

W.P.No.22098 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 13.09.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.22098 of 2023
and W.M.P.Nos.21496 and 21497 of 2023

Mohammed Jawahar,
S/o. Mr.Mohammed Ali

... Petitioner

Vs.

1. Union of India,
Deputy Director,
Directorate of Enforcement,
Government of India,
Chennai – 600 006.

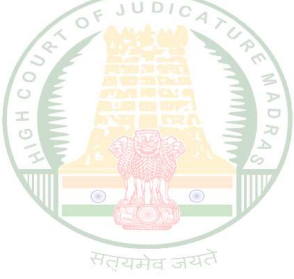
2. Assistant Director,
Directorate of Enforcement,
Chennai Zonal Office,
No.2, 5th and 6th Floor,
BSNL Administrative Building,
Kushkumar Road, Nungambakkam,
Chennai – 600 034.

... Respondents

Prayer: Writ Petition filed under Section 226 of Constitution of India, for issuance of writ of Mandamus, to forthwith withdraw the Look out circular issued in File No.T-3/88/CEZO/C/2015 on the file of the 2nd respondent.

For Petitioner : Mr. Nithyaesh Natraj
for Sri Law Associtaes

For Respondents : Mr.N.Ramesh
Special Public Prosecutor



ORDER

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This writ petition has been filed for issuance of writ of mandamus directing to withdrawal of the look out circular issued by the second respondent in file No.T-3/88/CEZO/C/2015.

2. The case of the petitioner is that he is involved in the Trading business of buying and selling of goods from Hong kong. In view of the same, the petitioner used to travel frequently to Hong kong. During the year 2013, the petitioner had signed some documents and he was also paid \$3000 Hong kong dollars. The petitioner had handed over the signed papers to one Sandeep Singh. On 29.08.2022, when the petitioner came back to India from Hong kong, he was detained at the Chennai International Airport by the Immigration Authorities. On enquiry, the petitioner was informed that a look out circular has been issued against him by the respondents.

3. The petitioner was thereafter issued summons to appear before the second respondent for an enquiry on 13.12.2012. The petitioner attended enquiry and it is claimed by the petitioner that only at that point



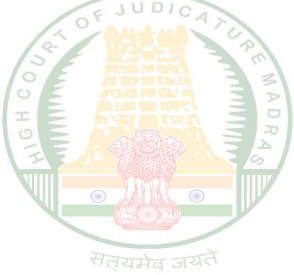
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of time he understood that the signatures that were made by the petitioner in several papers was used to open a bank account by the above said Sandeep Singh at Hong kong and there was transfer of funds from a company named Raja Trading Corporation to the account that was opened at Hong kong. The petitioner claims that he had no role to play in the said transactions and that the petitioner was hoodwinked to sign certain papers and that he has become a victim of circumstances.

4. The petitioner claims that he was frequently traveling from India to Hong kong for his business and since the look out circular is pending against him, he is not able to leave India. Under these circumstances, the present writ petition came to be filed before this court for a direction to the second respondent to withdraw the look out circular.

5. The respondents filed a counter affidavit. The relevant portions in the counter affidavit are extracted hereunder:

“ 3.3 It is humbly submitted that M/s.VMS Trading Limited, Hong Kong and its beneficial owner Mohamed Jawahar has received the foreign exchange and has not supplied the goods in lieu of foreign exchange received and neither returned the foreign exchange so received by



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them in the guise of advance import remittance. Thus, the petitioner herein has violated the provisions of FEMA, 1999, relevant regulations framed there under and directions issued by RBI.

4. It is humbly submitted that the petitioner has not provided the statement of bank accounts of M/s VMS Trading Limited, Hong Kong in which he is the Director. He has not submitted any details regarding operational activities of M/s VMS Trading Limited, Hong Kong. Thus, he has not cooperated. The investigation against the petitioner is a nascent stage and he is at flight risk. As mentioned above, the petitioner in the capacity of Director of M/s VMS Trading Limited, Hong Kong has violated various provisions of FEMA and made himself liable for penalty under FEMA, 1999 and even prosecution under Sec 13(1-A) of FEMA, 1999 and can be subjected to imprisonment for a term not exceeding five years.

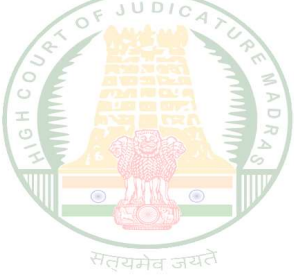
5. It is also submitted that an FIR No.140 of 2022 on the file of CCB, Chennai has been registered based on the findings of investigation done by the Directorate of Enforcement into six cases of FEMA investigation. It is found during the investigation that a larger criminal conspiracy took place during the year 2011 to 2014 by some private individuals in connivance with officials of Indusind Bank with sole intent to deprive India of its



foreign exchange by way of sending remittance on the basis of forged documents including forged Bills of Entry and M/s.Raju Trading Corporation is one of such entity from whom M/s.VMS Trading Limited, Hong kong has received USD 5347135 (Rs. 27,67,22,689/-) and Shri Mohamad Jawahar Mohamad Ali, the petitioner, who is the beneficial owner of M/s. VMS Trading Limited, has failed to supply the goods and has violated the provisions of Section 4 of Foreign Exchange Management Act, 1999.

6. It is submitted that the act of petitioner by receiving the foreign outwards remittance into his entity M/s.VMS Trading Limited under the garb of advance import remittance has got wide implications/ramification by affecting the economic fabric of India, but also has got cross border implications. As such the presence of the petitioner is very much essential for further investigation/enquiry and subsequent adjudication proceedings for the contraventions if any found to have been committed by the petitioner. It is settled law that, though the right to travel abroad is recognized under Article 21 of the Constitution of India, yet it is not an absolute right and which cannot be claimed as a matter of Right without any restriction.

7. It is humbly submitted that the respondent



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Department while opening of LOC, the consolidated guidelines for issuance of LOC i.r.o Indian Citizen and Foreigners, rendered by the Government of India, Ministry of Home Affairs Foreign Division, (Immigration Section) in F.No:25016/10/2017/IMM(Pt) dated 22.02.2021 were fully complied.”

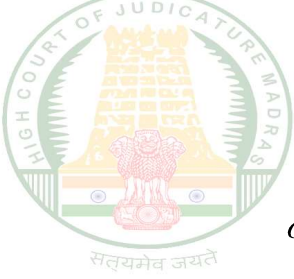
6. The matter came up for hearing on 05.09.2023 and this Court passed the following order:

“Heard the learned counsel for the petitioner and the learned Standing Counsel appearing on behalf of the Enforcement Directorate.

2. The facts as stated in the counter affidavit filed on behalf of the respondents are too general and there is nothing incriminating to justify stopping the petitioner from traveling abroad.

3. The learned Standing Counsel sought for time to produce the relevant materials before this Court to satisfy this Court that the petitioner is also involved and that if Look Out Circular is allowed to be withdrawn, the petitioner will escape the investigation.

4. Post this case under the caption 'Part Heard' cases



on 12.09.2023.”

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7. The matter was once again taken up for hearing today.

8. The learned Special Public Prosecutor submitted that the petitioner must give an assurance that he will be present for enquiry or during the proceedings initiated under the Foreign Exchange Management Act and if such assurance is given, he leaves it to the Court to pass appropriate orders in this writ petition.

9. The learned counsel for the petitioner submitted that the petitioner is willing to co-operate for the enquiry conducted by the second respondent and he will also be present as and when he is summoned during the proceedings. In the light of the undertaking given by the petitioner, this Court is inclined to issue appropriate directions to the respondents to keep the LOC in abeyance.

10. This will ensure the free movement of the petitioner from India to other foreign countries. If ultimately the petitioner goes against the undertaking or does not co-operate for the enquiry, the LOC can once



again be renewed or can be issued afresh against the petitioner.

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11. In the result, this writ petition is allowed and there shall be a direction to the petitioner to go over to the office of the second respondent and the petitioner shall give an affidavit of undertaking before the second respondent that he will attend the enquiry or appear during the proceedings as and when required by the second respondent.

12. On such undertaking being given by the petitioner, the second respondent shall take steps to keep the LOC in abeyance to ensure the free movement of the petitioner from and to India.

13. With these directions, this writ petition stands allowed. No costs. Connected miscellaneous petitions are closed.

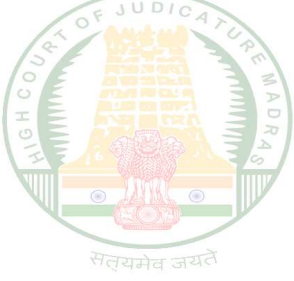
13.09.2023

Speaking Order/Non-speaking Order

Index :Yes/No

Neutral citation: Yes/No

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To

1. Union of India,
Deputy Director,
Directorate of Enforcement,
Government of India,
Chennai – 600 006.
2. Assistant Director,
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No.2, 5th and 6th Floor,
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N.ANAND VENKATESH, J

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