sri Ganganagar. The said LOC has been issued by the Bureau of Immigration ('BOI') under instructions of the Police Officials (operating agency i.e. Office of Superintendent of Police, Sri Ganganagar, Rajasthan) pursuant to lodging of the FIR in a matrimonial dispute. FIR was registered on the

basis of a police complaint filed by brother of the victim-wife, levelling allegations of assault, breach of trust and cruelty/demand of dowry.

FACTUAL NARRATIVE

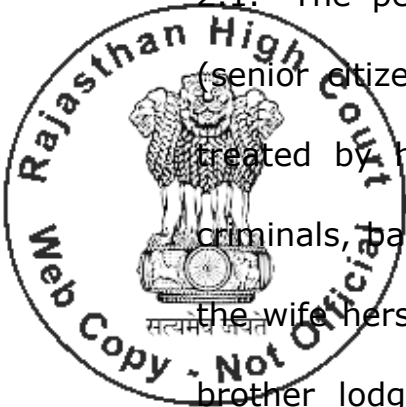
2. The facts of the case in hand are both peculiar and self-explanatory.

2.1. The petitioners before this Court are the husband and elderly (senior citizens) parents-in-law of an aggrieved wife. They are being treated by her and the prosecution as though they were hardened criminals, based solely on allegations made by her brother. Pertinently, the wife herself has not filed any complaint against them. Instead, her brother lodged a police complaint on 09.10.2012 at Police Station

Keshrisinghpur, District Sri Ganganagar, accusing petitioner No.1 (the husband) and petitioners No.2 and 3 (the father-in-law and mother-in-law, respectively) of harassing his sister. He alleges that they should be held criminally liable for committing offences under Sections 323, 406 & 498-A of the IPC.

2.2. It is rather intriguing as to why the aggrieved wife herein, who is highly educated (a Doctor- physician or academician- not clear), well aware of her rights and capable of asserting the same, could not herself take any initiative to prosecute her husband and in-laws, given the nature of allegations and the suffering, which is purely personal in nature.

2.3. Trite it may sound, but only the wearer knows where the shoe pinches, yet, she chooses to maintain silence about the same. And, it is her brother who files the police complaint. The complaint being motivated at the instance of the wife's family members and/or brother alone, cannot thus be ruled out. More of it later.



3. Relevant facts leading to filing of the instant petition are as follows :-

3.1. The complainant lodged the FIR in question stating that his sister, Dr. Jaskeerat Kaur and petitioner no.1 got married with each other on 29.01.2007. After some time, her husband, father-in-law and mother-in-law started to harass her. However, she continued with her matrimonial life. Usual allegations arising of the matrimonial acrimony have been leveled. Allegation against the husband is that, after consuming liquor, he used to beat and threaten the complainant's sister. Complainant also stated that the petitioner no.1/husband daily threatened his sister with firearms and eventually forced her to leave the matrimonial home.

3.2. Investigation ensued pursuant to the FIR, led to filing of a charge-sheet against the husband, father-in-law and mother-in-law of the victim and the trial commenced.

3.3. In the interregnum, the petitioners filed anticipatory bail applications being S.B. Criminal Misc. Bail Application No. 8566/2012 (filed by parents in-law) and S.B. Criminal Misc. Bail Application No. 485/2013 (filed by husband), which were allowed. They were granted bail by Co-ordinate Bench of this Court vide orders dated 12.12.2012 & 16.09.2013, respectively.

3.4. The learned trial court, vide an order dated 02.07.2015 framed charges against the petitioners under Sections 406, 498-A, and 323 IPC.

3.5. The petitioners filed a revision petition assailing the framing of charges against them, same was assigned to the court of learned Additional Sessions Judge (A.S.J.), Srikaranpur. The A.S.J. vide an order dated 25.03.2016, partly allowed the revision and discharged father-in-



law (Shri Balvinderjeet Singh) and mother-in-law (Jaspal Kaur) from all the offences. The charges against the husband-Abhayjeet Singh were kept intact.

3.6. Aggrieved against the revisional Court's order declining to drop the charges framed against him by the trial court, petitioner No.1/Abhayjeet Singh has also filed a petition before this court under Section 482 Cr.P.C., being S.B. Criminal Misc. Petition No. 999/2016, in which vide order dated 06.09.2017 passed by a co-ordinate bench, then seized of the matter, further trial proceedings against the accused-husband/petitioner no.1 have been stayed.



3.7. Aggrieved of the revisional Court's aforesaid order dated 25.03.2016, partly allowing the revision and discharging the father-in-law (Shri Balvinderjeet Singh) and mother-in-law (Jaspal Kaur) from all the offences, the complainant – Chandan Singh has also filed a revision petition before this Court being S.B. Criminal Revision Petition No. 535/2016, which is also pending consideration along with the quashing petition filed by petitioner no.1.

3.8. Pertinently, pending trial itself is also under challenge before this Court vide a petition filed by petitioner no.1 bearing S.B. Cr. Misc. (Pet.) No.999/2016, wherein following interim order dated 06.09.2017 has been passed :-

“Admit. Issue notice.

The parties are represented by their counsel. Thus, service is complete.

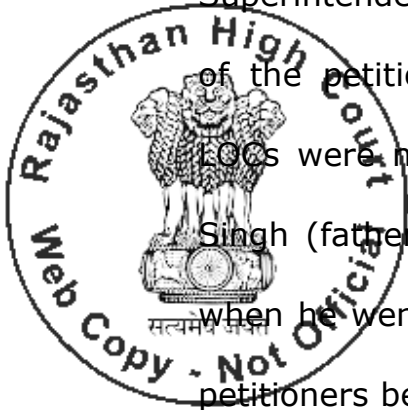
Having regard to the entirety of facts and circumstances as available on record and considering the fact that the complainants' revision has been admitted, it is hereby directed that further proceedings of Cr. Case No.151A/2013 pending in the court of the learned ACJM, Srikaranpur, District Sri Ganganagar shall remain stayed till disposal of the misc. petition.

Record be summoned from the trial Court.

List the matter for hearing in due course alongwith the connected revision after the record is received.”

Thus, by virtue of the aforesaid court order, further proceedings in the trial have been stayed.

3.9. It is averred that after registration of the FIR and prior to grant of anticipatory to the petitioners, the police was looking to arrest them. Look Out Circulars ('LOC') were issued by BOI at the instance of Superintendent of Police against them, which were not in the knowledge of the petitioners. Despite their being granted anticipatory bail, the LOCs were not withdrawn. Resultantly, petitioner No.2 - Balvinderjeet Singh (father in law) was intercepted (due to the LOC) at the Airport when he went there to board his flight to go abroad. It is then that all petitioners became aware of issuance of LOCs against them. Hence, this petition.



4. Before proceedings further, let us first see an order dated 04.01.2024, passed in course of the present proceedings by a Coordinate Bench earlier seized of the matter, which is as below :-

“1. Learned counsel for the petitioners highlighted that Look Out Circular (LOC) was issued against the petitioners, out of whom, petitioner nos. 2 and 3 namely Balvinderjeet Singh and Jaspal Kaur (father and mother of the petitioner no.1 – Abhayjeet Singh) have been discharged by the trial court and the case is pending only against the petitioner no.1.

2. While asserting that the petitioner no.1 has been attending the case and hearings diligently and that the petitioner no.1 has been granted anticipatory bail by this Court vide its order dated 16.09.2013, learned counsel raised a grievance that the competent authority – Superintendent of Police, Sri Ganganagar has not withdrawn / vacated the LOC.

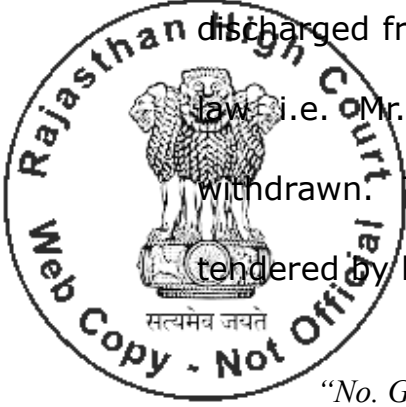
3. The factual report dated 15.10.2023 also shows that LOC qua the petitioner no.1 is still in vogue, while Superintendent of Police, Sri Ganganagar has been requested by the investigating officer to revoke the LOC qua the petitioner's parents.

4. The petitioner is directed to file a representation before the Superintendent of Police, Sri Ganganagar alongwith the requisite documents within a period of 7 days. The Superintendent of Police, Sri Ganganagar shall consider the same in accordance with law and revoke/withdraw the LOC qua petitioners if deemed appropriate.

5. In case, the Superintendent of Police, Sri Ganganagar is of the view that LOC issued qua petitioner(s) cannot be revoked, he shall pass a speaking order and send the same to the office of Public Prosecutor before the next date of hearing.

6. List this case on 01.02.2024, as prayed.”

5. Apropos, the petitioners filed a representation. Vide an order dated 18.01.2024, the request of petitioner No.1 to withdraw the LOC was though declined, but it was stated that a letter dated 17.10.2023 was sent to the Deputy Director of the Bureau of Immigration, New Delhi instructing to close/withdraw LOC against the parents as they had discharged from the trial. Pursuant thereto, the LOCs against parents in law i.e. Mr. Balvinderjit Singh and Mrs. Jaspal Kaur have been withdrawn. Translated version of the order dated 18.01.2024 as tendered by learned counsel for the petitioners is herein-below :-



“No. Ganga/Visha/Passport/24/43

Dated 18.01.2024

In FIR No. 239, dated 09.10.2012, under Sections 406, 498A, and 323 at Police Station Kesarisinghpur, the Station House Officer (SHO) of the police station sent a request through letter No. 996, dated 21.02.2013, to this office with a request was to issue a Look Out Circular (LOC) against the accused, Mr. Abhayjeet Singh, Mrs. Jaspal Kaur, and Mr. Balwinderjit Singh, to prevent them from traveling abroad. Based on this request, this office sent letter No. Ganga/DSB/PP 132626-28, dated 22.02.2013, to the Deputy Director of the Bureau of Immigration in New Delhi, and an LOC was issued to prevent the accused from leaving the country. A copy of the order under the subject is sent to the police station Kesarisinghpur and it is directed to ensure compliance of the said order.

In connection with this case, the accused, Shri Abhayjeet Singh, son of Shri Balwinderjit Singh, resident of 6 OB, Tehsil Srikananpur, Distt. Sri Ganganagar, filed a petition in the Hon'ble High Court, Jodhpur, seeking the cancellation of the LOC issued against him. In FIR No. 239/2012, dated 09.10.2012, under Sections 406, 498A, and 323 of the IPC, Police Station Kesarisinghpur, the accused, Shri Abhayjeet Singh, has requested the cancellation of the LOC issued against him, stating that his parents, Mrs. Jaspal Kaur and Shri Balwinderjit Singh, were previously prevented from boarding a passenger plane. It is important to note that the Hon'ble Court of Srikananpur has discharged the parents of Shri Abhayjeet Singh of all the charges. As a result letter No.4220 dated 14.10.2023 was sent by SHO, P.S. Kesrisinghpur to this office to cancel the LOC. Accordingly, letter No. 1243, dated 17.10.2023, was sent from this office to the Deputy Director of the Bureau of Immigration, New Delhi and the LOC against Shri Balwinderjit Singh and Mrs. Jaspal Kaur has been cancelled. The earlier incident of preventing their travel occurred when the LOC had not yet been cancelled, as the case against Shri Balwinderjit Singh and Mrs. Jaspal Kaur was still pending in Court at that time.

As per the directions issued by the Hon'ble Court, the accused, Shri Abhayjeet Singh, presented his case before this office, which was heard. In compliance with the Court's orders, after hearing the accused's plea, a detailed investigation report was requested from the SHO of Police Station Kesarisinghpur. Based on the report from the SHO of Police Station Kesarisinghpur, it was found that the case against Shri Abhayjeet Singh is still pending before the Hon'ble Court of Srikananpur, and the

hearings are ongoing. The presence of the accused at each hearing is mandatory, with the next hearing scheduled for 09.02.2024. If the LOC (Look Out Circular) against Shri Abhayanit Singh is cancelled, there is a possibility that he may leave the country and fail to appear at the next hearing. This would make it difficult for both the local police and the Hon'ble Court to ensure his presence, as differences in international laws mean that acts considered crimes here might not be treated as such in other countries. Therefore, if the LOC against the accused is cancelled, there is a high chance that he might be absent during the trial, which could hinder the judicial process. This would negatively impact the complainant's right to justice and would go against the principles of fairness and natural justice. It would also violate the judicial rights of the complainant, ultimately obstructing the legal process.

It is not appropriate to cancel the LOC (Look Out Circular) issued against the accused, Abhayjeet Singh, son of Shri Balvindrajit Singh, resident of 6 OB, Tehsil Srikanpur, in Case No. 239 dated 09.10.2012, under sections 406, 498A, and 323 of the IPC, registered at Police Station Kesrisinghpur. Therefore, the LOC against the accused, Abhayjeet Singh, should remain in effect.

A copy is hereby sent to Police Station Kesrisinghpur and it is declined that compliance to be done.

Deputy Inspector General of Police¹
Sri Ganganagar”



CONTENTIONS

6. In the aforesaid backdrop, the petitioners are thus before this Court seeking quashing of the Look Out Circulars (LOC) issued against them and subsequent order dated 18.01.2024 passed in by the SP/DIG declining to withdraw the LOC as against petitioner no.1/husband. I have heard the rival arguments which have been addressed on the lines of respective stands taken in the petition by the petitioner and defense taken by respondents in the order the passed by the Superintendent Police/DIG.

7. A perusal of the reasoning as above, assigned by the DIG in sum and substance is because the trial is pending against the petitioner no.1/husband, LOC cannot be withdrawn on the suspicion that he may not join the further trial proceedings.

8. Learned counsel for the petitioners, relying, inter alia, on a judgment rendered by Jammu & Kashmir High Court in **Rupen Patel v.**

¹ Per learned PP, while still holding the post of Superintendent of Police of the district, said officer was promoted as DIG.

Union of India², would argue that recourse to opening of Look Out Circular can be taken by the Investigating Agency when an under trial/accused is either deliberately evading the arrest or not responding to the process issued by the Investigating Agency or not appearing in the trial court despite issuance of coercive measures and/or if there is likelihood of the accused leaving the country to evade trial/arrest.

8.1. In fact, similar views have been echoed by Delhi High Court in **Rajendra Kashyap v. Union of India**³, and **Preet Kaur v. Bureau of Immigration**⁴, which are relied upon by the learned counsel for the petitioners.

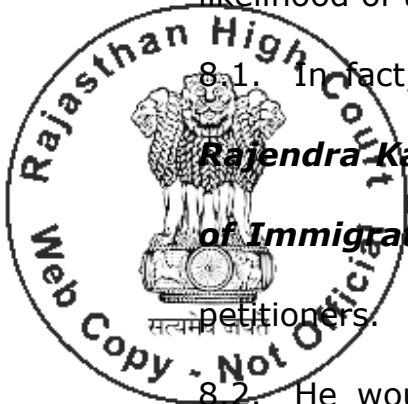
8.2. He would further submit that though the scope of grounds on which LOC can be opened was widened in terms of Office Memorandum dated 05.12.2017 and latest guidelines dated 22.02.2021, issued by Ministry of Home Affairs, but only in exceptional cases when the departure of such person from India is detrimental to the economic interests of India or the same is detrimental to the larger public interest. Issuance and continuance of LOC in the facts of the case herein is thus complete abuse of process of law and liable to be quashed, he would urge.

9. Per contra, learned Public Prosecutor opposes the petition. He would argue that the reasons assigned in the order dated 18.01.2024 passed by the Superintendent of Police are valid and just. Therefore, no interference of this Court is warranted. Further he points out that the petitioner No.1 was non-cooperative in joining the investigation. Therefore, charge-sheet against him was filed by invoking Section 299 Cr.P.C.

²2024 SCC Online (J&K) 265

³2023 SCC Online Del. 2520

⁴2024 SCC Online Del. 4798



DISCUSSION AND ANALYSIS

10. I shall now proceed to render my opinion on the legality of the stand taken by the prosecution and record reasons thereof, based on the discussion and analysis of the applicable provisions of law in the succeeding paragraphs.

11. At the outset, I am unable to persuade myself to agree with the insipidity of the aforesaid arguments of the prosecution. Reasons are not far to seek. Let us see how.

11.1. It is borne out from the record that the petitioner No.1 had earlier approached this Court to seek bail and a Co-ordinate Bench while granting the concession to the petitioner passed the following

order dated 16.09.2013 :-

“The instant application for pre-arrest bail has been moved on behalf of the petitioner seeking anticipatory bail in connection with F.I.R. No. 239/2012 P.S. Kesharisinghpur for the offences under Sections 498A and 406 I.P.C.

Learned counsel for the petitioner submits that the police is acting malafide in this case. He submits that whilst the instant application for pre-arrest bail was pending before this Court, the I.O. filed a charge-sheet against the petitioner by fraudulently showing him to be absconding. He submits that the petitioner and his parents were representing to all the concerned authorities regarding their false implication in this case. He further submits that in view of the fact that the police has filed charge-sheet, the petitioner be given liberty to appear before the trial court and submit the bail bond so that the matter can be proceeded with. He submits that the co-accused Balvindra Jeet Singh and Jaspal Kaur have been granted anticipatory bail in this case.

Learned Public Prosecutor does not object and he submits that no investigation is to be done from the petitioner as charge-sheet is already filed in the case.

Learned counsel for the complainant vehemently opposed submissions advanced by the learned counsel for the petitioner.

Having heard learned counsel for the parties and having regard to the facts and circumstances of the case, the bail application is disposed giving liberty to the petitioner to surrender before the trial court within a period of ten days from today and apply for bail. In the event of petitioner applying for bail after surrendering before the trial court, he shall be released on bail on his furnishing bail and bonds, the amount whereof shall be to the satisfaction of the trial court.

The bail application stands disposed of with the above directions.”

(emphasis supplied)

11.2. In the light of the aforesaid order, needless to say, that it flies in the face of the prosecution to assert that having been given the concession of bail by this Court, the petitioner can be termed as non-cooperative. Especially, in light of the statement of the PP that no further investigation is required as charge sheet had already been filed, meaning thereby that trial had commenced.

12. Without further ado, I may also hasten to add here that non-application of mind on the part of the Superintendent of Police/DIG is writ large from the very fact that no attempt, whatsoever, was made to even look into the basic facts that so-called pending trial itself is under challenge before this Court and further proceedings in the trial were stayed.

13. Not only that, even the petitioners No.2 & 3, parents of the husband, already stood discharged vide an order dated 25.03.2016 by the learned Sessions Judge, which led to withdrawing the LOC qua them. The Superintendent of Police/DIG being aware that the parents had already been discharged of all the allegations leveled by the brother of the wife, recommended withdrawing of the LOC qua them but declined to do so qua petitioner no.1. Adverting to the charges leveled against the husband/petitioner no.1, the same arise out of the couple's matrimonial discord. Even otherwise, the allegation of the alleged beating given to his wife, causing simple injury, if any, by the husband, resulting in invocation of section 323 of IPC, would at best constitute a bailable and non-cognizable offence.

14. In fact, it so appears that the petitioner has been constrained to approach this Court multiple times in past for seeking indulgence to pass appropriate directions to protect his fundamental right to travel as envisaged under Constitution of India. This is, what can be termed as



his fourth foray before this court. First petition was filed in year 2020 bearing S.B. Criminal Misc. Petition No. 3073/2020 seeking appropriate directions, which was disposed of by an order dated 08.12.2020, directing the issuance of a passport in accordance with the law. Despite this, the passport was not issued, prompting the petitioner to file yet another S.B. Civil Writ Petition No. 13773/2023 (second). This petition was disposed of by a Coordinate Bench of this Court on 16.10.2023, directing that decision on renewal of the passport be taken in accordance with the earlier court order dated 08.12.2020. Yet again, third petition was filed for seeking Passport being S.B. Cr. Misc. Petition No. 5870/2024, which was disposed of vide order dated 02.09.2024 directing the prosecution to issue an NOC so as to enable the petitioner to seek passport under Rule 12 of the Passport Rules, 1980 for a period of ten years. The petition in hand is the fourth one. Relevant extract of order dated 02.09.2024, passed in the 3rd round by this very bench, being apposite, is reproduced herein-below :-

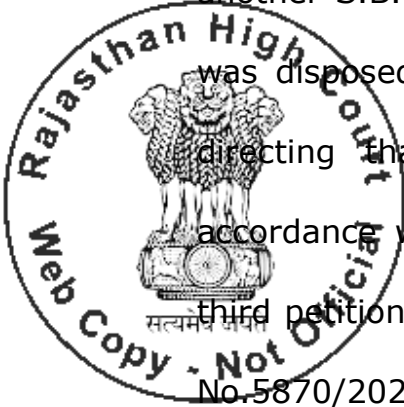
“8. First and foremost, for ready reference relevant extract of Rule 12 of the Passport Rules, 1980, is as below:

*“12. Duration of passports or travel documents. –
(1) An ordinary passport for persons other than children below the age of 15 years, containing thirty-six pages or sixty pages shall be in force for a period of 10 years from the date of its issue....”*

9. A plain reading of the aforementioned rule clearly establishes that a citizen is entitled to be issued a passport with a minimum validity of 10 years.

10. Trite law it is that right to travel is intrinsically contained in the right to earn a livelihood. Courts have consistently upheld this as a fundamental right, subject of course to reasonable restrictions. The petitioner, who is primarily a farmer cultivating 'Kinnu' in his orchards, exports some of his produce to Saudi Arabia and has established business relations there. He seeks to travel abroad to further these business interests.

11. It is also acknowledged position that a short-term passport validity poses practical difficulties in obtaining visas from certain countries. Whether the passport is valid for one year or ten years does not materially affect the allegations against the petitioner regarding



potential absconding. Thus the renewal of his passport for the full 10-year duration would not in any case prejudice the respondent or the complainant.

12. *Moreover, the petitioner has not been convicted of any offense; he is merely facing charges. Under the law, he is presumed innocent until proven guilty. The restrictions imposed on his passport validity appear to pre-emptively punish the petitioner, undermining the principle of presumption of innocence enshrined in Article 21 of the Constitution of India. Denying a 10-year passport validity without cogent reasons amounts to an arbitrary restriction on this right and does not align with the principles of justice, equity, and fairness.*

13. *There is no substantive evidence or reasonable apprehension expressed or presented before this Court that the petitioner poses a flight risk or that he intends to abscond from the legal proceedings. His established business ties in India, particularly in agriculture, further negate the possibility of him absconding. Not only that, it transpires that he has his parents also residing in India with him who are his dependents.*

14. *As an agriculturist involved in the export of 'Kinnu' produce to Saudi Arabia, the petitioner's ability to travel internationally, be it Saudi Arabia or any other country, is directly linked to his livelihood and economic stability. There is no gainsaying that restriction of a one-year passport validity places an undue burden on his business operations, affecting not only his income but also the livelihoods of those employed under him.*

15. *The Passport Act, 1967, and the Rules framed thereunder do not provide for arbitrary reduction in the validity period of a passport for individuals not convicted of any offense. The issuance of a one-year passport, in this case, appears to lack any statutory backing and thus, contravenes the provisions of the Passport Rules.*

16. *Requiring the petitioner to frequently renew his passport every year not only places an undue burden on him but also on judicial and administrative resources, leading to unnecessary litigation and wastage of public funds and time.*

17. *As regards the pending proceedings against the petitioner, the issuance of a 10-year passport will not impede the ongoing criminal proceedings in any way. The petitioner has demonstrated his commitment to attend court hearings and comply with all court directives. Proper conditions can be imposed to ensure his appearance, such as requiring prior court permission for international travel.*

18. *In the premise, competent authority of the respondent state is directed to issue the pre requisite "NOC" within a period of 30 days of the petitioner approaching it with web-print of the instant order so as to enable him to apply for a passport with the standard 10-year validity."*

15. However, the net result of the aforesaid order as far as petitioner No.1 is concerned, has been an exercise in futility as due to the subsistence of the LOC, the passport issued to him has become a meaningless document for him.



16. Needless to say, merely issuance of passport without withdrawing the LOC, will frustrate the right of the petitioner to travel abroad.

17. At this stage, in order to have better analysis of the legal position, it would be appropriate to go into the very genesis and subsequent evaluation of the concept and issuance of Lookout Circular ('LOC').

Though formally term LOC has not been statutorily mentioned or defined but the very origin of it appears as per provisions of the Passports Act, 1967, under Sections 10, 10-A, and 10-B thereof, relevant extract of which are reproduced hereunder:-



“10. Variation, impounding and revocation of passports and travel documents-

(1). x-x-x (2) x-x-x

(3). The passport authority may impound or cause to be impounded or revoke a passport or travel document.-

(a).x-x-x-x (b).x-x-x-x

(c). if the passport authority deems it necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public;

(d) if the holder of the passport or travel document has, at any time after the issue of the passport or travel document, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

(e) if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India;

(f) if any of the conditions of the passport or travel document has been contravened;

(g) if the holder of the passport or travel document has failed to comply with a notice under sub-section (1) requiring him to deliver up the same;

(h) if it is brought to the notice of the passport authority that a warrant or summons for the appearance, or a warrant for the arrest, of the holder of the passport or travel document has been issued by a court under any law for the time being in force or if an order prohibiting the departure from India of the holder of the passport or other travel document has been made by any such court and the passport authority is satisfied that a warrant or summons has been so issued or an order has been so made.

(4). x-x-x-

(5). *Where the passport authority makes an order varying or cancelling the endorsements on, or varying the conditions of, a passport or travel document under sub-section (1) or an order impounding or revoking a passport or travel document under sub-section (3), it shall record in writing a brief statement of the reasons for making such order and furnish to the holder of the passport or travel document on demand a copy of the same unless in any case, the passport authority is of the opinion that it will not be in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or in the interests of the general public to furnish such a copy.*

(6). X-x-x-x

(7). *A court convicting the holder of a passport or travel document of any offence under this Act or the rules made thereunder may also revoke the passport or travel document: Provided that if the conviction is set aside on appeal or otherwise the revocation shall become void.*

(8). *An order of revocation under sub-section (7) may also be made by an appellate court or by the High Court when exercising its powers of revision.*

(9). x-x-x-x”

(emphasis supplied)

Section 10-A

“10A. *Suspension of passports or travel documents in certain cases. –*

(1) Without prejudice to the generality of the provisions contained in section 10, if the Central Government or any designated officer is satisfied that the passport or travel document is likely to be impounded or caused to be impounded or revoked under clause (c) of sub-section (3) of section 10 and it is necessary in the public interest so do to, it or he may, -

(a) by order, suspend, with immediate effect, any passport or travel document;

(b) pass such other appropriate order which may have the effect of rendering any passport or travel document invalid,

for a period not exceeding four weeks:

Provided that the Central Government or the designated officer may, if it or he considers appropriate, extend, by order and for reasons to be recorded in writing, the said period of four weeks till the proceedings relating to variation, impounding or revocation of passport or travel document under section 10 are concluded:

Provided further that every holder of the passport or travel document, in respect of whom an order under clause (a) or clause (b) of this sub-section had been passed, shall be given an opportunity of being heard within a period of not later than eight weeks reckoned from the date of passing of such order and thereupon the Central Government may, if necessary, by order in writing, modify or revoke the order passed under this sub-section.



(2) The designated officer shall immediately communicate the orders passed under sub-section (1), to the concerned authority at an airport or any other point of embarkation or immigration, and to the passport authority.

(3) Every authority referred to in sub-section (2) shall, immediately on receipt of the order passed under sub-section (1), give effect to such order.”

(emphasis supplied)

Section 10-B

“10-B. Validation of intimations.—

Every intimation given by the Central Government or the designated officer, before the commencement of the Passports (Amendment) Act, 2002, to any immigration authority at an airport or any other point of embarkation or immigration, restricting or in any manner prohibiting the departure from India of any holder of the passport or travel document under sub-section (3) of section 10, shall be deemed to be an order under sub-section (1) of section 10A and such order shall continue to be in force for a period of three months from the date of commencement of the Passports (Amendment) Act, 2002, or the date of giving such intimation, whichever is later.

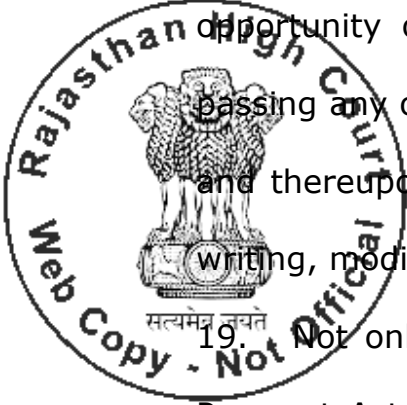
Explanation.—For the purposes of sections 10A and 10B, the expression "designated officer" means such officer or authority designated, by order in writing, as such by the Central Government.”

18. As would be seen, term LOC is not used in the Passport Act. Sub-section (3) of Section 10 provides that the Passport authority may impound or cause to be impounded or revoke a passport or travel document, inter alia, under clause (c). Said clause provides that the passport authority shall exercise power if it is deemed necessary to do so in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or in the interests of the general public.

18.1. Sub-section (1) of section 10-A the Act says that without prejudice to the generality of the provisions contained in section 10, if the Central Government or any designated officer is satisfied that the passport or travel document is likely to be impounded or caused to be impounded or revoked under Sub-section (3) clause (c), then it/he may pass such other appropriate order having the effect of rendering any passport or travel document invalid, for a period not exceeding four



weeks. Provided that the Central Government or the designated officer may, if it or he considers appropriate, extend by order and for reasons to be recorded in writing, the said period of four weeks till the proceedings relating to variation, impounding or revocation of passport or travel document under section 10 are concluded. Provided further, that every holder of the passport or travel document shall be given an opportunity of being heard within 8 weeks with effect from date of passing any order restraining his travel or rendering his passport invalid and thereupon, the Central Government may, if necessary, by order in writing, modify or revoke the order already passed.



19. Not only the term 'LOC' does not find mention anywhere in the Passport Act / or any rules framed thereunder, but the same is amiss even in any notification issued by the Ministry of External Affairs.

20. In fact, the concept of LOC is an invention of Ministry of Home Affairs, when for the first time it issued an office memorandum dated 05.09.1979⁵. The practice of issuing LOCs thus commenced and was originally governed by the Home Ministry's letter number 25022/13/78-F.I. dated 05.09.1979. Apart from Government of India in the Ministry of Home Affairs (MHA), circulars have also been issued by various other authorities for keeping a watch on arrival / departure of Indians and foreigners. These authorities include the Ministry of External Affairs, the Customs and Income Tax Departments, Directorate of Revenue Intelligence, Central Bureau of Investigation, Interpol, Regional Passport Officers, Police authorities in various States, etc.

20.1. The OM dated 27.12.2000⁶ of MHA for the first time specified the steps required to be taken for opening an LOC in respect of an Indian citizen. It was stated therein that 'the request for opening of LOC, must invariably be issued with the approval of an Officer not below the rank

⁵ Source- MHA website, as stated in recitals of subsequent OM dated 27.10.2010

⁶ Source- Ditto

of Deputy Secretary to the Government of India / Joint Secretary in the State Government / concerned Superintendent of Police at district level.

20.2. Subsequently, Delhi High Court⁷, considered the question whether a request for the issuance of an LOC could be made by the National Commission for Women (NCW). The Court observed that "*there are a large number of statutory commissions at the level of the Centre and the States which*

perform judicial functions and are vested with, for the purpose of conducting inquiries upon receiving complaints, the powers of a civil court. These include the National Human Rights Commission (NHRC), the NCW, the National Commission for Protection of Children's Rights. These statutory bodies, however, have not been vested with the powers of a criminal court and do not have powers to enforce criminal law. It is for the Government of India to take a policy decision on whether it wants to vest such statutory

tribunals /commissions with criminal law enforcement powers. Since as of today, they have no such power, it is imperative that the MHA should issue further clarificatory circulars or office memoranda clearly stating that the request for issuance of LOCs cannot 'emanate' from statutory bodies like the NCW. If at all, such bodies should bring the necessary facts to the notice of law enforcement agencies like the police, which 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. This clarification will be issued by the MHA, in consultation with other concerned agencies, including representatives of the statutory bodies referred to, within a period of 12 weeks from today ..."

20.3. In another related judgment dated 11.8.2010 rendered by Delhi High Court⁸, following four questions were framed in a criminal reference :-

- 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 out-Circular has been opened?*

⁷ Writ Petition (Civil) No. 10180 of 2009 -Shri Vikram Sharma vs. Union of India and Ors.

⁸ W.P. (Crl.) No. 1315/2008-Sumer Singh Salkan Vs. Asstt. Director & Ors and Crl. Ref.1/2006-Court on its Own Motion Re: State Vs. Gurnek Singh etc.

- 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?"*

Delhi High Court answered above questions as below :

- 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."*



20.4. Pursuant to the aforesaid judgment of Delhi High Court, Ministry of Home Affairs revised its earlier circulars and issued fresh office memorandum dated 27.10.2010 by framing guidelines to be followed by various agencies under the different ministries regarding issuance of LOCs in respect of Indian Citizens and Foreigners. These guidelines were subsequently modified vide this Ministry's O.Ms. no.25016/10/2017-Imm(Pt.) dated 05.12.2017, 19.09.2018 and 12.10.2018.

21. Currently the OM that holds the field is the one dated 22.02.2021 issued by the Ministry of Home Affairs. The relevant extract of the said OM for the purpose of adjudication of the case in hand is as below :-

"6. The existing guidelines with regard to issuance of Look Out Circulars (LOC) in respect of Indian citizens and foreigners have been reviewed by this Ministry. After due deliberations in consultation with various stakeholders and in supersession of all the existing guidelines issued vide this Ministry's letters/O.M. referred to in para 1 above, it has been decided with the approval

of the competent authority that the following consolidated guidelines shall be followed henceforth by all concerned for the purpose of issuance of Look Out Circulars (LOC) in respect of Indian citizens and foreigners:—

(A) The request for opening an LOC would be made by the Originating Agency (OA) to the Deputy Director, Bureau of Immigration (BOI), East Block - VIII, R.K. Puram, New Delhi - 110066 (Telefax : 011-26192883, email : boihq@nic.in) in the enclosed Proforma.

(B) The request for opening of LOC must invariably be issued with the approval of an Originating Agency that shall be an officer not below the rank of—

- (i) xxxx
- (ii) xxxx
- (iii) xxxx
- (iv) Superintendent of Police (SP) of the District concerned; or
- (v) xxxx

(C) LOCs can also be issued as per directions of any Criminal Court in India. In all such cases, request for opening of LOC shall be initiated by the local police or by any other Law Enforcement Agencies concerned so that all parameters for opening LOCs are available.

- | | | | |
|-----|------|------|------|
| (D) | xxxx | xxxx | xxxx |
| (E) | xxxx | xxxx | xxxx |
| (F) | xxxx | xxxx | xxxx |

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

- | | | | |
|-----|------|------|------|
| (H) | xxxx | xxxx | xxxx |
|-----|------|------|------|

(I) In cases where there is no cognizable offence under IPC and 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.

(J) The LOC opened shall remain in force until and unless a deletion request is received by Bol from the Originator itself. No LOC shall be deleted automatically. Originating Agency must keep reviewing the LOCs opened at its behest on quarterly and annual basis and submit the proposals to delete the LOC. if any, immediately after such a review. The BOI should contact the LOC Originators through normal channels as well as through the online portal. In all cases where the person against whom LOC has been opened is no longer wanted by the Originating Agency or by Competent Court, the LOC deletion request must be conveyed in Bol immediately so that liberty of the individual is not jeopardized.

(K) On many occasions, persons against whom LOCs are issued, obtain Orders regarding LOC deletion/quashing/suspension from Courts and approach ICPs for LOC deletion and seek their departure. Since ICPs have no means of verifying genuineness of the Court Order; in all such cases, orders for deletion/quashing/suspension etc. of LOC, must be communicated



to the BoI through the same Originator who requested for opening of LOC. Hon'ble Courts may be requested by the Law Enforcement Agency concerned to endorse/convey orders regarding LOC suspension/deletion/quashing etc. to the same law enforcement agency through which LOC was opened.

(L) In exceptional cases, LOCs can be issued even in such cases, may not be covered by the guidelines above, whereby departure of a person from India may be declined at the request of any of the authorities mentioned in clause (B) above, if it appears to such authority based on inputs received that the departure of such person is detrimental to the sovereignty or security or integrity of India or that the same is detrimental to the bilateral relations with any country or to the strategic and/or economic interests of India or if such person is allowed to leave, he may potentially indulge in an act of terrorism or offences against the State and/or that such departure ought not be permitted in the larger public interest at any given point in time.



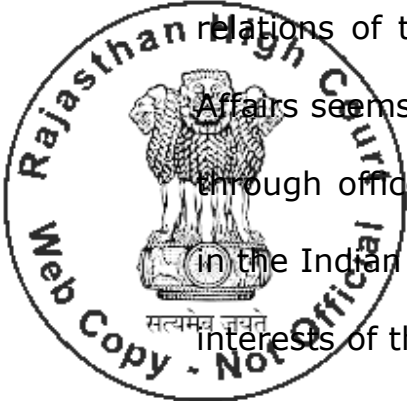
(M) xxxx xxxx xxxx

(N) For effective and better interception of LOC subjects, following guidelines shall be followed by the Originator:

- (i) Specific action to be taken by the Immigration authorities on detection must be indicated in the filled LOC proforma.
- (ii) In case of any change in parameters / actions / investigating officer / Originator contact details or if any court order is passed in the case, the same should be brought to the notice of the BoI immediately by the originating agency concerned for making necessary changes in the LOC.
- (iii) For LOCs originated on court orders, the concerned PS/IO should send the identifying parameters of the subject to the BoI as court orders contain only name and parentage of the subject.
- (iv) In case an LOC is challenged and stayed by the concerned court or a court issues any directive with regard to the LOC, the Originator must inform the BoI urgently and accordingly seek amendment/deletion of the LOC.
- (v) Whenever the subject of LOC is arrested or the purpose of the LOC is over, a deletion request shall be sent by the Originator immediately to the BOI.
- (vi) The Originator must respond promptly whenever the subject/likely match is detected at the ICP.
The confirmation regarding the identity of the subject and action to be taken must be informed immediately to the ICP.
- (vii) The BOI would form a team to coordinate matters regarding the LOC. This team would contact the LOC issuing agencies to get the status of LOC updated.
- (viii) Each LOC Originating Agency referred in para 6(B) above will appoint a Nodal officer as indicated in Annexure-I for coordination/updation of LOC status with BoI. The said team of BoI [as mentioned in para 6(N)(vii)] would remain in constant touch with this Nodal Officer."

22. A perusal of provisions of the Passports Act vis-a-vis, various office memoranda issued by the Ministry of Home Affairs, when read homogenously, reveals that initially the concept of LOC was statutorily

envisioned only in those cases where either security or integrity or sovereignty of India was endangered, in any manner, or relations of the India with the neighboring country had the potential of being compromised. Illustratively, a person who could be a potential detriment to the country by indulging in terrorism, insurgency or other offences against the State or acts which may affect the bilateral relations of the country. However, subsequently, the Ministry of Home Affairs seems to have expanded the scope by way of administrative fiats through office memoranda by bringing in the other offences contained in the Indian Penal Code and the ones adversely affecting the economic interests of the country.



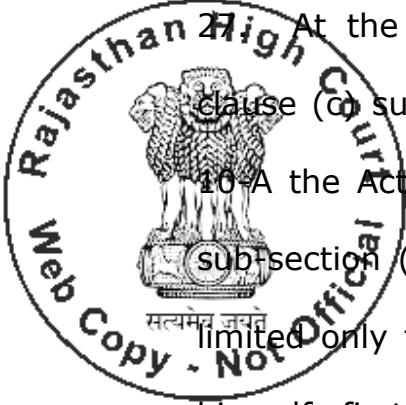
23. To sum up, it so appears that the Ministry of Home Affairs has issued the office memorandum beyond the contours of provisions contained in the Passports Act in the absence of any other statutory provision empowering Home Ministry to issue such office memorandum either in the erstwhile Cr.P.C. or any special statute or the newly enacted and enforced BNSS.

24. Be that as it may, having already opined on the scope, content and intent of the Passports Act, I shall refrain to tread on the path of dealing with the OM issued by the Ministry of Home Affairs as neither the same is under challenge before this Court nor even otherwise UOI / Ministry of Home Affairs has been made a party.

SUMMARY

25. It is not disputed that the SP/DIG, who passed the aforesaid order dated 18.01.2024, declining to instruct the BOI / designated officer to withdraw the LOC qua petitioner no.1, is an originating agency under OM dated 22.02.2021 issued by the Ministry of Home Affairs, governing the opening / issuance of an LOC by designated officer under section 10-A(1)(b) of the Act.

26. The object and effect of Look Out Circular (LOC) issued under section 10-A of the Act is to prevent the subject person from proceeding abroad during its subsistence. Thus, the direction for issuance/continuance of LOC by a designated officer seems within his competence/powers under section 10-A *ibid* to suspend or render any passport or travel document invalid during the subsistence of LOC.

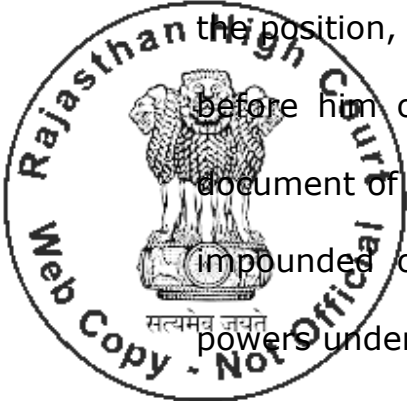


At the cost of repetition, conjoint reading of the provisions of clause (c) sub-section (3) of Section 10 and sub-section (1) of section 10-A the Act, *ibid*, shows that the scope for invoking the provision of sub-section (1) of section 10-A for the issue of LOC is restricted and limited only to the cases, in which the designated officer has satisfied himself; firstly, that the petitioner's passport is likely to be impounded or caused to be impounded or revoked by the Passport authority under clause (c) of sub-section(3) of Section 10 [i.e. if the passport authority deems it necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or otherwise in the interests of the general public] and; secondly, if the designated officer has also satisfied himself that it is necessary in the interest of justice to issue the LOC.

28. Thus, unless, any action/proceedings have been initiated by or at least any report/request has been made to the Passport authority/officer to initiate action/proceedings for impounding, causing to impound or revoking his passport or travel document, there would be no material or grounds before the designated officer for his satisfaction that the passport or travel document is likely to be impounded or caused to be impounded or revoked by the Passport authority in exercise of it's powers under sub-clause(c) of sub-section (3) and also, for the further satisfaction of the designated officer that it is necessary

in the interest of justice to impound or cause to be impounded or revoke the passport or travel document.

29. In present case, it is not alleged or shown if any proceedings have been initiated by or even any report/request has been made to the Passport authority/officer to initiate proceedings for impounding or revoking his passport or travel document of the petitioner. This being the position, obviously the designated officer had absolutely no material before him or ground for his satisfaction that the passport or travel document of petitioner No.1 was likely to be impounded or caused to be impounded or revoked by the Passport authority in exercise of it's powers under sub-clause(c) of sub-section (3).



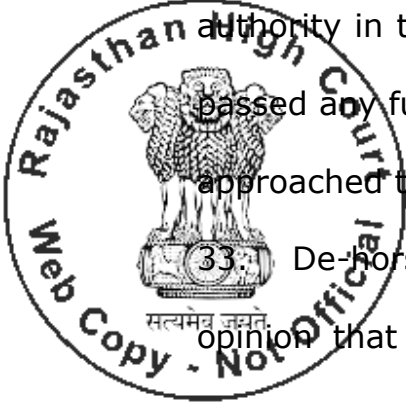
30. Further, it is not even alleged, much less shown by the respondents if the travel of petitioner No.1 abroad is detrimental to the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, so as to treat him like a dreaded suspect/criminal.

31. Petitioner No.1 was not even given the opportunity of hearing within eight weeks of the passing order dated 18.01.2024 (for continuance of the LOC) as mandated by second Proviso to section 10-A of the Passports Act, 1967. In terms of the said proviso, after such hearing, it was/is only the Central Government who could pass further appropriate orders in relation to LOC.

CONCLUSION

32. Order dated 18.01.2024 cannot be sustained in law; firstly, because it is not even alleged, much less shown therein that the travel of petitioner No.1 abroad is detrimental to the sovereignty/integrity/security of India or friendly relations of India with any foreign country; secondly, because it is not alleged or shown if any proceedings have been initiated by or even any request has been made

to the Passport authority/officer to initiate proceedings for impounding or revoking his passport or travel document (3); thirdly, because of the non-compliance of this mandatory requirement of giving the opportunity of hearing by the competent authority to petitioner No. 1 within eight weeks of it's passing by the designated officer and; fourthly, because it is not even shown if the Central Government being the competent authority in terms of the second proviso to section 10-A of the Act, has passed any further order in the case of petitioner No.1 or even has been approached till date for this purpose.

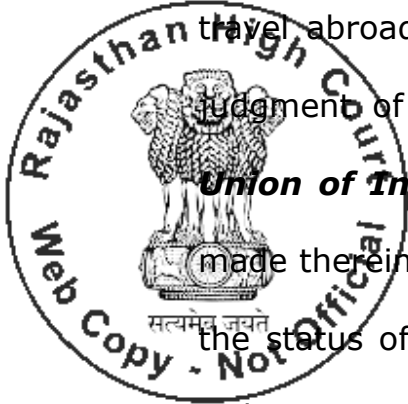


33. Dehors the discussion/observations made above, I am also of the opinion that in the overall facts and circumstances of the case, the reasons given in the order dated 18.01.2024 (reproduced above) do not, at all, justify the continuance of the LOC against the petitioner. The said order proceeds on the reasoning that if the LOC against Abhayjeet Singh is cancelled, there is a possibility that he may leave the country and fail to appear in the next hearing in pending trial and that there is a high chance that he may abscond during the trial, which could hinder the judicial process. Absolutely no basis/material has been disclosed/provided in the said order for the conclusion drawn by the concerned Police authority to the effect that there is a possibility that he may leave the country and fail to appear at the next hearing and there is a high chance that he might be absent during the trial. This conclusion drawn by the police authority, to my mind, is only a suspicion, that too without any basis/material, which cannot be equated with the likelihood of the accused leaving the country to evade trial/arrest.

34. As already stated, vide order dated 06.09.2017 passed in S.B. Criminal Misc. Petition No. 999/2016, the proceedings against Abhayjeet Singh petitioner in the trial Court have been already stayed. Same thus,

further fortifies my opinion that there is no reasonable ground or otherwise any circumstance on record to believe that for the purpose of evading trial/arrest, the accused would flee from the country.

35. The order dated 18.01.2024 passed by the police authority for continuance of LOC against the petitioner has the serious effect of impeding his movement as a citizen, which takes away his right to travel abroad. In **Rupen Patel**, supra, reference was also made to a judgment of High Court of Delhi in the case of **Nepun Singhal v. Union of India**⁹. I am in respectful agreement with the observations made therein that right to travel abroad is to be treated and elevated to the status of fundamental right under Article 21 of the Constitution of India.



36. Pertinently, the order dated 18.01.2024 has been passed stating inter alia that *"by letter No.1243, dated 17.10.2023, was sent from this office to the Deputy Director of the Bureau of Immigration, New Delhi and the LOC against Shri Balvinderjit Singh and Mrs. Jaspal Kaur has been cancelled"*. As regards the husband petitioner No.1 Abhayjeet Singh, the operative part of the said order is that *"It is not appropriate to cancel the LOC (Look Out Circular) issued against the accused, Abhayjeet Singh, son of Shri Balvindrajit Singh, resident of 6 OB, Tehsil Srikaranpur, in Case No. 239 dated 09.10.2012, under sections 406, 498A, and 323 of the IPC, registered at Police Station Kesarisinghpur. Therefore, the LOC against the accused, Abhayjeet Singh, should remain in effect."*

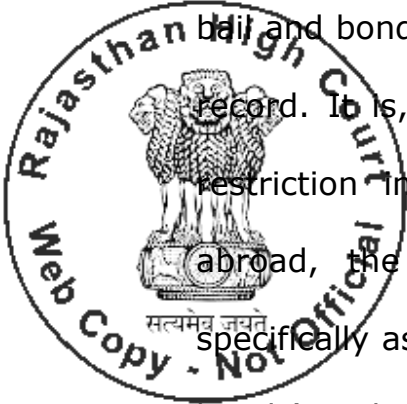
37. Moreover, while disposing of the petitioner's pre-arrest bail application, an order dated 16.09.2013(reproduced above) had been passed by this Court giving liberty to the petitioner to surrender before the trial court and apply for bail and directing that in the event of petitioner applying for bail after surrendering before the trial court, he shall be released on bail on his furnishing bail and bonds, the amount whereof shall be to the satisfaction of the trial court. It would be seen

⁹2023 SCC OnLine Del 6721

that in terms of the bail order passed by this Court, the trial court had just to release the petitioner on bail on his furnishing bail and bonds, the amount whereof was to be determined to its satisfaction. Admittedly, upon the petitioner's surrender, he was released on bail by the trial court and continues to be on bail.

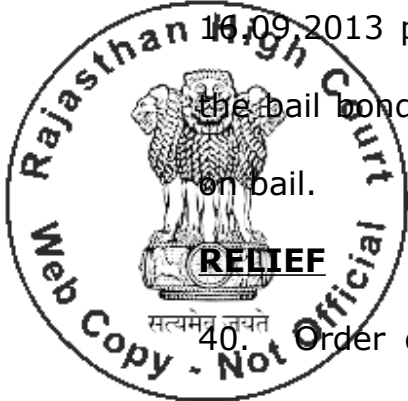
38. Relevant order of the trial Court (for determining the amount of bail and bonds) and the petitioner's bail bonds accepted by it are not on record. It is, however, otherwise obvious that, in the absence of any restriction in this Court's bail order against the petitioner's travel abroad, the trial Court would/could not have exceeded the role specifically assigned to it by this Court (to determine the amount of bail bonds) and would not have, on its own, imposed any such restrictions against the petitioner's travel abroad. Even the order dated 18.01.2024 passed by the Superintendent of Police also does not speak of any such restriction imposed by court. Learned counsel for the parties are *ad idem* that, in fact, the trial Court had not imposed any restrictions against the petitioner's travel abroad. Be that as it may, such a restriction, even if imposed, is not tenable being beyond the scope of the duty assigned by this Court to the trial court while granting bail to petitioner no.1.

39. In the premise, the issuance/continuance of the LOC to prevent the petitioner's travel abroad is obviously contrary to and destructive of the object, spirit and substance of the bail order dated 16.09.2013 passed by this Court; the petitioner's bail bonds accepted by the trial Court and his consequential release on bail. It is intriguing, to say the least, that even though no restriction against foreign travel of the petitioner had been imposed either by this Court while passing the order dated 16.09.2013 for the petitioner's release on bail or by the learned trial Court while determining the amount of and accepting the



bail bonds, yet thereafter, the police authority passed the order 18.01.2024 for the continuance of the LOC against the petitioner, thereby preventing his travel abroad. This Court restrains itself from going further into and commenting on this aspect of the case. Suffice to say, that the order dated 18.01.2024, to the extent of continuing the LOC against petitioner No.1 cannot stand in the face of the order dated

16.09.2013 passed by this Court and the consequential acceptance of the bail bond by the learned trial Court and release of petitioner No. 1 on bail.



40. Order dated 18.01.2024 passed by the SP/DIG shows that the LOC against petitioners no.2 & 3, i.e. Shri Balvinderjit Singh and Mrs. Jaspal Kaur, has been cancelled/closed. Qua them, the petition has already become infructuous and is disposed of accordingly. Qua the petitioner no.1, order dated 18.01.2024 passed by the SP/DIG for continuance of LOC against is held to be unlawful and cannot thus be sustained. Resultantly, it is hereby quashed.

41. As an upshot of the foregoing discussion and analysis of applicable provisions of law, though a case of quashing of LOC is also made out, but the prayer qua the same cannot be accepted for the technical reasons i.e. the LOCs have been issued by the BOI, Ministry of Home Affairs and it has not been made a party herein. Therefore, the petition is disposed of with a direction to the respondent No.3, i.e. jurisdictional Superintendent of Police/Operating Agency, that forthwith steps shall be taken, but not later than 30 days from the date petitioner no.1 approaches with web-print of the instant order, to instruct the BOI to withdraw / close / cancel the LOC issued/opened against him pertaining to FIR No.239/2012, which, at the first instance, was issued

by the BOI under the instructions of the Superintendent of Police being the originating agency.

Guidelines for Issuance/Continuation of LOCs

42. Before parting with the case, it needs to be noted that quite often, the LOCs are being indiscriminately issued/continued at the instance of the operating agencies to prevent the foreign travel of the accused persons without proper and sufficient justification. This causes lot of harassment, humiliation and expenditure to the persons adversely affected by such LOCs. They have to run from pillar to post including approaching the Courts for relief. This in turn results in considerable addition to administrative work of the concerned authorities and of the Courts. Ultimately, that is against the larger public interest. It is, therefore, considered appropriate to formulate and lay down the following guidelines to be borne in mind and followed by the concerned authorities/operating agencies for causing the issuance/continuance of the LOCs :-

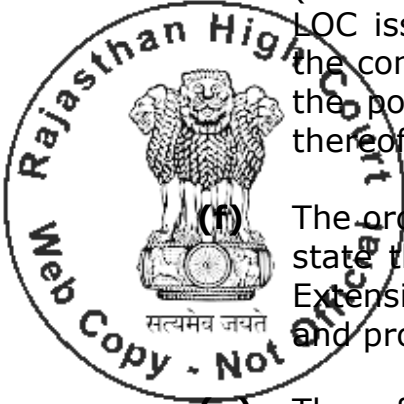
- (a) The issuance or continuation of an LOC effectively suspends or invalidates the individual's passport or travel document, restricting foreign travel. This action should not be taken lightly in a casual manner, as the Supreme Court has recognized the right to travel abroad as a fundamental right under Article 21 of the Constitution (*Maneka Gandhi v. Union of India*)¹⁰.
- (b) Order for issuance of LOC can only be passed by originating agency (O.A.) in cognizable offences under IPC or other penal laws, where the accused and/or under trial, as the case may be, is deliberately evading arrest or not appearing in the trial court despite NBWs and other coercive measures and there is likelihood of the accused leaving the country to evade trial / arrest. It is thus a situation akin to issuance of NBWs in exercise of Magisterial powers, but for the difference that Home Ministry has empowered BOI to only detain / restrain a person from travelling abroad and not arrest, if he is either evading arrest or deliberately not appearing in the trial court.
- (c) In cases other than falling in (b) above, while taking a decision to instruct the BOI to open / issue an LOC for preventing the subject to travel abroad, the O.A. must record reasons and grounds for his satisfaction for believing that the passport is likely to be impounded or revoked under Section 10(3)(c) by the passport

¹⁰ (1978) SCC 248

authority either in the interest of sovereignty or integrity, security of India or in the interest of friendly relation of India with a foreign country or general public interest.

- (d) In cases where the person in question has been granted bail, the order for issuance of LOC must not conflict with or override the terms and conditions of the bail or over reach an order passed by the court.
- (e) Once an investigation is completed and a report under Section 193(3) of the Bharatiya Nagrik Suraksha Sanhita, 2023 (corresponding to Section 173(2) of the CrPC), is submitted, any LOC issued or continued must be reported by O.A. in writing to the concerned court to ensure propriety and to prevent misuse of the power to issue order for opening an LOC or continuance thereof, as the case may be.
- (f) The order passed by the O.A. for issuance of LOC must specifically state that initial validity of an LOC shall not exceed four weeks. Extensions are permissible only if the O.A. deems it appropriate and provides reasons in writing.
- (g) The affected individual i.e. as per Section 10-A of the Act, passport holder must be given an opportunity to be heard within eight weeks of the LOC issuance or continuation at the instance of O.A. To facilitate this, the O.A. must refer the matter to the Central Government in a timely manner, allowing the Government to provide a hearing and, if necessary, modify or revoke the LOC order by taking such decision in writing.
- (h) If no cognizable offense is involved, the holder of passport, i.e., subject of LOC, cannot be detained or prevented from leaving the country. In such cases, the O.A. can only request for being notified of the subject's arrival / departure.
- (i) Originating agency must review LOCs quarterly i.e. every 3 months by giving reasons in writing. After the review, if the LOC is no longer needed Proposals for deletion must be submitted immediately. LOC deletion requests must be conveyed promptly to BOI to avoid adversely affecting individual liberties unnecessarily.
- (j) Originating agency must send a deletion request of LOC to BOI as soon as the purpose of the LOC is fulfilled or the subject is arrested.
- (k) Each originating agency, in every district of the state, must appoint a nodal officer for effective communication and updates with BOI, Ministry of Home Affairs, Government of India.

43. It is directed that the Home Secretary of the Government of Rajasthan, i.e. respondent no.1, and the Director General of Police, Rajasthan shall take appropriate steps to sensitize the concerned operating agencies, i.e. all Joint Secretaries, all District Magistrates and



Superintendents of Police, of State Government in this behalf and also convey the aforesaid guidelines to them for compliance.

44. Petition is accordingly disposed of. Pending application, if any, also stands disposed of.

(ARUN MONGA),J



165 Ananthur/-

Whether fit for reporting : Yes / No