

Rana Ayyub vs Union Of India & Anr on 4 April, 2022

Author: Chandra Dhari Singh

Bench: Chandra Dhari Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(CRL) 714/2022
RANA AYYUB

Through: Ms. Vrinda Grover,
Banerjee, Ms. Manna
Devika Tulsiani, Ad

versus

UNION OF INDIA & ANR

Through: Mr. Mukul Singh, CG
Devesh Dubey, GP an
Singh, Advocates fo
Mr. S.V. Raju, ASG
Mahajan, CGSC, Mr.
SPP, Mr. Dhruv Pand
and Mr. Imon Bhatta
Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH
ORDER

% 04.04.2022 Exemption allowed subject to just exceptions.

The application stands disposed of.

W.P.(CRL) 714/2022 & CRL.M.A.6010/2022 (Stay)

1. The petitioner has approached the Court by way of a Writ Petition under Article 226 of the Constitution read with Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of the Look Out Circular/Directions issued against her that has restrained her from travelling abroad.

2. Ms. Vrinda Grover, learned counsel appearing for the petitioner submitted that the petitioner is a globally renowned journalist and is being persecuted for speaking truth to power and being critical of the incumbent establishment. Learned counsel submitted that on March 29, when the petitioner arrived at Chhatrapati Shivaji Maharaj International Airport, Mumbai, to board a flight to London to attend an event about the global problem of cyber-attacks on women journalists on 1st April at London, as well as to deliver a keynote speech in Rome on the status of journalism in India on 5th April.

3. It is submitted that upon her arrival at the airport and after passport- visa check, her travel was approved by immigration at around 11.50 am. However, at 12 noon she was detained by the Bureau of Immigration and the officers told her that they have instructions from the ED to not allow her to board the flight, and was conveyed that she would be receiving summons from the ED. Soon after, her immigration stamp was cancelled. The summons arrived in her email at 1:46 pm directing her to appear before the ED on 1st April, whereas she had to board the flight at 2 pm. It is submitted that the issuance of summons was an afterthought and was hastily done in a bid to stop the petitioner from attending the said events.

4. Learned counsel further submitted that it is ED's case that the petitioner had collected funds by crowdfunding for COVID relief work and has not done proper accounting. It is submitted that there is nothing on record to suggest that the petitioner was evading the legal process. The respondent no. 2 has already filed a complaint under Section 5 of the PMLA, 2002, and provisionally attached part of the petitioner's bank account.

5. Further, it is submitted that she had been in regular communication with ED and had responded to each and every summons issued by the ED under the PMLA, that she had also joined the investigation and has been cooperating throughout. Additionally, the petitioner in her response dated 2nd February 2022 to the Summons issued had volunteered to appear before the Department on 11th February 2022 at New Delhi. Therefore, there is no reasonable ground for apprehension of the petitioner avoiding the investigation, and hence no case for issuing Look Out Circular is made out. Furthermore, it is stated that the said Circular has been issued without due compliance of the guidelines issued by the Ministry of Home Affairs as well as the guidelines issued by the Courts regarding the same. It is stated that the only reason that is being cited for the issuance of the impugned LOC is an apprehension that the petitioner might not return to India. However, the said apprehension is sans merit and without any foundation. It is submitted that there is no material on record to give rise to the said apprehension. Even otherwise, in light of the conduct of the petitioner, as well as the facts that she has booked her return ticket for India dated 11th April 2022 and has her old family at home in Mumbai, there is no basis whatsoever for the said apprehension. In light of the aforesaid, it is submitted that the Look Out Circular has been issued with a mala fide, is devoid of reasons, is violating her fundamental right to travel abroad, hence is bad in law and accordingly be quashed.

6. Per Contra, Mr. SV Raju, learned Additional Solicitor General assisted by Mr. Amit Mahajan, Special Public Prosecutor for Enforcement Directorate, and Mr. Mukul Singh, CGSC appearing on behalf of Respondents vehemently opposed the instant petition and argued that the petitioner has been involved in a very serious offence and has misappropriated funds collected in the name of relief work. It is submitted that the petitioner had submitted fake bills and thus the money raised for relief work has been siphoned off.

7. It is also submitted that the Enforcement Directorate had attached her assets worth Rs 1.77 crore in connection with alleged irregularities in the collection of charitable funds for COVID relief work. Further, it was submitted that the agency had issued summons to her earlier as well, but she did not respond and that it did not want her to leave the country because it would delay the probe and filing

of charge sheet in court.

8. Learned ASG in furtherance of his arguments also placed on record the Status Report and reiterated the averments mentioned therein. It is submitted that the petitioner is merely making a show of cooperation however, she has wilfully withheld furnishing of the documents as being requested from the petitioner. On 1st April 2022, the petitioner did not give specific replies to questions posed to her and instead sought time to furnish a detailed reply on 20th April 2022. Additionally, summons dated on 20th January 2022 for appearance on 31st January 2022 to submit pending details related to expenses made by her were not complied with and instead an email was received by the Directorate which stated that she was unable to travel to Delhi and undertook to submit all the requisite documents shortly, which were never submitted.

9. The apprehension of the respondents is that if she is allowed to leave the country she will not come back. Pertinently, a day right after the impugned LOC was issued to secure her presence, she embarked upon to leave the country on 29th March 2022 for some event, which was not in the knowledge of the Respondents. Ld. ASG further relied on para 45 of the judgment of the Madras High Court in S. Martin v. Central Crime Branch, 2014 SCC Online Mad 426, and stated that the attitude of the petitioner is non-cooperative thus stalling the investigation in the matter and hence has given rise to the apprehension of her not returning to India and evading the process of law. In light of the aforesaid, it is submitted that the instant writ petition be dismissed.

10. Heard learned counsels for the Parties and perused the record.

11. In the particular facts of the case, it becomes evident that the LOC was issued in haste and despite the absence of any precondition necessitating such a measure. An LOC is a coercive measure to make a person surrender and consequentially interferes with petitioner's right of personal liberty and free movement. It is to be issued in cases where the accused is deliberately evading summons/arrest or where such person fails to appear in Court despite a Non-Bailable Warrant. In the instant case, there is no contradiction by the respondent to the submission of the petitioner that she has appeared on each and every date before the Investigating Agency when summoned, and hence, there is no cogent reason for presuming that the Petitioner would not appear before the Investigation Agency and hence, no case is made out for issuing the impugned LOC.

12. The impugned LOC is accordingly liable to be set aside as being devoid of merits as well as for infringing the Human right of the Petitioner to travel abroad and to exercise her freedom of speech and expression. For the reasons discussed above, the impugned LOC is set aside and quashed. However, a balance has to be struck qua the right of the investigation agency to investigate the instant matter as well as the fundamental right of the petitioner of movement and free speech.

13. Therefore, the instant petition stands allowed in above terms with the conditions that follow hereunder:

(a) The petitioner shall intimate her travel dates and detailed itinerary to the Investigation Agency forthwith along with the address of the places that the

petitioner shall be visiting;

(b) The petitioner shall deposit an FDR to the tune of Rs. 1 lakh before the Enforcement Directorate at Mumbai;

(c) The petitioner shall not attempt to tamper with the evidence or influence the witnesses in any manner;

(d) The petitioner shall return to India on the date specified i.e. 11th April 2022; and

(e) The petitioner shall give an undertaking to appear before the Investigation Agency immediately on her return and on dates that might be fixed by the Investigation Agency for interrogation, if any, after the travel period.

14. It is made clear that the observations of this Court setting aside the impugned LOC shall have no impact whatsoever on the criminal proceedings or any other proceedings, at any stage, initiated against the petitioner.

15. Order dasti.

CHANDRA DHARI SINGH, J APRIL 4, 2022 Aj/@dityak