**Directorate of Enforcement Vs. M/s. Sunstar Overseas Ltd. & Ors. (Manik Aggarwal's application)**
CNR No.: DLCT01-013456-2024
CC No.: 01/2024
ECIR No.: GNZO/09/2021
Under Sections: 3, 4, 70, 44, 45(1) PMLA Act, 2002
PS.: EOW

**03.02.2025**

Present: Mr. Simon Benjamin, Ld. SPP for ED.
Mr. Sharad Bansal, Ms. Sahiba Singh and Mr. Aditya Diwan, Ld. Counsel for the applicant, namely, Manik Aggarwal.

## <u>O R D E R</u>

1. By means of the present order, this Court shall determine the application, filed on behalf of the applicant, namely, Manik Aggarwal (*hereinafter referred to as the '**applicant**'*), seeking suspension of look-out circular (*hereinafter referred to as '**LOC**'*), to permit him to travel to Nuremberg, Germany and Dubai, UAE *w.e.f.* 08.02.2025 to 22.02.2025 and to Los Angles, USA *w.e.f.* 01.03.2025 till 11.03.2025.

2. Learned Counsel for applicant outrightly submitted that the applicant is an ex-Director of Sunstar Overseas Ltd. *(hereinafter referred to as '**SOL**')* and a holder of Indian Passport bearing no. Z7600319. Ld. Counsel has further submitted that the applicant is desirous to travel to Nuremberg, Germany and Dubai, UAE in order to attend 'BIOFACH-2025', scheduled to held from 11.02.2025 to 14.02.2025 and 'Gulfood-2025', scheduled to be held from 17.02.2025 to 21.02.2025, respectively. Correspondingly, as per the Ld. Counsel, the applicant further entreaties that he may be permitted to subsequently travel to Anaheim, California, USA in order to attend 'Expo-West', scheduled to held from 04.03.2025 to

07.03.2025. As per the Ld. Counsel, for the aforesaid purpose, the applicant proposes to depart on 08.02.2025 from New Delhi for Germany and thereafter, for Dubai followed by his return from Dubai on 22.02.2025 to New Delhi. Subsequently, as per the Ld. Counsel, the applicant further proposes to travel to Los Angeles, USA, departing from New Delhi on 01.03.2025 and thereafter, returning from USA on 11.03.2025. Ld. Counsel further submitted that the event/trade fair/expo west, as aforenoted are some of the renowned conference programmes and network opportunities, affording an exposure to the applicant for expanding the realms of his profession/business, necessitating an active participation on the part of the applicant for his professional growth.

2.1. Ld. Counsel further submitted that the applicant was granted permission to attend similar events, including food shows and related business meetings in the past, which were determined to be essential to add value to the applicant's profession/work. In this regard, Ld. Counsel vehemently contended that such networking opportunities are difficult to find and are of immense importance to the applicant's consultancy work. As per the Ld. Counsel, denial of permission to the applicant to travel to the aforementioned events, for the purposes of attending the said shows and meetings with other participants, would result in causing grave injustice and irreparable loss to the applicant as well as would impede the applicant's right to earn livelihood. It was further submitted that the applicant had earlier traveled to Cologne, Germany and Milan, Italy for which he had left from India on 06.10.2023, after complying with all the conditions, imposed by this Hon'ble Delhi High Court *vide* order dated 03.10.2023 passed in *W.P. (CRL) 396 of 2021* and the applicant had promptly returned to Delhi on 18.10.2023 as well as informed about his return to the concerned IO, forthwith. Further, Ld. Counsel reiterated that the applicant has been attending similar food shows/events in the past also and has been traveling often for the said purpose, with the prior permission of the Hon'ble Delhi High Court. It was further submitted that the applicant is an upstanding member of society with deep roots in the society and that there are no reasons to apprehend that the applicant might abscond from the law or flee from justice. Ld. Counsel further submitted that the applicant has no criminal antecedents and has not been involved in any criminal activities, though, he has been made an accused in the FIR dated 31.12.2020, registered by the CBI in the case of SOL, pursuant to the declaration of SOL's account as '*Fraud*' by a handful of lenders who had a minority share in the Joint Lenders' Forum (JLF). The said 'Fraud' declaration has already been successfully challenged by the applicant in *W.P.(C) No. 10526/2019*, whereby the Hon'ble Delhi High Court *vide* order dated 09.07.2024, has been pleased to set aside the arbitrary and illegal fraud declaration by banks. Pertinently, it is the said FIR based upon which ED has registered the instant ECIR.

2.2. Ld. Counsel further submitted that *vide* order 26.04.2024, Ld Special Judicial Magistrate CBI, Haryana at Panchkula in case No. CHI9342023 titled as *"CBI vs Ms Sunstar Overseas Ltd. Ors."* has taken cognizance of the alleged offences and *vide* order dated 03.09.2024, applicant herein has been granted anticipatory bail by the Ld. Special Judge, CBI, Panchkula, while categorically observing that the applicant has extended full co-operation to CBI during its investigation, subsequent to which, *vide* order dated 09.09.2024, bonds furnished by the applicant were also accepted by the Court. Further, as per Ld. Counsel, there is no restriction placed by the Court over the applicant's travel. It is further submitted that ED filed instant complaint on 29.08.2024, wherein this Court was pleased to take cognizance of the offence *vide* its order dated 25.09.2024 and pursuant to the issuance of the summoning order, this Court has also accepted the bonds furnished by the applicant and granted bail to the applicant. Ld. Counsel further submitted that the right to travel abroad is a fundamental right, enshrined under Constitution of India, as held by the Hon'ble Supreme Court in ***Maneka Gandhi v. Union of India, AIR 1978 SC 597*** **.** Further, as per the Ld. Counsel, preventing the applicant from attending the Food Show exhibitions and business tour at Nuremberg, Germany, Dubai, UAE; and at Anaheim, California, USA would also amount to deprivation of the applicant of his said fundamental right. Even otherwise, as per the Ld. Counsel, the material particulars of the LOC have not been shared with the applicant till date, despite which, the applicant has already joined the investigation in the present case and extended full co-operation. It was further submitted that the LOC ought not to be permitted to stand as a coercive measure against the applicant, which has an effect of violating the applicant's fundamental rights, including the rights guaranteed to the applicant under Articles 21 and 19(1)(g) of the Constitution. Further, as per the Ld. Counsel, a bare perusal of the Office Memorandum bearing No. 25016/10/2017- Imm (Pt.) dated 22.02.2021, reveals that it is only when the conditions prescribed therein are satisfied that a LOC could be opened/persisted with by the authorities. Ld. Counsel further submitted that the purpose of issuing the LOCs is to curb the movement of the accused if he was/is deliberately evading arrest or not appearing in the trial court despite a non-bailable warrant and other coercive measures, and there was the likelihood of the accused leaving the country to evade trial or arrest, however, no such situation exist in the present case. Ld. Counsel further submitted that the applicant has clearly demonstrated his readiness and willingness to co-operate with the investigation, and he further undertakes to continue co-operating with the ED in the ongoing investigation. Accordingly, it was prayed that the LOC issued against the applicant be suspended and the applicant be permitted to travel to Nuremberg, Germany, Dubai, UAE and Los Angeles, USA for the aforesaid purposes.

3. *Per contra,* Ld. SPP for ED outrightly asserted that the applicant is involved in the commission of serious white-collar offence and has the potential to tamper with the pieces of evidence and influence the witnesses. Further, as per Ld. SPP, the present case involves a huge amount of public money and as such the instant application deserves outright rejection on this ground alone. Ld. SPP further submitted that due consideration has to be given to the fact that prosecution complaint has been filed in the present case for the offences of money laundering as specified under Sections 3/4 of PMLA and cognizance of the said offence(s) has already been taken by this Court. Ld. SPP further submitted that the grant of permission to applicant to travel abroad may pose a threat to the ongoing investigation as there is high probability of obfuscation of potential proceeds of crime *via* transfer, alienation, or appropriation in guise of business transaction. Ld. SPP for ED further submitted that allowance of permission to travel abroad may compromise the final outcome of subject PMLA case, which is pending adjudication before this Court and the facts of present case involve huge amount of public

money and commission of serious economic offence of money laundering, which in itself is considered to be gravest offence against the society at large and hence, the application deserves outright rejection.

3.1. Ld. SPP for ED further submitted that the investigation of the CBI established that M/s Sunstar Overseas Ltd. and its Directors namely Rakesh Aggarwal, Rohit Aggarwal and Manik Aggarwal entered into criminal conspiracy with each other at Sonipat during the period from 2015 and in pursuance of the said criminal conspiracy, in order to cheat PNB Sonipat Branch, they got restructured the credit facilities which was already sanctioned. Further, as per Ld. SPP, the accused persons did not use the loan funds availed from the banks for the purpose for which it was sanctioned and the accused - M/s Sunstar Overseas Ltd. through its authorized representative, Rakesh Aggarwal, Rohit Aggarwal and Manik Aggarwal/applicant in criminal conspiracy with each other dishonestly and fraudulently cheated the lender Bank by fraudulently submitting the Stock Statements for the Month of January, 2015 containing false information and showed a healthy picture of the company to Bank. Ld. SPP for ED further submitted that due to submission of aforesaid false information/documents by the accused with dishonesty and fraudulent intent, the Bank was cheated and such facility of restructured loan was allowed to the accused in the month of September 2015. Further, as per Ld. SPP, the applicant along with co-accused person Rohit Aggarwal launched the arbitration proceedings based on forged documents *i.e.* bills & invoices and used the same as genuine and in this manner, the aforesaid accused persons, in conspiracy with each other, committed the offence of criminal conspiracy, cheating and used the forged documents as genuine punishable U/s 120-B r/w 420, 471 of IPC and substantive offence thereof.

3.2. Ld. SPP for ED further submitted that the applicant was the Director of M/s. Star Rice Land Pvt. Ltd. from 09.01.2009 till 18.10.2019 as well as its related entities found involved in the money laundering, including M/s Star Rice Land Pvt. Ltd. till 2015 and he used to supervise and look after the affairs of M/s Sunstar Overseas Ltd. along with his father Rakesh Aggarwal and along side Rohit Aggarwal as well as of its related entities during the relevant period. Ld. SPP further submitted that the investigation has revealed that the applicant played key role in the siphoning off of bank loans from M/s Sunstar Overseas Ltd. to its related and unrelated companies/firms under the garb of sham trade transactions. Further, as per Ld. SPP, the applicant along with Rohit Aggarwal, managed the sham arbitration proceedings in respect of a few fictitious debtor entities viz. M/s. Al-Sara Trading Co. created by M/s. Sunstar Overseas Ltd., which led to generation of 'proceeds of crime'. It was further submitted by Ld. SPP that the applicant with the help of his father-in-law, Late Sumesh Khanna, also managed, the diversion of proceeds of crime through his related/ beneficially owned & controlled entities - M/s. Star Rice Land Pvt. Ltd., M/s. DH Trading Co. and M/s. Broadway Distribution Pvt. Ltd. to M/s. Umaiza Infracon LLP through NBFCs under the garb of sham borrowings/loans/investments extended by/to such NBFCs and this diverted 'proceeds of crime' has been used by a shell entity- M/s. Umaiza Infracon LLP to take over Sunstar Overseas Ltd. in NCLT and then handed over the same to M/s. Shivakriti Agro Pvt. Ltd., as per pre-conceived and pre-planned conspiracy. It was further submitted by Ld. SPP that the applicant actually involved himself and knowingly became a party and supported this plan with the aide of his confidante ex-employees of Sunstar Overseas Ltd. and owner/directors of M/s. Star Rice Land Pvt. Ltd., M/s. DH Trading Co. and M/s. Broadway Distribution Pvt. Ltd. Further, as per Ld. SPP, the applicant along with his other family members have also been enjoying 'proceeds of crime' diverted from M/s. Sunstar Overseas Ltd. to its related and unrelated companies/firms under the garb of sham trade transactions. Further, as per Ld. SPP, the investigation findings established that applicant is the beneficial owner/actual controller of M/s. Star Rice Land Pvt Ltd. even after leaving its directorship and shareholdings, and also of other two shell entities- M/s. DH Trading Co. and M/s. Broadway Distribution Pvt. Ltd. and hence, he is responsible for their overall affairs including their role in acquisition, possession, concealment and diversion of 'proceeds of crime' involved in the case from M/s. Sunstar Overseas Ltd. to M/s. Umaiza Infracon LLP which was ultimately used to acquire assets and properties of M/s. Sunstar Overseas Ltd. itself in NCLT.

3.3. Further, as per Ld. SPP for ED, it is vital to secure presence of the applicant in India in light of ongoing investigation in present matter. Ld. SPP further submitted that the right to travel abroad, even otherwise, cannot be considered as an absolute right. On the contrary, the restriction to applicant's travel abroad is subject to/envisaged under reasonable restrictions as provided under Article 21 of the Constitution. Learned SPP for ED further submitted that issuance of LOC was in consonance with the spirit of safeguarding interest of ongoing investigation against the applicant as well as a precautionary measure to protect the proceeds of crime. Ld. SPP further submitted that the issuance of impugned LOC is purely in accordance with the protocol and guidelines issued by Ministry of Home Affaris for issuance of Lookout Circulars *vide* Office Memorandum bearing No. 25016/10/2017-Imm (PT) dated 22.02.2021. Ld. SPP for ED further submitted that the issuance of LOC has been persistently upheld by various Courts during the course of ongoing investigation and that it is essential in the instant case that the LOC is not cancel/suspended to ensure proper investigation of the present case. Ld. SPP for ED further submitted that for the investigation to proceed in a proper manner, the presence of applicant in India is imperative and in case the present application is allowed, the investigation would several delayed, hampered as well as lead to destruction of material evidence. Further, as per Ld. SPP for ED, there is no procedure under law to share the information, as sought for by the applicant pertaining to LOC with him. Further, as per Ld. SPP for ED, considering the nature of offence involved, it is quite possible for unscrupulous persons to seek advantage of suspension of LOC circular by initially travelling abroad and subsequently, settling there with his family members, over whom, ED has no control. In fact, as per Ld. SPP for ED even the past travel record of the applicant would be immaterial to arrive at any decision for permitting him to travel abroad. Ld. SPP for ED further submitted that several material aspects of the investigation are yet to be concluded and in case the entreaty, as sought for in the present application is accorded by this Court, same would result in impeding ED's investigation. Ld. SPP for ED further vehemently contended that the maintenance of applicant's LOC is crucial to safeguard the best interest of investigation/trial and to rule out any possibility of his tampering with the evidence and/or to dissipate/alienate any proceeds of crime, parked outside India. It was further submitted that mere 'so called' cooperation with investigation officers would not preclude the necessity of travel restriction in the instant case as there is a reasonable likelihood of applicant's absconding, if permitted to travel abroad. Accordingly, Ld. SPP for ED has submitted that the present application may be dismissed. In support of the said contentions, reliance has been placed upon the decisions in ***Sumer Singh Salkhan v. Asst. Director & Ors., ILR (201) Del 706; Talab Haji Hussain v. Madhukar Purshottam Mondkar, AIR 1958 SC 376; Chaitya Shah v. The Union of India & Ors., 2021 SCC OnLine Bom 3967; Atul Punj v. IDBI Bank, W.P. (Crl.) No. 2332/2022; Suman Gupta v. Union of India & Ors., Writ Petition (Crl.) 1313/2020; S. Martin v. Deputy Commissioner of Police (2014) SCC OnLine MD 426; G.S.C. Rao v. State of UP and Ors., 2018: AHC:161457-DB; Rahul Dipak Shah v. Union of India, WP(C) 13790/2023;*** and ***Nitin Sandesara v. Director of Enforcement & Ors., W.P. (C) 7559/2017.***

4. The arguments of Ld. Counsel for applicant and that of Ld. SPP for ED, heard as well as case record(s) have been thoroughly perused.

5. In order to deal with the contentions raised by the Ld. Counsel for the applicant and that by the Ld. SPP for ED, this Court deems it pertinent to outrightly make a reference to the prayer clause of the present application, as under;

> *"...In view of the aforementioned facts and circumstances, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:*
>
> *a. Issue an order, or direction suspending the operation of any Look Out Circular that has been issued at the instance of the Respondent No. 1, ED in order to enable the Applicant, Manik Aggarwal having Indian passport no. Z7600319 to travel to*

*Nuremberg, Germany and Dubai, UAE from 08.02.2025 to 22.02.2025; and travel to Los Angeles, USA from 01.03.2025 to 11.03.2025; and*

*b. Direct the Respondents to take necessary steps for ensuring that there is no restriction on the travel of the Applicant, Manik Aggarwal to above stated locations, and*

*c. Pass any other or further orders as this Hon'ble Court may deem fit and proper in the interest of justice...”*

*(Emphasis supplied)*

6. Relevantly, it is observed from perusal of the above that one of the primary entreaties of the applicant pertains to the suspension of LOC, if any, issued against him/the applicant at the behest of ED to enable him to travel in Nuremberg, Germany and Dubai, UAE and to Los Angles, USA, on an India passport as well as directing the respondent to ensure that there is no impediment in his said proposed travel, during the aforesaid period. Notably, during the course of arguments, before this Court, Ld. Counsel has confined his submissions to suspend the LOC, if any, permitting him to travel to Nuremberg, Germany and Dubai, UAE and to Los Angles, USA, on the terms and condition to be imposed by this Court as well as upon furnishing of a detailed itinerary, in case said permission is accorded by this Court. Nevertheless, the applicant has specified the particulars of his proposed travel under paras no. 2 and 3 of the instant application. Correspondingly, the applicant has also specified the particulars of his previous travel abroad, as under;

| ***S. No.*** | ***Period of travel*** | ***Destination*** | ***Date of grant of permission by the Court*** |
|---|---|---|---|
| *1.* | *09.10.2021 to 19.10.2021* | *Germany* | *07.10.2021* |
| *2.* | *10.02.2022 to 18.02.2022* | *Dubai, UAE* | *07.02.2022* |
| *3.* | *25.04.2022 to 05.05.2022* | *Australia* | *22.04.2022* |
| *4.* | *25.07.2022 to 03.08.2022* | *Nuremberg, Germany & London, UK* | *21.07.2022* |

| | | | |
|---|---|---|---|
| *5.* | *10.10.2022 to 19.10.2022* | *Paris, France* | *07.10.2022* |
| *6.* | *14.02.2023 to 24.02.2023* | *Dubai, UAE* | *13.02.2023* |
| 7. | 23.06.2023 to 02.07.2023 | New York, USA | 15.06.2023 |
| 8. | 06.10.2023 to 18.10.2023 | Milan, Italy | 03.10.2023 |

7. Markedly, in order to deal with the contentions raised by/on behalf of the applicant as well as Ld. SPP for ED, this Court deems it pertinent to outrightly to make a reference to the decision of the Hon'ble High Court of Delhi in ***Sumer Singh Salkan v. Asstt. Director, (Supra.)***, wherein the Hon'ble Court, while cogitating on various aspects of LOC(s), observed as under;

> *"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*

*<u>alone shall give directions for opening LOC by passing an order in this respect</u>.*

*C. The <u>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</u>.*

*D. <u>**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**</u>."*

*(Emphasis supplied)*

8. Relevantly, it is observed from above that Hon'ble High Court, has in unambiguous terms observed that the recourse to LOC can be taken by investigating agency only when the accused has been deliberately evading arrest not appearing in the trial, despite coercive measures and there was a likelihood of the accused leaving the country to evade trial/arrest. Further, as per Hon'ble High Court, the power to cancel/suspend LOC is stated to be invariably vest to the authority that had issued the same may also be *inter alia* rescinded/cancel/suspended by the concerned trial court where the case is pending. Lastly, the jurisdiction of trial court in such cases is stated to commensurate with the jurisdiction of cancellation or affirming NBWs. As aforenoted, Ld. Counsel for the applicant has confined his prayer in the present case to the suspension of the LOC, with the applicant assuring his return in India on 11.03.2025. Accordingly, this Court, at this stage, is not delving into the aspect of correctness of issuance of LOC in the instant case. However, it is pertinent to note here that from a perusal of case

record, it is observed that the applicant, though, has been named as an accused no. 7 in the present complaint filed by the ED before this Court, however, admittedly, the applicant was never arrested in the present complaint. Notably, the applicant had already furnished his bonds in terms of the dictates in; ***Tarsem Lal v. Directorate of Enforcement, (2024) 7 SCC 61*** and ***Satender Kumar Antil v. CBI (2022) 10 SCC 51,*** which is already accepted by this Court on 09.12.2024, the applicant is asserted to have duly joined in the investigation as well as tendered his statement under Sec. 50 PMLA, besides as aforenoted the applicant has been accorded similar travel permissions in past and nothing has been brought to the attention of this Court demonstrating that the applicant breached the terms imposed on the applicant, permitting him such travel.

9. Conspicuously, the aforesaid facts pertaining to the applicant's joining the investigation, as also, tendering his statement under Sec. 50 PMLA have not been denied by Ld. SPP for ED/ED, however, it has been merely contended that the applicant's travel abroad would prejudice further investigation in the present case and that the applicant may tamper with the prosecution evidence/witnesses. Further, as aforenoted, Ld. SPP has objected to the suspension of LOC on the ground that the offence is instant case is grave pertaining to economic offences and that the applicant's presence in India would be difficult to be ensured, once he is permitted to travel abroad. However, the said contention does not find favour with this Court, considering that the applicant has been permitted similar permissions in past and as aforenoted nothing has been brought to the attention of this Court to demonstrate that the applicant had misused the same. Even otherwise, this Court is also not impressed with the

contention raised during the course of proceedings that the applicant may join the said conferences through video conferencing mode, considering that video conferencing cannot be a substitute at all the times and there may be instances where while developing business and investing money, physical presence/meetings become imperative. In fact, despite progress in technology, it cannot be negated that there may be occasions that while developing business, it may be sometimes important that one party is present before the other in person. Here, this Court deems it further apposite to note that superior Courts have persistently avowed that right to travel abroad is one of the basic facets of Article 19/21 of the Constitution and a fundamental right, which is even available to an accused. In fact, superior Courts have, in unambiguous terms, noted that right to travel is a valuable fundamental right and can be curtailed under exceptional circumstances. Here this Court deems it pertinent to make a reference to the decision of the Hon'ble Supreme Court in ***Parvez Noordin Lokhandwalla v. State of Maharashtra, (Supra.)***, wherein the Hon'ble Court, while carrying out a thorough review of several previous decisions, in unambiguous terms noted as under;

> *"19. In Barun Chandra Thakur v. Ryan Augustine Pinto [Barun Chandra Thakur v. Ryan Augustine Pinto, 2019 SCC OnLine SC 1899], this Court restored a condition mandating that the respondent seek prior permission from a competent court for travel abroad. The condition, which was originally imposed by the High Court while granting anticipatory bail was subsequently deleted by it. This Court made the following observations with respect to imposing restrictions on the accused's right to travel: (SCC OnLine SC para 9)*
>
> > *"9. … There could be no gainsaying to that the **<u>right to travel abroad is a valuable one and an integral part of the right to personal liberty</u>**. Equally, however, the pre-condition of securing*

*prior permission before travelling abroad is a crucial ingredient which undoubtedly was engrafted as a condition for the grant of anticipatory bail in this case. … At best, the condition for seeking permission before travelling abroad could have been regulated, not deleted altogether."*

*20. <u>This Court has passed multiple orders previously allowing an accused enlarged on bail to travel abroad. In Ganpati Ramnath v. State of Bihar [Ganpati Ramnath v. State of Bihar, 2017 SCC OnLine SC 1998], this Court allowed an accused applicant to travel abroad for medical treatment, modifying its earlier bail order, noting that the applicant had travelled abroad on the ground of medical necessity on six occasions with the permission of the court and had returned. In K. Mohammed v. State of Kerala [K. Mohammed v. State of Kerala, 2020 SCC OnLine SC 860], this Court allowed the appellant-accused to travel abroad to meet in the exigencies of a family situation. In Tarun Trikha v. State of W.B. [Tarun Trikha v. State of W.B., 2015 SCC OnLine SC 1879], this Court allowed the petitioner-accused to travel to Indonesia in connection with his employment and to return once the work was completed. In Pitam Pradhan v. State of A.P. [Pitam Pradhan v. State of A.P., 2014 SCC OnLine SC 1795], this Court while granting anticipatory bail, **permitted the petitioner to travel abroad noting that his job required him to travel abroad at frequent intervals and may lose his employment if he were not permitted to travel abroad**</u>."*

*(Emphasis supplied)*

10. Similarly, Hon'ble High Court of Madras, in ***E.V. Perumal Samy Redyy v. State, 2013 SCC OnLine Mad 4092***, observed as under;

*"9. It is <u>**basic that merely because a person is involved in a criminal case, he is not denude of his Fundamental Rights. It is the fundamental of a person to move anywhere he likes including foreign countrie**s. One's such personal freedom and liberty cannot be abridged.[See : Article 21 Constitution of India]. In the celebrated in MENAKA GANDHI v. UNION OF INDIA [(1978) 1 SCC 248 : AIR 1978 SC 597], the Hon'ble Supreme Court upheld the constitutional right of persons to go abroad. The phrase no one shall be deprived of his "life and liberty" except procedure established by law</u>*

*employed in Article 21, had deep and pervasive effect on fundamental right and human right. MENAKA GANTHI (supra) ushered a new era in the annals of Indian Human Rights Law. It had gone ahead of American concept of 'Due Process of Law'.*

*10. But, **the fundamental right to move anywhere including foreign countries could be regulated. Where persons involved in criminal cases are wanted for investigation, for court cases, persons, who are anti-social elements their movements can be regulated**. Need may arose to apprehend persons, who have ability to fly, flee away the country. So, L.O.C. orders are issued. It is an harmonius way out between a person's fundamental right and interest of the society/state. But, in any case, it must be fair and reasonable. It should not be indiscriminate without any reason or basis."*

*(Emphasis supplied)*

11. Correspondingly, quite recently, the Hon'ble High Court of Madras in ***Pathan Apser Hussen v. Bureau of Immigration & Ors., W.P. Nos. 27686 & 28518 of 2024, dated 06.12.2024***, noted as under;

*"12. Life in the fullest sense is accomplished when the life is allowed to grow and prosper, and is let to halt only where one chooses to halt. In that sense, right to grow and prosper cannot be limited to material growth, but it extends to every aspect of life, from physical, mental, material, emotional and spiritual well-being. From holidaying to building relationship to professional engagement to pilgrimage and education, there can be endless human activities which can fall with in this concept, and each of them may contribute to one's growth and prosperity. The choice rests with the one who holds the right. How one exercises one's right to life is not the concern of law as long as it is legitimate. In that sense the manner of its exercise is part of one's privacy, and that space belongs to the one who holds the right and exercises it. If so viewed, right to grow and prosper can also be seen as part of right to privacy. Eventually, whether it is considered as an independent species of right or as a limb of right to privacy,it still belongs to the family of right to life.*

**** *** ****

*17. If **right to grow and prosper is a facet of right to life, then necessarily right to travel abroad can be read not just an aspect of liberty, but also as an integral right within the right to life itself. Liberty***

***and life do not exist in mutual exclusivity, but they fuse to define the life and its quality under the Constitution***. *Having stated thus, it may have to be added that it is plainly immaterial whether right to travel abroad should be respected as an aspect of liberty or right to life. Semantics may fascinate a theoretician, but a functional Constitution considers worthy that which is eventually delivered to promote the aspirations of individuals to grow and prosper.*

*18. Despite geographical barriers dividing the nations, despite the political ideologies separating human minds, the world still offers a lot to exchange within its constituent countries for mutual growth and prosperity. There is no world state, but surely there is a global village. And, every person's right to life which the Constitution protects is part of this larger scheme.* ***Opportunity to grow in the contemporary world is defined by the ability to see, seek and seize an opportunity, and where there is an opportunity to grow and prosper, there surely may arise a need to travel****. Growth defies inertia and so does travel. After all, man is not a grazing cow to waste his life in the meadow of the neighbourhood.*

**** *** ****

*24. It could now be derived that right to travel abroad need not necessarily be need based. To reiterate, if the concern of the criminal justice administration is only to ensure the participation of the accused in a criminal proceeding, then law and its administration should focus only on that, and not on any other ancillary issues affecting the personal lives and privacy of accused persons. If not,* ***we may end up converting the stay of an accused person into a kind of house arrest in this country. That may not be an ideal way to understand the Constitution****. Hypothetically, if after a couple of decades, a person accused of committing a crime in India and restrained from travelling abroad and stripped of his opportunity to grow and prosper, is acquitted, will the legal system recompense him of all that he has lost?*

**** *** ****

*27. Driven perhaps by the fear psychosis that everyone who gets an opportunity to travel abroad will flee, if understood in the context of the discussion above, the fears of the prosecution will blur the neutrality of the vision with a strong dose of prejudice. To state it differently, when the law requires the Court to presume the innocence of the accused, the LOC requires the Court to believe his guilt. If it is otherwise, the focus of the Office Memorandum ought to have been not to stop a*



ABHISHEK GOYAL Digitally signed by ABHISHEK GOYAL Date: 2025.02.03 15:47:57 +0530 *person accused of an offence from travelling abroad but to ensure that he would return back to participate in the trial. In other words, the foundation for LOC rests on a faulty pivot and it very seriously requires an attitudinal shift in appreciating the very issue.*

*** *** ***

*35. To accomplish the purpose, the following self-operational mechanism is hereby provided :*

*a) In the <u>first instance a petition should be filed before the trial Court for a direction to suspend the LOC, and to require the Court to set out the conditions for travel abroad</u>. It may give reasons for travel, whose purpose is only to provide the setting for the Court.(Surely, this Court has all the powers to entertain a similar petition but except in cases of emergencies such as medical emergency or death; it would be advisable that petition for leave to travel is filed before the trial Court since the trial Court will have all the facts before it, which may have a bearing when it frames its conditions).*

*b) Once the petition is filed, the <u>Court may not look to the reasons for travel, but should focus on the nature of conditions that may be imposed for the return of the accused person to India</u>. Here, the prosecution may have a right to make its statement to the Court.*

*c) So far as the conditions that may be imposed are concerned, the <u>Court may devise those, which are effective, which hold reasonable assurance that the accused may return to India, and are also workable</u>. Some suggested conditions are:*

*i. To require the <u>accused person to provide any security</u> either by depositing a stated sum in the Court, or any property whose value may be equivalent or approximates the said sum or in addition to the said sum;*

*ii. To <u>require any relative or a business associate of the accused person concerned who is a frequent traveller abroad with an active Indian passport, (the number of such foreign travel may vary from case to case, and the Court may have to satisfy itself based on each particular case) to provide surety</u> for any stated value, and also to deposit the passport with the investigating agency (or even at the office nearer the home of the surety). Once the accused returns to India, the passport of the surety concerned should be returned to him or her. In all cases due acknowledgement must be issued by the investigating agency.*

*iii. The condition (i) may either be given by the accused person himself or herself, or by any*



ABHISHEK GOYAL Digitally signed by ABHISHEK GOYAL Date: 2025.02.03 15:48:02 +0530 *other person for the accused person, which may include sureties or any other.*

*d) Once the conditions imposed are complied, the Court may direct the suspension of LOC during the period of travel.*

*e) After the first occasion, every time an accused proposes to travel abroad, he or she only needs to file a memo in the petition first filed, intimating the dates of proposed travel, and comply with the conditions originally set out. The prosecution may seek modification of any condition for any specific reasons, and the Court shall address the issue through a speaking order.*

*f) Once the conditions are complied with, the Originating Authority shall suspend the LOC during the period of travel, and restore it on the accused person's return to India. This method can be replicated for every travel abroad.*

*g) The conditions illustratively given in (c) can be substituted, if the accused person himself/herself gives anything which is equally efficacious.*

*h) The conditions listed above are not mandatory if the investigation agency has reasons to believe that the accused will return to India, and conveys the same to the Court…"*

*(Emphasis supplied)*

12. Ergo, in light of the aforesaid, it is reiterated that it is a settled law that even a person facing a criminal trial has a fundamental right to travel abroad, which may be subject to reasonable restrictions. However, as aforenoted, it is equally settled law that merely because a person is involved in a criminal case, he is not denuded of his Fundamental Rights. On the contrary, as may be noted from above, superior courts have persistently avowed that deployment of LOC cannot be devised as converting the stay of an accused person/individual into a kind of house arrest in this country. Accordingly, under such understanding, reverting to the facts of the present case and considering that the applicant admittedly joined the investigation with ED, statement of the applicant under Section 50 PMLA has already been recorded; complaint has already been filed upon which cognizance has already been taken; the applicant has

prayed for a limited suspension of the LOC assuring his presence in India on 11.03.2025; the applicant has travelled abroad on several occasions, as aforenoted and had duly returned to India; nothing has been brought to the attention of this Court specifying that the applicant has breached the terms of earlier travel permissions, trial is likely to take some time, this Court deems it pertinent to ***allow*** the present application and **suspend the operation of LOC against the applicant, issued at the behest of ED or any other travel restrictions upon him, pertaining to the present ECIR *w.e.f.* 08.02.2025 to 11.03.2025, subject to the applicant conforming with the terms, as specified herein** and in particular, by filing a detailed itinerary of his travel plan to be verified by ED, prior to his travel as well as by furnishing the particulars/details of his stay, travel and other terms and conditions, as noted herein.

13. Further, as proposed/offered by the applicant, the **applicant is directed to furnish personal bond in a sum of Rs. 25,00,000/- (Rupees Twenty Five Lakhs only), in the name of this Court (ASJ-03, Central, Tis Hazari Courts, Delhi)** along with **one surety of the like amount subject to the satisfaction of this Court**. Further, the applicant is directed to furnish the details of his family members and office details, particulars of their contact details as well as his contact particulars, where he may be approached by the officials of ED during his stay abroad in the aforesaid period. Further, it is directed that **in case of change of residential address, particulars of contact details or office address of the applicant, he shall inform the same to the concerned officials of ED within the period of two days of such change**. The **applicant is further directed to ensure that he cooperates with the concerned officials of ED during the investigation process as**

**well as informs the concerned officials of ED, upon his return to India, within a period of 48 hours therefrom.** Lastly, **the applicant would also furnish in this Court, attested copy of his passport along with copy of visa of the country, where he visited, within a period of five days of his return from abroad.**

14. Needless to reiterate that though the applicant has not pressed on his submission regarding non supply/furnishing of a copy of LOC to him, as specified under the instant application, at present, however, this Court is cognizant of the fact that the observations of Hon'ble High Court of Bombay in ***Noor Paul v. Union of India, 2022 SCC OnLine P&H 3408*** in this regard, have since, been stayed by the Hon'ble Supreme Court in ***Bank of India v. Noor Paul, 2022 SCC OnLine SC 2108***, in particular, under the following observations;

> *"7. In the special facts and circumstances of this case, we are not inclined to stay the judgment and order dated 05.04.2022 passed by the High Court <u>except for the direction in the operative part of the order in Paragraph 78(c), which is set out hereinbelow for convenience</u>:-*
>
> > *"(78) For the aforesaid reasons, we hold that:*
> > *(c) <u>The respondents No. 1, 3 and 4 shall serve copy of the LOC and also reasons for issuing it to the person against whom it is issued as soon as possible after it is issued, and also provide a post decisional opportunity to him and these requirements shall be read into the Oms issued by respondents concerning the issuance of the LOCs</u>."*
>
> *8. There shall also be stay of the direction for payment of costs until further orders."*
>
> *(Emphasis supplied)*

15. The application is, accordingly, ***disposed off*** in above terms.

16. A copy of this order be given ***dasti*** to Ld. Counsel for the applicant.

17. Further, a copy of this order be also given ***dasti*** to the Ld. SPP/IO for ED.

ABHISHEK GOYAL
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Date: 2025.02.03 15:48:25 +0530

**Abhishek Goyal**
ASJ-03, Central District,
Tis Hazari Courts, Delhi
03.02.2025