

## Bharadwaj Venkatavaraghavan ... vs Serious Fraud Investigation Office & ... on 15 September, 2022

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(CRL) 413/2022, CRL. M.As. 14141/2022, 14149/2022, 14153/2022 & 16857/2022,

BHARADWAJ VENKATAVARAGHAVAN THIRUVENKATA

Through: Mr. Vikas Pahwa, Sr. A  
Namitha Mathews, Mr. K  
Bhatnagar and Ms. Raav  
Advs.

versus

SERIOUS FRAUD INVESTIGATION OFFICE & ORS.

Through: Mr Anurag Ahluwalia, C  
Mr. Vishal Chanda Advo  
Dr. Arib Ansari, Prose  
Tarun Srivastave, Advo  
SFI0.

CORAM:

HON'BLE MS. JUSTICE POONAM A. BAMBA  
ORDER

% 15.09.2022 1.0. Vide this application under Section 482 of the Code of Criminal Procedure, the petitioner has sought exemption from conditions of the Look Out Circular („LOC in short) issued by Serious Fraud Investigation Office („SFIO in short), praying as under :-

"a. Order exemption from conditions of Look Out Circular issued against the Petitioner.

b. Permit the Petitioner to travel to United States of America from September 16, 2022, to October 1, 2022.

c. Direct the Respondent No.4 i.e., Bureau of Immigration to permit the Petitioner to travel and .pass-:through immigration in accordance with this order.

d. Pass such other and further order( s) as may deem fit and proper and in the interest of Justice."

2.0. Vide his subsequent application Crl. M.A 16857/2022 under Section 482 Cr.P.C, the petitioner prayed for taking on record his revised travel summary to be read with aforesaid travel summary,

which is given as under :-

S. No.	From (Departure)	To (Arrival)	Airline Details	Departure Date
1.	Mumbai, India	Singapore	Singapore Airlines SQ	17.0
2.	Singapore	Newark (USA)	Singapore Airlines SQ	19.0
3.	San Francisco	Mumbai, India	Qater Airways QR	30.0
			San Francisco to Doha.	
			Qater Airways QR 556 Doha to Mumbai	

3.0. It is submitted that the petitioner is a reputed businessman and is a founder and General Partner at A91 Partners LLP, a leading Investment Fund based out of Mumbai. He has no criminal antecedents. He is required to travel outside India for the purposes of business. It is further submitted that the petitioner was professionally associated with Sequoia Capital India Advisors Private Limited ('Sequoia') and had resigned from Sequoia on 30.06.2018. It is submitted that the Sequoia had invested certain funds in Vasan Health Care Private Limited (VHCPL) ; therefore, the Petitioner was nominated by Sequoia to be on the board of VHCPL as Non-Executive Director Investor Nominee.

3.1. It is also submitted that the petitioner was never involved in the day- to-day affairs of VHCPL and had resigned from VHCPL on 18.11.2015. On 30.11.2021, the petitioner was stopped by the Immigration Authority from boarding his flight due for Dubai at Chhatrapatii Shivaji International Airport, Mumbai and on inquiry, it was revealed that that some investigation has been initiated by the SFIO i.e., respondent no.1 into the affairs of the VHCPL by virtue of Order dated 11.01.2021 issued by the Ministry of Corporate Affairs, Government of India. As required, the petitioner appeared before the Investigation Officer (IO) Mr. N.M. Mahesh Kumar, SFIO on 01.12.2021 at SFIO Regional Office, Chennai, as a witness, in the ongoing investigation of VHCPL.

3.2. It is further submitted that even thereafter, the petitioner duly responded to the notices and summons received from SFIO and has been cooperating with the SFIO in the on-going investigation into the affairs of VHCPL. It is also submitted that pursuant to the order dated 31.05.2022 of this Court, the petitioner had again appeared before IO at SFIO Regional Office at Chennai on 27.06.2022.

3.3. It is also submitted that with respect to his business, the petitioner is required to travel abroad from time to time to meet prospective clients to gather business. He is required to travel to United States of America to meet A91 Partners LLP clientele spread across New York, New Jersey, Boston and other cities during September 17, 2022, to October 2, 2022. The Petitioner has received an invitation to the "Asia Alternatives' COVID-19 Vaccination 2022 Annual Meeting & LP Program organized by Asia Alternatives Management LLC, which is scheduled for September 26, 2022 to September 28, 2022, in San Francisco, United States of America. The copy of the invitation is annexed as Annexure B. 3.4. It is further submitted that the petitioner is presently residing with his family at the address mentioned in the petition. The Petitioner is not at flight risk.

3.5. Petitioner has also submitted that SFIO has arbitrarily issued LOC, which is against law and is violative of the petitioner's fundamental right. Reliance in this regard has been placed on *Rihen harshad Mehta v. Union of India* and *Ors.* [Writ Petition No. 4356 of 2021], 3.6. Ld. counsel for the petitioner argued that the accused persons involved in huge financial frauds were allowed to travel abroad for business purposes, whereas, the petitioner is merely a witness and there is no criminal proceedings pending against him.

4.0. Per contra, this application is opposed by learned counsel for SFIO mentioning that the investigation in the affairs of VHCPL is going on ; M/s Alcon Laboratories (India) Private Limited, an operational creditor of VHCPL had filed an insolvency application before National Company Law Tribunal (NCLT) under Section 9 of Insolvency and Bankruptcy Code, 2016, which culminated in appointment of Corporate Insolvency Resolution Professional (CIRP) vide order of NCLT dated 21.04.2017. The Insolvency Resolution Professional (IRP) had admitted claims of 1762 persons for Rs. 2,077.98 crores. The resolution plan received under IBC was also rejected by the Committee of Creditors. The investigation into the affairs of VHCPL, has prima facie revealed that the assets held by the VHCPL are miniscule and have been fraudulently capitalized at a high value thus causing huge losses to banks, especially public sector banks.

4.1. It is further submitted that the petitioner was a director of VHCPL between 18.12.2009 to 18.11.2015 under both, Companies Act, 1956 and the Companies Act, 2013. He was the signatory of the falsified financial statements on behalf of the Board of Directors of VHCPL for the financial years 2010-11 and 2011-12 and he had also approved the falsified financial statements for financial years 2012-13 and 2013-14.

4.2. It is also submitted that the petitioner was also appointed as nominee director and as per Section 179 of Companies Act, 2013, the Board of Directors is collectively responsible for the affairs of the company including borrowing from banks and expansion of the company. Therefore, the petitioner along with other directors was collectively responsible for the affairs of VHCPL, which has

resulted in losses to the bank, and the amount outstanding as adjudicated by the liquidator appointed under IBC to banks and financial intuitions (BFIs) is, Rs. 1368 crores.

4.3. It is further submitted that the petitioner is associated with VHCPL since beginning and the exposure of the Banks in financial year 2015 was already Rs. 935 crores before the petitioner resigned as a director of VHCPL.

4.4. It is also submitted that the Sequoia Capital India Investment Holding (Sequoia) for which, the petitioner was a nominee director had invested in Compulsorily Convertible Preferential Shares (CCPS) of VHCPL and had obtained 50 lakhs CCPS at a cost of Rs. 50 crores in the year 2009-10. The Sequoia disposed of 24.98 lakh CCPs at a sale price of Rs. 177.40 crores on 14.03.2012 making a profit of over Rs. 150 crores in the sale. Investigation is going on to find out whether the Sequoia made unlawful gains in the aforesaid transaction.

4.5. It is further submitted that the petitioner initially failed to produce requisite documents/records despite notices/reminders dated 02.12.2021 and 11.01.2022. As the petitioner failed to produce the requisite documents, he was summoned vide summons dated 18.02.2022 and 09.05.2022 but he failed to appear. Subsequently, he appeared on 27.06.2022 pursuant to the order dated 31.05.2022 of this Court and had given a statement on oath and also submitted some of the documents. However, other documents as required are yet to be furnished.

4.6. It is further submitted that the LOC was issued as per rules, guidelines issued vide Office Memorandum dated 22.02.2021, in the public interest. The petitioner has failed to show as to how is he unreasonably/unlawfully restricted from exercising his right by the aforesaid LOC. It is further submitted that the maximum punishment prescribed for fraud and false statement under Section 447 of Companies Act 2013, is imprisonment of ten years.

5.0. In rebuttal, learned Senior Counsel for the petitioner submitted that the petitioner was only a nominee director of the company under investigation for the period from 18.12.2009 to 18.11.2015. In his capacity as managing director of Sequoia, he had made investment in VHPCL. It is further submitted that the petitioner has been cooperating and even providing documents ; however, certain documents which are with the company VHPCL, he is unable to provide.

5.1. Ld. Senior counsel further argued that as per the amended policy, the LOC can be issued only in exceptional cases for specified reasons. LOC in the instant case is stated to have been issued in public interest ; it does not specify anything further and is therefore, bad. Reliance in this regard was placed on various judgements, however, Ld. senior counsel mainly referred to the judgment of this Court in „Sumer Singh Salkhan vs. Assistant Director ED IRL (2010) VI Delhi 706'. He also referred to various orders of this Court inter alia „order dated 28.10.2021 in WP (C) 12173/2021, Priyanka Mittal vs. Union of India & Ors.' and 'order dated 12.04.2021 in WP (C) 3374/2021, Brij Bhushan Kathuria vs. Union of India & Ors. 6.0 I have considered the submissions made by both the sides.

7.0. Let it be mentioned at the outset that legal position of LOCs came to be dealt with way back in 2010 by this Court in „Sumer Singh Salkhan's case (supra). While answering a reference made by the court of Ld. ACMM, Patiala House Court, New Delhi with respect to the LOC, this Court noted that the LOC is a part of investigation techniques and answered the reference as under :-

""A. What are the categories of cases in which the investigating agency can seek recourse of Look-out-Circular and under what circumstances?

B. What procedure is required to be followed by the investigating agency opening a Look-out-circular? C. What is the remedy available to the person against whom such Look-out-Circular has been opened?

D. What is the role of the concerned Court when such a case is brought 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. ....

D. LOC is a coercive measure to make a person surrender to the investigating agency or Court of law. The subordinate courts' jurisdiction in affirming or cancelling LOC is commensurate with the jurisdiction of cancellation of NBWs or affirming NBWs."

7.1. From the above, it is clear that LOC is a coercive measure and purpose of its issuance is to secure the presence of the accused, who is deliberately evading the process of law or there is likelihood of accused leaving the country.

8.0. Further, in Vikram Sharma & Ors. vs. Union of India & Ors., decided on 26th July 2010, this Court directed the Government of India to take a Policy decision regarding statutory bodies/tribunals/commissions, in whom, it wanted to vest that powers of enforcement of criminal law ; and that MHA should issue clarificatory circular in this respect. Accordingly, Government of India, Ministry of Home Affairs (Foreigners Division), vide its Office Memorandum no. 25016/31/2010-Imm. dated 27.10.2010, issued guidelines in this regard and listed the agencies. The relevant portion of the said OM is reproduced as under :-

"8. In accordance with the order dated 26.7.2010 of the High Court of Delhi, the matter has been discussed with the concerned agencies and the following guidelines are hereby laid down regarding issuance of LOCs in respect of Indian Citizen and foreigners :

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

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

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

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

8.1. The aforesaid OM dated 27.10.2010 came to be amended vide the Office Memorandum no. 25016/10/2017/Imm(Pt.) dated 05.12.2017, which reads as under :-

"In exceptional cases, LOCs can be issued even in such cases, as would 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) of the above-

referred OM, if it appears to such authority based on inputs received that the departures of such person, is detrimental to 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"

8.2 In view of the above OM dated 05.12.2017, the LOC in exceptional cases, can be issued against a person, if it appears to the authority concerned that departure of such a person could impact the economic interest of India or in larger public interest.

8.3. Ld. counsel for SFIO submits that as per the guidelines contained in OM dated 05.12.2017 and subsequent comprehensive guideline issued vide OM No. 25016/10/2017/Imm (Pt.) dated 22.02.2021, the LOC against the petitioner issued in larger public interest, was very much as per

these guidelines.

8.4 Attention of this Court is also drawn to the OM No. 25016/10/2017/Imm (Pt.) dated 19.09.2018, whereby, SFIO, Ministry of Corporate Affairs has been included as an agency, which can make a request for opening of LOC.

9.0. Ld. counsel for the petitioner submitted that the petitioner is not an accused and is being summoned as a witness and has been fully cooperating in the investigation. His travel abroad for his business purposes cannot be stated to be detrimental to the economic interest of India.

10.0. Admittedly, till date no FIR has been registered against the petitioner. The petitioner is being summoned only as a witness. In the light of the aforesaid and keeping in view the admitted position that the petitioner has not been named as an accused in the matter ; he has been joining investigation ; and that nothing has been placed on record to show that he is a flight risk, I am inclined to suspend the LOC issued against the petitioner.

11.0. As prayed, LOC against the petitioner is suspended for the period during 17.09.2022 to 03.10.2022 for travelling to Singapore and USA, as per the itinerary given in para 2.0 above, subject to the following conditions:

(i) the petitioner shall furnish a security in the sum of Rs.50 lakhs by way of a Fixed Deposit to the satisfaction of the Registrar General of this Court ;

(ii) the petitioner shall keep informed the respondent/SFIO about his travel plan(s) and shall also furnish his complete address in the country of travel ;

(iii) the petitioner shall also furnish to the respondent/SFIO, his mobile phone number in use outside country, which shall be kept operational at all times ;

(iv) the petitioner shall also furnish his e-mail address.

12.0. The applications CRL. M.A no. 14149/2022 and 16857/2022 stand disposed of accordingly.

13.0. List on 30.01.2023.

14.0. Copy of this order be given dasti under the signatures of Court Master.

POONAM A. BAMBA, J SEPTEMBER 13, 2022/[chandan Click here to check corrigendum, if any](#)