

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16<sup>TH</sup> DAY OF MARCH, 2023

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPPASANNA

WRIT PETITION NO.30 OF 2023 (GM-PASS)

**BETWEEN:**

SHRI SUDARSHAN RAMESH,

... PETITIONER

(BY SRI SANDESH. J.CHOUTA, SENIOR ADVOCATE FOR  
SRI GAURAV. N, ADVOCATE)

**AND:**

- 1 . UNION OF INDIA,  
BY MINISTRY OF HOME AFFAIRS,  
JAI SINGH MARG,  
HANUMAN ROAD AREA,  
CONNAUGHT PLACE,  
NEW DELHI – 110 001.  
REPRESENTED BY ITS  
HOME SECRETARY.
- 2 . BUREAU OF IMMIGRATION,  
MINISTRY OF HOME AFFAIRS,  
5<sup>TH</sup> FLOOR, 'A' BLOCK, TTMC,

BMTC BUS STAND BUILDING,  
K.H. ROAD,  
SHANTI NAGAR,  
BENGALURU – 560 027.

- 3 . DIRECTORATE OF ENFORCEMENT,  
MINISTRY OF FINANCE ,  
GOVERNMENT OF INDIA,  
BENGALURU ZONAL OFFICE,  
BMTC, 'B' BLOCK,  
3<sup>RD</sup> FLOOR, SHANTI NAGAR,  
K.H. ROAD, WILSON GARDEN,  
BENGALURU – 560 027.  
REPRESENTED BY ITS  
DEPUTY DIRECTOR.

... RESPONDENTS

(BY SRI ADITYA SINGH, CGC FOR R1 AND R2;  
SRI MADHUKAR DESHPANDE., ADVOCATE FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE  
CONSTITUTION OF INDIA PRAYING TO DIRECT THE R2 HEREIN TO  
CONSIDER THE REPRESENTATION OF THE PETITIONER DATED  
19.12.2022, PRODUCED HERETO AS ANNEXURE-A AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED  
FOR ORDERS ON 28.02.2023, COMING ON FOR PRONOUNCEMENT  
THIS DAY, THE COURT MADE THE FOLLOWING:-

**ORDER**

The petitioner is before this Court seeking a direction by  
issuance of a writ in the nature of mandamus to respondents 2 and  
3 to consider his representation 19-12-2022. The representation is

submitted for recalling of a Look Out Circular ('LOC' for short) issued against the petitioner.

2. *Shorn* of unnecessary details, facts in brief that lead the petitioner to this Court in the subject petition, as borne out from the pleadings are as follows:-

The petitioner claims to be a qualified software Engineer working at Netherlands. On 12-08-2021 the petitioner lands on the shores of this nation to see his ailing father who appears to have been suffering from Parkinson's disease. The petitioner is a holder of a Dutch residence permit and not a citizen which is necessary for work in Netherlands. Coming of the petitioner to the shores of India is not what is the issue in the *lis*.

3. The brother of the petitioner had been embroiled in certain transactions which have become subject matter of proceedings before the Enforcement Directorate. In furtherance of the said proceedings, summons come be issued against the petitioner on 26-11-2021 directing him to appear before the 3<sup>rd</sup> respondent on 29-11-2021. The petitioner did appear before the 3<sup>rd</sup> respondent

and co-operated with the investigation. Since the petitioner was working at Netherlands he had to return back to his job and accordingly, owing to his employment condition, scheduled his travel to Netherlands on 13-01-2022. The petitioner was issued a boarding pass as well for such travel. At the time of boarding the flight, the petitioner was stopped and restrained from proceeding further. Stamping was made on the Visa of the petitioner as cancelled. The petitioner then knocks at the doors of this Court in Writ Petition No.1730 of 2022 on 24.01.2022 seeking to quash the endorsement issued by the Passport Authorities on the Visa that it is cancelled. The writ petition comes to be disposed of in terms of an order dated 20.06.2022 declining to accept the contentions of the petitioner while directing the petitioner to submit a representation seeking recall/withdrawal of LOC issued against him, pursuant to which, the petitioner submitted his representations on 21-09-2022 and 19-12-2022 indicating that he had rendered complete co-operation to the investigation and, therefore, his need in the investigation is not required. He also submitted that he is not an accused in any crime registered under any law in the nation and, therefore, the LOC should be withdrawn. Non-consideration of

the aforesaid representations is what drives the petitioner to this Court yet again, seeking a mandamus for consideration of the said representations.

4. Heard Sri Sandesh J.Chouta, learned senior counsel appearing for the petitioner, Sri Aditya Singh, learned Central Government Counsel appearing for respondents 1 and 2 and Sri Madhukar Deshpande, learned counsel appearing for respondent No.3.

5. The learned senior counsel appearing for the petitioner would vehemently argue and contend that the petitioner is neither an accused nor any complaint against him is registered under any penal law in any of the predicate offences. He has been, without any rhyme and reason, detained in this Country on account of him being the brother of one Mr. Srikrishna who is the prime accused in Crime No.153 of 2020. He would submit that fundamental right of the petitioner cannot be taken away on any ground whatsoever.

6. The learned counsel Sri.Madhukar Deshapnde representing the Enforcement Directorate ('ED') would submit that the petitioner

is not co-operating with the investigation. He has not divulged the password of e-mails that are created for the purpose of transaction of huge amounts between the accounts of the prime accused, his father and the petitioner. It, therefore, becomes necessary for the petitioner to be detained until he co-operates in the completion of investigation.

7. In reply to the said submissions, the learned senior counsel for the petitioner seeks to place reliance upon a slew of judgments. He would take this Court to several judgments rendered by several constitutional Courts. Reference to them would be made in the course of this order as per their relevance.

8. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

9. Before embarking upon merits of the matter, I deem it appropriate to notice the office memoranda issued by Government of India in the Ministry of Home Affairs from time to time. It would

suffice for the journey to commence from the judgment of the Delhi High Court in the case of **SUMER SINGH SALKAN v. ASSISTANT DIRECTOR AND OTHERS**<sup>1</sup> wherein it is observed as follows:

*"5. This court also received a reference from ACMM, Patiala House Court regarding guidelines for issuance of LOC and for closure of LOCs. Response of the State/UOI was sought on this reference. In its response, it is stated by UOI that there was no legal definition of LOC. However, LOC was interpreted as a communication received from an authorized government agency with reference to a person who is wanted by that agency for fulfillment of a legal requirement, to secure arrest of a person evading arrest, to nab a Proclaimed Offenders so as to facilitate court proceedings by securing presence of under trials. It is stated that statutory backing for issuance of LOC can be placed to Passport Act, 1967, sections 10A and 10B. Section 10A gives power to a designated officer to suspend passport or render a travel document invalid for a period of 4 weeks and section 10B provides that every intimation given by the Central Government or the designated officer, 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 or any holder of the Passport or travel document. The other statutory provision relied upon is Section 41 of Cr. P.C. which requires police to arrest any person without warrants. The LOC's are issued at the behest of different agencies in accordance with Ministry of Home Affairs' Circular No. 15022/13/78-F.1 dated 5th September, 1979, either to monitor the arrival/departure of foreigners and Indians or to restrict arrival/departure of foreigners or Indians. It is stated that LOCs are based on the originator's request to send communication to various immigrations, check posts on the basis of substantive/procedural laws in respect of persons wanted in some cases. It is admitted that Ministry of Home Affairs' office memorandum No. 15022/20/98-F.IV dated 27th December, 2000 requires that a request for opening of LOC must be issued with an approval of officer not below the rank of Deputy Secretary to the Govt. of India/Joint Secretary in the*

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<sup>1</sup> **ILR (2010) 6 Delhi 706**

*State Government/Concerned Supdt. of Police at district level and action on the LOC is to be taken in accordance with the directions of the originator. LOC was a part of investigation technique.*

...  
**9.** *In another case where LOC was issued at the behest of National Commission of Women (NCW) titled as Vikram Sharma v. Union of India, decided on 26th July, 2010, High Court observed as under:*

*"8. As regards the procedure for opening an LOC, reference is made to the MHA circulated dated 5th September 1979. It is stated that: "Courts also open LOCs on various legal matters. LOCs are based on the originator's request who sent the communication to various immigrations check posts on the basis of substantive/procedural laws viz. IPC, Cr. P.C., Custom Act, Income Tax Act. NDPS Act, etc. All these communications are related to accused/suspected persons wanted in some cases. Besides, different courts also issue these communications in the form of LOCs including LOCs against those person who evade their presence in the Court of law during the course of judicial trial."*

*9. It is further clear from the reply that in terms of a subsequent O.M. dated 27th December 2000 there is a specific proforma in which a request must be made for opening of an LOC and this should be issued "with the approval of an officer not below the rank of Deputy Secretary to the Government of India/Joint Secretary in the State Government/ Concerned Superintendent of Police at district level." A copy of the Office Memorandum dated 27th December 2000 enclosing pro-forma for request for opening an LOC has also been enclosed.*

*16. The question now is only for consequential relief that should be granted. The power to suspend, even temporarily, a passport of a citizen, the power to issue an LOC, the power to 'off-load' a passenger and prevent him or her from travelling are all extraordinary powers, vested in the criminal law enforcement agencies by the statutory law. These are powers that are required under the law, to*



*be exercised with caution and only by the authorities who are empowered by law to do so and then again only for valid reasons. Recently, in Suresh Nanda v. Union of India, 2010 IV AD (Del) 53, this Court, after referring to the judgment of the Supreme Court in Maneka Gandhi v. Union of India, (1978) 1 SCC 248, observed: "35. ...There has to be application of mind by the authority to the relevant factors that would enable it to come to the conclusion that the impounding of the passport is in the interests of the general public. And then again, in the context of the criminal case which is still under investigation, this cannot be an opinion formed at one point in time. The public interest element will vary depending on the stage of the investigation. It cannot be said that as long as the investigation is not complete, it is not in public interest to release a passport. That would be giving too wide a power to the authority."*

*17. In Bhim Singh v. State of J&K, (1985) 4 SCC 677, a member of the Jammu & Kashmir Legislative Assembly was detained by the Police while on his way to attend a session of the assembly. By the time the petition filed by him challenging his detention was heard, he had already been released. Nevertheless, the Supreme Court examined the case and concluded that his detention was unlawful. It then proceeded to award him compensation after observing:*

*"Custodians of law and order should not become depredators of civil liberties. Their duty is to protect and not to abduct. However the two police officers, the one who arrested him and the one who obtained the orders of remand, are but minions, in the lower rungs of the ladder. We do not have the slightest doubt that the responsibility lies elsewhere and with the higher echelons of the Government of Jammu and Kashmir but it is not possible to say precisely where and with whom, on the material now on us. We have no doubt that the constitutional rights of Shri Bhim Singh were violated with impunity. Since he is now not in detention, there is no need to make any order to set him at liberty, but suitably and adequately compensated, he must be. That we have the right to award monetary compensation by way of exemplary costs or otherwise is now established by the*

*decisions of this court in Rudul Sah v. State of Bihar, (1983) 4 SCC 141 : (1983) 3 SCR 508 and Sebastian M. Hongray v. Union of India, (1984) 3 SCC 82 : AIR 1984 SC 1026. When a person comes to us with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation. We consider this an appropriate case."*

*This High Court concerning the issuance of LOC in Vikram Sharma (Supra) gave following directions:*

*"19. Mr. Nanda, learned counsel appearing for Respondent No. 1 submitted that in order to ensure that such incidents do not recur, this Court should direct that further instructions/circulars should be issued clarifying the correct legal position. This Court finds 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 tribunal/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 the other concerned agencies, including representatives of the statutory bodies referred to, within a period of 12 weeks from today.

**10.** In the present case, the LOC was issued against the petitioner soon after the registration of FIR. It is alleged by the petitioner that LOC was issued in view of the fact that complainant's close relative was an IPS officer. This allegation of the petitioner finds support from the fact that the punishment stated by the police to Interpol in respect of the offences committed has been deliberately given as 10 years while the prescribed punishment is maximum 3 years imprisonment. The petitioner's description of being 'violent and dangerous' also has been added malafidly, with ulterior motive, in view of the fact that allegations against petitioner were of only of emotional torture. Offence of kidnapping was given as the reasons for issuance of RCN, which on the representation of petitioner was removed. It is apparent that the LOC & RCN were issued for extraneous reasons by an officer who was not authorized. The petitioner has also highlighted the difference in statements made by witnesses on different occasions. Since the matter pertaining to these offences is subjudice, it will not be appropriate to comment on this aspect but suffice it to say that the action against the petitioner of issuing RCN was uncalled for in view of the fact that neither offence, for which the petitioner is facing trial in India, is an extraditable offence, nor any request for extradition of the petitioner has been made for the last 7 years despite knowing whereabouts of the petitioner. I, therefore, consider it a fit case for quashing the RCN issued against the petitioner at the behest of Delhi Police. The RCN, is therefore, hereby quashed.

**11.** Look-out-Circular has also been issued against the petitioner as the petitioner is an accused the Court of M.M. and he has not appeared the Court of M.M. If the petitioner gives an undertaking the court for his appearance on a particular date, through his counsel, the Look-out-Circular issued against the petitioner shall be withdrawn within 24 hours of giving undertaking by the petitioner.

The questions raised in the reference are as under:

- "A. *What are the categories of cases in which the investigating agency can seek recourse of 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. *The person against whom LOC is issued must join investigation by appearing I.O. or should surrender 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."**

*(Emphasis supplied)*

This judgment resulted in an Office Memorandum dated 27.10.2010 being issued by Government of India. The Office Memorandum insofar as it is germane reads as follows:

""..... .."

"8. in accordance with the order dated 26.07.2010 of the High Court of Delhi, the matter has been discussed with the concerned agency and the following guidelines are hereby laid down regarding the issuance of LOC's in respect of Indian citizens and foreigners.

- a. The request for opening an LOC would be made Originating Agency (OA) two Deputy Director, Bureau of Immigration (BOI), East Block - VIII, R.K.Puram, New Delhi -66 (Telefax:011-2619244) Hindi proforma enclosed.
- b. The request for opening of LOC must invariably be issued with the approval of an officer not below the rank of -
  - (i) Deputy Secretary to the Government of India; or
  - (ii) Joint Secretary in the State Government; or
  - (iii) District Magistrate of the District concerned; or
  - (iv) Superintendent of Police (SP) of the District concerned; or

- (v) *SP in CBI or an officer of equal and level working in CBI; or*
- (vi) *Zonal Director in Narcotics Control Bureau (NCB) or an officer of equivalent level including Assistant Director (Ops.) in Headquarters of NCB); or*
- (vii) *Deputy Commissioner or an officer of equivalent level in the Directorate of Revenue Intelligence or Central Board of Direct Taxes or Central Board of excise and Customs; or*
- (viii) *Assistant Director of Intelligence Bureau/Bureau of Immigration (BOI); or*
- (ix) *Deputy Secretary of Research and Analysis Wing (R & AW); or*
- (x) *An officer not below the level of Superintendent of Police in National Investigation Agency; or*
- (xi) *Assistant Director of Enforcement Directorate; or*
- (xii) *Protector of emigrants in the office of the protector of emigrants are in office or not below the rank of deputy Secretary of the Government of India; or*
- (xiii) *Designated officer of Interpol.*

*Further, LOC's can also be issued as per the direction of any criminal court in India.*

- c) *The name and designation of the officer signing the proforma for requesting issuance of an LOC must invariably be mentioned without search request for issuance of LOC would not be entertained.*

- d) *The contact details of the originator must be provided in column VI of the enclosed proforma. The contact telephone/mobile number of the respective control room should also be mentioned to ensure proper communication for effective follow-up actions.*
- e) *Care must be taken by the originality agency to ensure that complete Identifying particulars of a person, in respect of whom the LOC is to be opened, or. It should be noted that an LOC cannot be opened unless a minimum of three identifying parameters, as given in the enclosed profile, of set, are available. Have a work, LOC can also be issued if name and passport particulars of a person concerned are available. It is the responsibility of the originator to constantly review the LOC request and proactively provide additional parameters to minimise harassment to genuine passengers.*
- f) *The legal liability of the action taken by the immigration authority in pursuance of the LOC rest with originating agency.*
- g) *Recourse to LOC is to be taken in cognizable offence under IPC or other penal laws. The detail in column IV in the enclosed Proforma regarding reason for opening LOC invariably be provided without which the subject of an LOC will not be arrested/detained.*
- h) *In case where there is no cognizable offence under IPC or other penal laws the LOC subject cannot be detail/ 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 case.*
- i) *The LOC will be valid for a period of one year from the date of issue Name of the subject shall be automatically removed from the LOC thereafter unless the concerned agency request for its renewal within a period of 1 year. With effect from 01.01.2011. All LOC's with more than one year validity shall be deemed to have been lapsed unless the agency concerned specifically request BOI for communication of the person in the LOC. However this*

*provision for automatic deletion after 1 year shall be applicable in the following cases.*

- a. Ban-entry LOC's issued for watching arrival of Wanted persons (which have a specific duration);*
- b. loss of passport LOC's (which ordinarily continuous till the validity of the document);*
- c. LOC's regarding impounding of passport;*
- d. LOC's issued at behest of courts and interpoi*
- j) In exceptional cases LOC's can be issued without complete parameters and/ pr case detail against CI suspects, terrorist, anti-national element, etc in larger National interest.*
- k) the following procedures will be adopted in case of statutory bodies like NCW, the NHRC and national commission for protection of children's rights request for preventing Indian/ for from. Search our first to be brought to the notice of law enforcement Agencies like the police. The SP concerned with then makes the request for issuance of an LOC upon an assessment of the situation. The immigration/ immigration authorities will strictly go by the communication received from the officer authorised to open LOC's as details in para 8(b) above.*

*9. It is requested that the contents of this OM may be brought to the notice of all concerned for strict compliance.*

*(Emphasis added)*

Pursuant to the afore-mentioned judgment and the Office Memorandum the LOCs were being issued following directions as was directed in the aforesaid Office Memorandum. This Office Memorandum has been tinkered and replaced from time to time.



The present Office Memorandum that is being operated by the Government of India is the one issued on 22.02.2021 depicting consolidated guidelines for issuance of Look Out Circular in respect of Indian citizens and foreigners. The consolidated guidelines so issued read as follows:

"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) Deputy Secretary to the Government of India; or
  - (ii) Joint Secretary in the State Government; or
  - (iii) District Magistrate of the District concerned; or
  - (iv) Superintendent of Police (SP) of the District concerned; or

- (v) *SP in CBI or an officer of equivalent level working in CBI; or*
- (vi) *Zonal Director in Narcotics Control Bureau (NCB) or an officer of equivalent level [including Assistant Director (Ops.) in Headquarters of NCB]; or*
- (vii) ***Deputy Commissioner or an officer of equivalent level in the Directorate of Revenue Intelligence or Central Board of Direct Taxes or Central Board of Indirect Taxes and Customs; or***
- (viii) ***Assistant Director of Intelligence Bureau/Bureau of Immigration (BOI); or***
- (ix) ***Deputy Secretary of Research and Analysis Wing (R & AW); or***
- (x) ***An officer not below the level of Superintendent of Police in National Investigation Agency; or***
- (xi) ***Assistant Director of Enforcement Directorate; or***
- (xii) ***Protector of Emigrants in the office of the Protectorate of Emigrants or an officer not below the rank of Deputy Secretary to the Government of India; or***
- (xiii) ***Designated officer of Interpol; or***
- (xiv) ***An officer of Serious Fraud Investigation Office (SFIO), Ministry of Corporate Affairs not below the rank of Additional Director (in the rank of Director in the Government of India); or***
- (xv) ***Chairman / Managing Directors / Chief Executive of all Public Sector Banks.***

- (C) LOC 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) The name and designation of the officer signing the Proforma for requesting issuance of an LOC must invariably be mentioned without which the request for issuance of LOC would not be entertained.**
- (E) The contact details of the Originator must be provided in column VI of the enclosed Proforma. The contact telephone/mobile number of the respective control room should also be mentioned to ensure proper communication for effective follow up action. Originator shall also provide the following additional information in column VI of the enclosed Proforma to ensure proper communication for effective follow up action:-
- (i) Two Gov/ NIC email IDs
  - (ii) Landline number of two officials
  - (iii) Mobile numbers of at least two officials, one of whom shall be the originator
- (F) Care must be taken by the Originating Agency to ensure that complete Identifying particulars of the person, in respect of whom the LOC is to be opened, are indicated in the Proforma mentioned above. It should be noted that an LOC cannot be opened unless a minimum of three identifying parameters viz. name & parentage, passport number or Date of Birth are available. However, LOC can also be issued if name and passport particulars of the person concerned are available. It is the responsibility of the originator to constantly review the LOC requests and proactively provide additional parameters to minimize harassment to genuine passengers. Details of Government identity cards like PAN Card, Driving License,

*Aadhaar Card, Voter Card etc, may also be included in the request for opening LOC.*

- (G) *The legal liability of the action taken by the immigration authorities in pursuance of the LOC rests with the originating agency*
- (H) ***Recourse to LOC is to be taken in cognizable offences under IPC or other penal laws. The details in column IV in the enclosed Proforma regarding 'reason for opening LOC' must invariably be provided without which the subject of an LOC will not be arrested/detained.***
- (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) ***The following procedure will be adopted in case statutory bodies like the NCW, the NHRC and the National Commission for Protection of Children's Rights request for preventing any Indian/ foreigner from leaving India. Such requests along with full necessary facts shall be brought to the notice of law enforcement agencies like the police. The Superintendent of Police (S.P.) concerned 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. The immigration/emigration authorities will strictly go by the communication received from the officers authorized to open LOCs as detailed in Clause (B) above.***
- (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.*

7. *It is requested that the consolidated guidelines as contained in this O.M. may be brought to the notice of all concerned for strict compliance."*

*(Emphasis added)*

In terms of the afore-quoted guidelines pursuant to the judgment of the Delhi High Court in the case of **SUMER SINGH SALKAN** and the one that is now being operated would unmistakably indicate a slew of procedure that is to be followed for issuance of LOC; a request for opening an LOC would be made by the originating agency to the Deputy Director, Bureau of Immigration on a particular subject i.e., a citizen. Therefore, there are three protagonists in the episode – (i) the subject, the citizen, (ii) the originating agency, one who requests issuance of an LOC and (iii) executing agency who executes the request of the originating agency to execute the LOC and stop the travel of the subject beyond the shores of this nation. Such an LOC can be sought by the originating agency in certain cases where cognizable offences under the IPC or other penal laws are registered against the subject. Even in cases where there are no cognizable offences registered under the IPC or any other penal law, the originating agency can

only request about the arrival and departure of the subject in such cases. In exceptional cases, LOC can be issued even in those cases which are not covered under the guidelines whereby departure of a person from India could be declined if it appears that the inputs received on the subject that his departure would be detrimental to the sovereignty or security or integrity of India or he may potentially indulge in an act of terrorism. The LOC originating from Court orders is also one of those species that would result in issuance of an LOC. This is the broad frame work of the guidelines under which an LOC can be issued against a subject. On the bedrock of the aforesaid guidelines, the case of the petitioner will have to be considered.

10. The petitioner is issued summons on 26-11-2021 after his arrival and stay in India for more than three months by the ED for investigation or questioning in a criminal case registered against one Mr. Srikrishna, brother of the petitioner in Crime No.153 of 2020. On registration of the crime against several persons, the ED also registers an Enforcement Case Information Report in ECIR No.1 of 2021 which was registered on 04-01-2021. Therefore,



there are two proceedings pending against the brother and father of the petitioner and several others in the predicate offence or under the provisions of the Prevention of Money Laundering Act, 2002 ("PMLA" for short).

11. It is the allegation that his brother Mr. Srikrishna is the prime accused in the aforesaid cases who had hacked poker websites and bit-coin exchanges and thereby had made high value transactions within and outside the country. The brother of the petitioner is said to have converted crypto currencies and traded them in international platforms and had amassed wealth by such illegal gains which formed proceeds of crime. Summons was issued to the brother and father of the petitioner under Section 50 of the PML Act. Statements were recorded regarding involvement of the brother of the petitioner in hacking of crypto exchanges and poker websites in India and overseas from 2013 up to date.

12. It is the case of the ED that the brother of the petitioner had admitted in those statements that proceeds have been utilized for illicit activities such as narcotics, travel, parties and stay at

luxurious hotels etc. A separate case has also been registered against the brother of the petitioner for stealing bitcoins and purchasing narcotics on line through Darkweb in Crime No.91 of 2020. These are the proceedings against the brother of the petitioner. The proceedings in ECIR 4 of 2020 comes to be registered on the strength of the FIR in Crime No.9 of 2019 registered by the Crime Investigation Department Police with regard to hacking of e-procurement portal of Government of Karnataka and thieving of ₹11.55 crores from the Government portal Bank account. It is during investigation of the said hacking, the name of the brother of the petitioner comes about and the brother gives a statement of involvement in those alleged crimes. This is the story about the genesis of the crime.

13. The petitioner claims to have come to India to see his ailing father on 12-08-2021 and was in India for about 3 months up to the date on which he was issued summons by the ED. The allegation is that the petitioner is not co-operating with the investigation as he has not divulged the passwords that are necessary for completion of investigation by the ED. It is the case

of the ED that there is serious apprehension of the petitioner escaping the jurisdiction of the investigation and fleeing out of the country and settle in Netherlands.

14. On the aforesaid grounds, the sword of LOC was kept hanging on the petitioner. As observed hereinabove, the petitioner has knocked at the doors of this Court in Writ Petition No.1730 of 2022. All the present contentions were taken up before the co-ordinate Bench. The co-ordinate Bench in terms of its order dated 20-06-2022, after recording all the submissions disposed of the petition by the following order:

*"17. The petitioner relying upon the decision of Division Bench of the High Court of Madras in **2018 SCC OnLine MAD 2229 [(2018) 2 SWC 609 (Karti P.Chidambaram v. Bureau of Immigration, Ministry of Home Affairs)]** states that reasons must be recorded atleast in the request letter. The third respondent in a sealed cover has made available the request letter of the third respondent issued to second respondent and also note sheet leading to issuance of the said request letter. On going through the same, this Court is satisfied with the reasons recorded in the note sheet, while requesting the second respondent to issue LOC against the petitioner. Those reasons at this stage need not be disclosed to the petitioner since investigation is under progress.*

**18. In the instant case, investigation of money laundering against brother of the petitioner is in progress and also investigation with regard to role of petitioner along with his brother in money laundering is also being investigated. Further, the apprehension of respondents**

**that petitioner may settle down at Netherlands and he may not be available for further investigation has to be respected in view of extract of e-mails reproduced in their statement of objections.**

**19. It is for the petitioner to co-operate with investigation being conducted by the third respondent and to convince the third respondent that he has no role to play in money laundering case registered against his brother and request for withdrawal of LOC issued against him."**

*(Emphasis supplied)*

The co-ordinate Bench recorded that the petitioner was not co-operating with the investigation as he is not divulging the passport or the password of e-mail account and is not divulging receipt of 50,000 pounds from his brother through Bank transfer and further transfer from his account to one Mr. Hanish Patel. The observations of the co-ordinate Bench of this Court in the aforesaid order is as follows:

**"11. Learned Additional Solicitor General inviting attention of this Court to memo dated 5-04-2022 submits that even on 23-03-2022, the petitioner instead of appearing before the third respondent, sent a letter through his advocate and the said letter is also silent on the aspect of receipt of 50,000 pounds from his brother Mr. Sri Krishna through bank transfer. It is submitted that unless petitioner explains satisfactorily the receipt of 50,000/- pounds and further transfer of the same to one Mr. Hanish Patel and furnishes the password of the temporary e-mails and certain keys, his presence for investigation with regard to money laundering case**

**registered against his brother would be absolutely necessary. It is his submission that the economic interest of the country is involved. It is also submitted that conversation between the petitioner and his father revealed that certain Great Britain Pounds (GBP) were transferred to a Swiss Account, details of which are yet to be known. Since the respondents are yet to ascertain the role of petitioner in the offence of money laundering and thereby ascertaining all the transactions leading to proceeds of crime, the presence of petitioner is absolutely necessary. Hence, issuance of LOC is justified.**

**12. It is an admitted fact that no crime nor FIR is registered for any offence against the petitioner. It is also an admitted fact that one Mr. Sri Krishna is the brother of the petitioner and it is a matter of record that two FIRs in Crime No.9 of 2019 and Crime No.153 of 2020 are registered against Mr. Sri Krishna, brother of petitioner. Crime No.153 of 2020 is registered against Mr. Sri Krishna and others for the offences punishable under Sections 120B, 384, 419, 420 and 471 of IPC. The respondent No.3 recorded ECIR bearing No.1/2021 dated 4-01-2021 and commenced investigation against the brother of petitioner Mr. Sri Krishna for money laundering under PML Act. The allegation against Mr. Sri Krishna is that he hacked poker websites and Crypto currency exchanges, making high value transactions within and outside the country; converted certain crypto currencies into other crypto currencies and traded in international platforms; thereafter converting the same for his own illegal gains. For the purpose of investigation, summons was issued under Section 50 of PML Act to Mr. Sri Krishna and his father and other persons. It is the case of respondent No.3 that Mr. Sri Krishna in his statement has categorically admitted his involvement in hacking of crypto exchanges and poker website in India as well as overseas from the year 2013 till date. Crime No.9/2019 was registered by the CID Police, Government of Karnataka with regard to hacking of e- Procurement Portal of Government of Karnataka and theft of ₹11.55 crores from the Government Portal bank account."**

*(Emphasis supplied)*

Therefore, this Court recorded the submissions of the ED that the petitioner is not co-operating with the investigation. He is even now not divulged the fact of receipt of huge amount and further transfer to third party viz., Sri Hanish Patel, who is a resident of UK, owning an entity by name GCP UK Limited. This Court declined to issue a direction to recall the LOC. But, reserved liberty to the petitioner to submit a request for withdrawal of LOC issued against him. Therefore, two representations were submitted by the petitioner, the latest being on 19-12-2022. Noticing certain paragraphs of the said representation assumes certain significance and is, therefore, extracted for the purpose of ready reference:

*"4. Thereafter, as a condition precedent to my employment conditions I was required to return to the Netherlands on or before 27-01-2022. Accordingly, I was scheduled to depart from Kempegowda International Airport, Bengaluru on 13-01-2022. Upon completing all the other formalities requisite for an international flight, I proceeded towards the immigration desk and obtained the due formal stamping of my passport. Thereafter, much to my shock and surprise, I was resisted from proceeding any further and my visa was stamped as cancelled and the same came to be endorsed on my passport. Despite my repeated and persistent requests, no information came to be divulged by the Officers of the Bureau of Immigration for the aforesaid action meted out to me.*

5. Upon my return, I was constrained to address a detailed representation to my employer adumbrating the entire circumstances of the aforesaid issue and sought an extension for resuming my work at the Netherlands and as well as to support work backhand at India.

6. Despite my repeated representations, no plausible information came to be offered and I was therefore, constrained to institute a Writ Petition before the Hon'ble High Court of Karnataka as mentioned in the subject above on 24-01-2022. Thereafter, upon hearing of the writ petition, notice came to be ordered to your good-selves and you duly entered appearance on 2-02-2022. Thereafter, as duly apprised by the counsels appearing on behalf of the Central Government that an LOC came to be issued against me. However, the details pertaining to the LOC were never disclosed to me and has still not been disclosed to this date.

7. When things stood thus, while the matter being listed before the Hon'ble High Court of Karnataka on 21.03.2022, the counsel appearing on your behalf made a submission to the effect that, I had not submitted any written explanation in response to any of the allegations that were made against me in connection to the alleged role in the alleged bitcoin scam. A copy of the written response addressed to you on 23-03-2022 is produced along with this representation as Document No.1.

8. As a follow up to my previous written representation dated 23-03-2022, as you are aware, the subject case came to be listed on 5-04-2022. Despite receipt of my detailed written representation as aforesaid, your counsel on 5-04-2022, once again raised an objection the Hon'ble Court that I had not addressed any satisfactory response to the query raised by your good office. Your counsel further made a submission stating that I had not clarified regarding an alleged transaction pertaining to 50,000 GBP. Your counsel had further stated that your good offices had caused issuance of multiple summons calling upon me to clarify on the said issue. Thereafter, I was constrained to issue another detailed written response to clarify on the same on 11-04-2022. A copy of the written response addressed to you on 11-04-2022 is produced along with this representation as Document No.2.

9. Thereafter, during the course of the hearing of the writ petition, in the month of April, 2022 upon perusal of the LOC, the Hon'ble High Court of Karnataka observed that the LOC did not contain any forthcoming details of any of the criminal proceedings as initiated against me warranting issuance of LOC as aforesaid. Owing to which, the Hon'ble High Court of Karnataka further directed you to produce the supporting documents warranting to the issuance of the LOC against me. The said documents were produced before the Hon'ble High Court on the next date of hearing and returned back to you. Pertinently, neither my counsel nor was I allowed to peruse the aforesaid LOC or the documents produced in support of issuance of the same.

10. When things stood thus, during the pendency of the writ petition, your good office came to issue two more summons calling upon me to appear before you on 5.05.2022 and 1-06-2022. I once again duly appeared before your good office and extended my full co-operation. Pertinently, I was asked by you to provide clarification to the same set of questions as posed to me during the earlier summons and questioning thereof.

11. On 20-06-2022, the Hon'ble High Court of Karnataka disposed of the aforesaid writ petition affording liberty to approach your good self regarding withdrawal of the LOC issued against me.

12. In view of the foregoing, I had addressed a detailed representation through e-mail as stated in the subject above on 21-09-2022 and as the same was not heeded to, I have addressed this follow up representation and further request you to furnish the following:

- (a) The details and the circumstances warranting issuance of LOC against me.
- (b) Copy of the LOC
- (c) Status of the investigation in the above mentioned ECIR
- (d) Whether the LOC issued against me is still in operation and details regarding the same.

13. I further reiterate that I have no role in any of the alleged offences and further request your co-operation in



*permitting me to travel abroad in order to enable me to resume my employment.*

*14. More particularly, since 1-06-2022, I have not been issued any summons by your good office. Suffice to state that, I have no role in any of the alleged offences as forthcoming in your investigation.*

*15. In the event of continued operation of the LOC issued against me and the subsequent restriction on my travel, I have been straddled irreparable consequences and shall further face graver consequences as mentioned below:*

- (A) Gross infringement of my fundamental rights of livelihood, life, liberty and travel as conferred upon me on Articles 19 and 21 of the Indian Constitution, 1950.*
- (B) Suspension of my employment with effect from 28.10.2022 and consequently no emoluments have been paid to me therefrom. The monetary loss could be quantified at approximately INR 14 lakh.*
- (C) Due to the above loss of pay, my father is deprived of opportune medical care and treatment required for his poor and ailing health condition. The same is also adversely affecting the day-to-day needs of my aged mother and that of my family.*
- (D) Due to my over stay beyond the permissible limit outside of the Netherlands, the Immigration Authorities in the Netherlands have initiated the process to cancel my residence permit. Cancellation of my residence permit would automatically compel my Employer to permanently terminate my employment since the continued operation of the resident permit is a pre-requisite for having work permit.*
- (E) My Employer has stated that I will face further consequences with respect to my employment if I do not report back to the Netherlands on or before January 2023. I apprehend that if I am unable to*

*travel back to the Netherlands by then, I will face termination of my employment.*

*All of the above consequences shall have irreparable consequences for the rest of my life and that of my family members. In such circumstances, I would once again urge your good offices to lift the LOC issued against me.*

*Due to the grave and imminent consequences as mentioned above, I kindly request you to consider my representation within a period of two weeks from today."*

The petitioner submits that his employment will be lost, if he is not permitted to go and join his duties and his right to livelihood would be taken away. But, he does not indicate the keys, the password or any other information that is necessary for completion of investigation. Any amount of judgments could be quoted to drive home the point that fundamental right of a person is taken away but all of them with a rider that one should co-operate with the investigation. An accused or any other person who is connected with the proceeds of crime, but may not be accused in the predicate offence, has a bounden duty to co-operate with the investigation. If the investigation does not get completed on account of his non-cooperation which would result against others not being taken to logical conclusion, it would defeat the delivery of justice as it would defeat discovery of crime. Therefore, it is for the petitioner to give

complete details and desist answering vaguely to the ED, explain as to why temporary mails were created for transactions and reveal the password that the ED is asking. Therefore, his travel beyond the shores of this nation will be subject to such clearance by the ED.

15. It cannot also be ignored by the ED that the petitioner cannot be kept on tenterhooks by the sword of LOC hanging on him for all time to come. The LOC is issued on 13.01.2022 and more than a year has passed by. The ED shall also bear in mind plethora of judgments rendered by constitutional Courts from time to time where emphasize is on the right to travel abroad being a fundamental right. A positive direction is not rendered in the peculiar facts of the case at hand. It is the allegation that the petitioner is not co-operating with the investigation. This cannot be the swan song for the ED by not summoning the petitioner for questioning or concluding the investigation. Therefore, I deem it appropriate to direct the Enforcement Directorate to complete the investigation insofar as the petitioner is concerned, within an outer limit of 6 weeks from the date of receipt copy of the order for

which, the petitioner shall co-operate and give such information that is necessary for completion of such investigation. After 6 weeks', the ED shall consider the representation of the petitioner for withdrawal of LOC issued against him. Therefore, both the petitioner and the ED would be bound by the conditions stipulated hereinabove.

16. For the aforesaid reasons, the following:

**ORDER**

- (i) The Writ Petition stands disposed.
- (ii) A *mandamus* issues to respondents 2 and 3 to consider representations of the petitioner, bearing in mind the observations made in the course of the order and pass appropriate orders in accordance with law, within ten weeks from the date of receipt of a copy of this order.

**Sd/-  
JUDGE**

bkp  
CT: MJ