

(2020) 10 P&H CK 0048

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Writ Petition No. 9415 Of 2020

Kartik Tayal

APPELLANT

Vs

Central Bureau Of Investigation

RESPONDENT

Date of Decision: Oct. 6, 2020**Acts Referred:**

- Indian Penal Code, 1860 - Section 120B, 420, 465, 467, 468, 471
- Prevention Of Corruption Act, 1988 - Section 13, 13(2), 13(1)(E)
- Passport Act, 1967 - Section 10A, 10B
- Code Of Criminal Procedure, 1973 - Section 41
- Constitution Of India, 1950 - Article 21

Hon'ble Judges: Sudhir Mittal, J**Bench:** Single Bench**Advocate:** R.S. Cheema, Tanu Bedi, Sumeet Goel**Final Decision:** Allowed

Judgement

Sudhir Mittal, J

Through this petition, the petitioner seeks the issuance of a writ in the nature of a writ of Mandamus directing the respondent to withdraw the Look

Out Circular (LOC) issued against him.

The petitioner is a law graduate and a practising Advocate in Chandigarh. He has a permanent residence in the city and has strong roots in the

society. He completed his LLB. Course in the year 2006 where-after he worked as Manager Legal for 3 years in the Chandigarh office of Reliance

Industries. Thereafter, he went to Australia for a period of two years to pursue a degree in commercial laws and master in accountancy. After his

return, he worked for sometime with a law office in Delhi. In the year 2014, he got married and shifted to Chandigarh and joined the office of a Senior

Advocate. On 12.08.2015, FIR No. 510 was registered against unknown persons under Sections 420, 465, 467, 468, 471 and 120-B IPC as well as

Section 13 of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the PC Act') at Police Station Manesar, District Gurugram. The

same was transferred to the Central Bureau of Investigation (hereinafter referred to as 'CBI') by the Government of Haryana and FIR dated

04.09.2017 under Section 13 (2) read with Section 13 (1) (E) of the PC Act was registered against the father of the petitioner. With the aid of Section

109 IPC, the petitioner, his sister and mother were also nominated as accused. At around the same time, a LOC was opened against the petitioner

which has continued till date after being renewed from time to time. It has been stated that for medical treatment, the petitioner has to travel abroad

frequently and the opening of the LOC is fettering his right to travel abroad. In the past, the petitioner has had to travel abroad on six occasions and on

each occasion he has had to take permission from the competent CBI Court. On every occasion, the petitioner has returned within the prescribed

period. The medical treatment is now at such a stage where he would need to travel more frequently and at short notice. It may not be feasible to

approach a Court of Law on every occasion and, thus, a request was made to the CBI to withdraw the LOC but the same was rejected vide

communication dated 09.06.2020 on the ground that the case against him is still under investigation. Thus, the present writ petition has been filed.

It has also been averred that the petitioner has not been arrested till date and has joined investigation whenever called to do so. The investigation is still

in progress and challan having not been presented, there is no question of issuance of summons by the competent Court.

The contents of the FIR may also be noticed. The father of the petitioner retired from the Indian Administrative Service. Prior thereto, he served in

the Haryana cadre as well as in the Government of India. He remained Principal Secretary to the then Chief Minister of Haryana Sh. Bhupinder

Singh Hooda w.e.f. 06.03.2005 to 31.10.2009 when he took retirement. Thereafter, he served as a Member of the Competition Commission of India

for a period of 5 years i.e. from 30.11.2009 to 31.12.2014. As mentioned earlier, initially an FIR No. 510 dated 12.08.2015 was registered at Police

Station Manesar against unknown public servants of Government of Haryana and unknown private persons. The said FIR was transferred to the CBI

by the Government of Haryana whereupon the CBI conducted investigation and carried out searches at a number of locations including the residential

premises of the father of the petitioner. Scrutiny of documents disclosed that the father of the petitioner had acquired huge assets in the form of

movable and immovable properties in his own name and in the name of his family members while working as a public servant. For this purpose, he

misused his official position during the period 01.01.2006 to 31.12.2014 which has been described as the check period. It is stated that the father of the

petitioner accumulated assets to the tune of ` 9,83,87,285 which were disproportionate to his known sources of income.

In response, a reply has been filed on behalf of CBI. The opening of the LOC has been supported on the ground that there is apprehension that the

petitioner may try to escape the country to avoid legal proceedings. This apprehension has been expressed on the ground that the petitioner and his

father sold shares of co-accused company M/s. Kappac Pharma Ltd. to more than 40 companies/entities and it was suspected that the said sales

were for the purposes of providing accommodation entries to persons who wanted to convert their unaccounted money into clean money. An

additional affidavit dated 30.09.2020 has also been filed according to which the investigation is at a crucial stage. The LOC is being renewed annually.

If the petitioner escapes, he may utilise the opportunity to launder the proceeds of crime thus hindering the investigation. If the petitioner escapes to a

country with which there is no extradition treaty, then there is every possibility that he would escape permanently and evade the process of justice in

India.

It has, however, not been denied that the petitioner went abroad on six occasions earlier, details of which have been given in the writ petition and that

every time he returned within the prescribed time period. These instances have been cited to state that petitioner can easily approach the CBI Court

for permission to travel abroad and this does not amount to abrogation or hindrance of his right to travel abroad.

Learned senior counsel for the petitioner has argued that the facts of this case show that the petitioner has never evaded the law or even attempted to

do the same. He has joined investigation as and when he has been so directed. His requests for permission to travel abroad have been denied, forcing

him to approach the CBI Court for permission to travel abroad and the record shows that on each occasion, the petitioner has returned within the

period laid down by the CBI Court. Thus, the apprehension of the CBI is wholly misplaced. None of the lawfully permissible grounds for opening of an

LOC exist in this case and, thus the continuation of LOC is illegal. An LOC can remain in force for a period of one year only where-after it lapses

automatically. Although, in its reply it has been stated by the CBI that the LOC has been reviewed periodically, the dates on which the renewal was

done are not forthcoming. In all probability, no renewal has taken place and thus the LOC has lapsed. Reliance has been placed upon a judgment of

the Delhi High Court in Sumer Singh Salkan and others vs. Asstt. Director and others, Manu/DE/1937/2010, a judgement of the Madras High Court in

E.V. Perumal Samy Reddy and Ors. vs. State and Ors., Manu/TN/2308/2013 and a Division Bench judgment of the Bombay High Court in Afzal

Jaffer Khan vs. The Officer, CBI ACB Office and others, Crl. Writ Petition No.263 of 2019 decided on 29.08.2019.

Learned counsel for the respondent has argued that the LOC is being renewed every year as there is a real apprehension that the petitioner may leave

the country to avoid legal proceedings. In case the LOC is withdrawn, it is quite likely that the petitioner may go abroad and settle. This would enable

him to avoid the legal proceedings pending against him.

There is no dispute between the parties that an LOC has no legal definition. It is a communication received from an authorised government agency

regarding a person who is wanted by that agency for fulfilment of a legal requirement i.e. to secure arrest of a person evading arrest or to nab a

proclaimed offender so as to facilitate Court proceedings. On receipt of such a request made by an authorised officer, an LOC is opened and sent to

all the immigration check posts. The source of this power is Section 10-A and 10-B of the Passport Act, 1967 read with Section 41 of the Code of

Criminal Procedure. The procedure of opening LOCs is governed by Ministry of Home Affairs Circular dated 05.09.1979 modified vide Ministry of

Home Affairs Office Memorandum dated 27.12.2000. It is also admitted that vide office memorandum dated 31.08.2010 issued by the Ministry of

Home Affairs, it has been specified that the validity period of an LOC is one year and that it is the responsibility of the originator to review the same

before expiry of the validity period. This stipulation has been reiterated in office memorandum dated 27.10.2010. The directions issued by the Delhi

High Court in the case of Sumer Singh Salkan (supra) have also been reproduced, in the said office memorandum.

In Maneka Gandhi vs. Union of India, AIR 1978 (SC) 597, the Supreme Court has unequivocally held that the right to travel abroad is a facet of the

right to life and personal liberty guaranteed by Article 21 of the Constitution of India. No person can be deprived of this right except in accordance

with the procedure established by law. The procedure established by law must be just, fair and reasonable. A natural corollary of this would be that

the invocation of the procedure established by law must be based on reason and should not be whimsical.

The opening of an LOC to keep a watch on a person against whom a criminal investigation is pending would fall within the expression 'procedure

established by law'. The question however is whether any lawful or reasonable grounds exist for adoption of the said procedure in the instant case?

A perusal of the Madras High Court judgment in E.V. Perumal Samy Reddy (supra) reveals that the instructions issued for opening of LOC lay down

the types of persons in respect of whom an LOC can be opened. INTER ALIA, these persons are those required by Courts in criminal/civil cases and

who are absconding and absconding offenders wanted by various investigating agencies. There are other types of persons also mentioned but those

are not relevant for the purposes of this case. The petitioner does not fall in either category. In the case of Sumer Singh Salkan (supra), the Delhi High

Court has answered four questions that arose in the said case. The answer relevant for the purpose of this case is reproduced below:-

â€œA. 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.â€

This answer has also been reproduced in office memorandum dated 27.10.2010 issued by the Ministry of Home Affairs. Thus, there can be no doubt

that according to the prevailing instructions, an LOC can be opened against an accused person who is (a) deliberately evading arrest, (b) not appearing

in the trial Court despite non-bailable warrants and other coercive measures. Coupled with either of these conditions should be a likelihood of the

accused leaving the country to evade trial/arrest. Neither of these conditions exist in the instant case. The petitioner is not evading arrest. In fact, he

has appeared before the investigating agency whenever required to do so and the investigating agency has not thought it proper to arrest him. Since

the investigation is still pending and challan has not been presented, there is no question of any trial Court issuing/adopting coercive steps to ensure the

presence of the petitioner. This requirement of law has been recognized by the Bombay High Court in the case of Afzal Jaffer Khan, (supra). The

fact that the petitioner has travelled abroad on six occasions and has never violated the terms of the permission granted by the CBI Court, shows that

the apprehension of the respondent is illusory.

In view of the above, it is evident that the conditions which must pre-exist before a request can be made for opening of an LOC, do not exist in the

present case. Thus, the continuation of an LOC for more than 3 years against the petitioner is a violation of his fundamental right to life and personal

liberty. It is, thus, liable to be withdrawn.

Consequently, the writ petition is allowed and the respondent is directed to withdraw the LOC. However, the petitioner shall furnish an undertaking

before the concerned investigating officer that he shall present himself whenever required by the investigating agency. On presentation of challan, if

any, he shall undertake to appear before the trial court. For the said purposes, the petitioner shall make available his contact details such as email ID

and mobile number to the investigating officer. He shall also inform the investigating officer whenever he travels abroad.