



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Reserved on: 25th November, 2024
Pronounced on: 07th January, 2025

+ W.P.(C) 9372/2024 & CM APPL. 38510-38511/2024, CM APPL.
44083/2024

ATUL PUNJPetitioner

Through: Mr. Dayan Krishnan, Senior
Advocate with Mr. Himanshu Gupta
and Mr. Shreedhar Kale, Advocates.

versus

UNION OF INDIA & ORS.Respondents

Through: Mr. Anurag Ojha, SSC with Ms.
Hemlata Rawat, Mr. Dipak Raj and
Mr. Subham Kr., Advocates for R-1.
Mr. Anurag Ahluwalia, CGSC with
Mr. Kaushal Jeet Kait, GP, Mr.
Vibhav Singh, Ms. Hridyanshi
Sharma, Mr. Suyash Rawat,
Advocates, Mr. Pradeep Balliyan, Sr.
AD and Mr. Piyush Kumar, Sr.
Prosecutor for R-2.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J.:

1. The Petitioner, formerly a Promoter and Director of Punj Lloyd



Limited,¹ impugns the Look Out Circular² issued against him at the behest of the Department of Revenue (Respondent No. 1) and the Serious Fraud Investigation Office³ (Respondent No. 2). The LOC, which restricts his international travel, was initially impugned to enable a trip to the United Kingdom from 14th August, 2024 to 30th August, 2024 for business purposes. During the course of proceedings, the Petitioner, through additional affidavits, modified his request to travel from 5th December, 2024 to 20th December, 2024. Although this period too has elapsed, the Petitioner persists in seeking suspension of the LOC, emphasizing the ongoing relevance of his business commitments and asserting that the meetings can be rescheduled if relief is granted, by this Court.

2. The present case necessitates a careful examination of the competing interests at play: the Petitioner's fundamental right to travel abroad and the State's imperative to ensure that ongoing investigations into serious allegations of financial impropriety are not thwarted. While the Petitioner asserts that his long-standing cooperation with investigative authorities and absence of criminal antecedents negate any apprehension of flight risk, SFIO and the Income Tax Department strongly oppose the request, citing the gravity of the allegations and the potential risk of evasion.

PETITIONER'S CASE

3. Mr. Dayan Krishnan, Senior Counsel for the Petitioner, outlined the

¹ "PLL"

² "LOC"

³ "SFIO"



following facts that form the basis of the present petition:

3.1. The Petitioner's company, PLL, operated in the infrastructure and energy sectors between 1992 and 2014. To support its commercial operations, PLL secured various credit facilities under a multi-banking arrangement. However, due to financial difficulties and a liquidity crunch, PLL's financial condition deteriorated. The situation worsened by delays in sanctioning credit limits by a consortium of lenders, which impeded the implementation of a Corrective Action Plan for restructuring under the guidelines of the Reserve Bank of India.⁴

Admission of PLL into Corporate Insolvency Resolution Process

3.2. On 8th March, 2019, ICICI Bank Limited filing a petition under Section 7 of the Insolvency Bankruptcy Code, 2016,⁵ before the Principal Bench, National Company Law Tribunal⁶. PLL was admitted into Corporate Insolvency Resolution Process⁷ on the same day.

3.3. During the CIRP, on 19th August, 2020, the Resolution Professional filed an Avoidance Application before the NCLT, alleging suspect transactions involving PLL. A Transaction Auditor was appointed to review the PLL's financial records.

3.4. Despite all efforts, CIRP proved unsuccessful, and the NCLT ordered PLL's liquidation as a going concern on 27th May, 2022.

⁴ "RBI"

⁵ "the Code"

⁶ "NCLT"

⁷ "CIRP"



Proceedings under the RBI's Master Circular on Fraud- Classification and Reporting

3.5. In July, 2017, at the insistence of its lenders, a forensic audit of PLL was conducted for the period 2014-2017 to investigate potential improprieties in its financial dealings. Subsequently, on 22nd March, 2018, a joint meeting of the consortium of lenders was convened to deliberate on a loan restructuring package. The minutes of the meeting revealed that neither the forensic audit nor inquiries by the Central Economic Intelligence Bureau found any evidence of misconduct by PLL or the Petitioner regarding the lenders' funds.

3.6. Based on the Transaction Audit Report filed in insolvency proceedings, PLL was classified as a "fraud" account. This order was subsequently set aside by this Court through order dated 12th May, 2023 in W.P.(C) 10796/2020.⁸

3.7. Subsequently, the State Bank of India appointed M/s Pipara and Company LLP to conduct a fresh forensic audit of PLL which concluded that PLL's account was not fraudulent. In light of this report, the consortium of lenders in its meeting held on 20th November, 2023, by majority vote, resolved to re-classify PLL's account as a "No Fraud" account.

3.8. Following this reclassification, IDBI Bank issued a fresh show cause notice dated 7th February, 2024 under the RBI Master Directions on Frauds-Classification and Reporting. The Petitioner responded on 31st May, 2024

⁸ titled *Atul Punj v. Reserve Bank of India and Ors*



and these proceedings remain pending.

Investigation by SFIO under the Companies Act, 2013

3.9. On 22nd May, 2019, the Central Government, under Section 212(1)(c) of the Companies Act, 2013, directed the SFIO to investigate PLL's affairs.

3.10. On 15th July, 2022, the Central Government issued directions directing the SFIO to initiate proceedings against the Petitioner and his son, Mr. Shiv Punj, under Sections 241 and 242 read with Sections 246 and 339 of the Companies Act, 2013.

3.11. Aggrieved by directions issued by the Central Government, on 25th September, 2023, the Petitioner preferred W.P.(Crl) 2847/2023⁹ *inter alia* seeking quashing of letters dated 22nd May, 2019 and 15th July, 2022. This Court *vide* order dated 31st October, 2023 restrained SFIO from taking any coercive action against Petitioner while directing him to cooperate with the investigation.

Legal Proceedings in relation to the Personal Guarantees furnished by the Petitioner

3.12. On 5th March, 2022¹⁰ and 6th May 2022,¹¹ the Debt Recovery Tribunal,¹² New Delhi, discharged the Petitioner from financial liabilities arising out of personal guarantees dated 21st May, 2015 and 23rd February, 2018.

⁹ titled *Atul Punj v. Union of India through Ministry of Corporate Affairs and Another*

¹⁰ in O.A. No. 02/2020 titled *IDBI v. Atul Punj*

¹¹ in O.A. No. 400/ 2022 titled *SBI v. Atul Punj & Ors*

¹² "DRT"



Previous Writ Petitions

3.13. The Petitioner has previously sought judicial relief through writ petitions. On 6th October, 2022, he filed W.P.(Crl.) 2332/2022¹³ seeking suspension of the LOCs issued against him to enable travel between 1st November, 2022 until 21st November, 2022. However, this Court by order dated 24th November, 2022, dismissed the same on account of ongoing proceedings under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015,¹⁴ and the SFIO investigation being at a nascent stage.

3.14. In a subsequent attempt, the Petitioner filed W.P. (Crl) No. 359 of 2023¹⁵ for undertaking travel, citing changed circumstances. However, the said petition was dismissed as withdrawn on 19th July, 2023.

Proceedings under the Black Money Act

3.15. Following a survey conducted by the Income Tax Department, the Petitioner and his son were subjected to proceedings under the Black Money Act by the office of Deputy Director (Investigation), Income Tax Department. Show cause notices dated 20th February, 2024, were issued alleging undisclosed assets of INR 8,38,66,71,356/- and INR 6,80,25,46,208/-, respectively. However, in the Assessment Order dated 30th March, 2024, the Petitioner's taxable undisclosed assets were significantly reduced to INR 4,37,19,020/- with a corresponding tax liability of only INR

¹³ titled *Atul Punj v. IDBI Bank and Others*

¹⁴ "the Black Money Act"

¹⁵ titled *Atul Punj v. Union of India and Ors*



1,31,15,710/-. The taxable assets of Petitioner's son were assessed at NIL. The Petitioner has since challenged the Assessment Order before the Commissioner of Income Tax (Appeals)-31, New Delhi.

Petitioner's Contentions

3.16. The Petitioner asserted that he is a respected businessman with deep societal ties and no criminal antecedents. He emphasises his consistent cooperation with ongoing investigations and adherence to all legal requirements. Since July, 2019, he has appeared before the SFIO on 9 occasions and submitted documents on 13 occasions. No allegations of tampering with evidence, influencing witnesses, or evading proceedings have been raised against him.

3.17. The Petitioner further asserts that the SFIO's investigation has remained inconclusive for over five years, with no clear end in sight. He argues that such prolonged delay, coupled with the issuance of an LOC, violates his fundamental rights under Article 21 of the Constitution of India, 1950, which guarantees the right to life and personal liberty.

RESPONDENTS' CONTENTIONS

4. Counsel for SFIO and the Income Tax Department strongly opposed the Petitioner's request advancing the following arguments:

Bar on Maintainability

4.1. The present writ petition is not maintainable being barred by principles of *res judicata* as it seeks relief identical to that has been previously denied. In W.P.(Crl.) 2332/2022, this Court refused to suspend



the LOC after considering *prima facie* evidence of the Petitioner's involvement in fraudulent activities within PLL. The subsequent withdrawal of W.P.(Crl.) 359/2023, filed on similar grounds, further demonstrates the repetitive nature of the pleas urged in the present petition.

Findings of Fraudulent Activities

4.2. SFIO specifically highlighted that IDBI Bank, the second-largest creditor of PLL and a member of the lending consortium, initiated an independent investigation under RBI directives to examine potential fraudulent activities, including the siphoning or diversion of funds and loans provided to PLL. Based on its inquiry, IDBI Bank classified PLL's account as fraudulent in its Financial Monitoring Report dated 3rd October, 2020, a finding echoed by HDFC Bank. Although the Central Bureau of Investigation¹⁶ initially returned the complaint, recommending a fresh forensic audit, IDBI Bank later reclassified PLL's account as fraudulent on 5th July, 2024, after issuing them a show cause notice. While this classification has been stayed by this Court on 16th July, 2024 in W.P.(C) 9461/2024,¹⁷ the Court has clarified that IDBI Bank retains the liberty to report the matter to the CBI or Police for appropriate legal action against the Petitioner, in accordance with the law.

Irregular Trading and Financial Manipulation

4.3. The investigation by SFIO revealed that PLL engaged in trading activities unrelated to its core Engineering, Procurement, and Construction

¹⁶ "CBI"

¹⁷ titled *Atul Punj v. IDBI Bank*



business. These trading activities, rather than being legitimate, were primarily designed to facilitate the rotation of funds to address PLL's short-term financial requirements, which ultimately contributed to its default on bank loans. A significant portion of these trading transactions was conducted with two of PLL's related group entities—Punj Lloyd Private Limited¹⁸ and Punj Lloyd Infrastructure Private Limited,¹⁹ both of which are incorporated in Singapore. It was noted that between FY 2012-2013 and FY 2017-2018, PLL's operational revenue amounted to INR 32,797.65/- Crores, of which INR 3,158.17/- Crores was generated through these trading activities. Out of this total amount, trading activity amounting to INR 2,319.18/- Crores was derived from transactions with PLL's own group entities, PLPL and PLIPL. As a result of these bogus trading activities, the group entities accumulated significant unpaid debts and liabilities towards PLL. The investigation further revealed that key managerial personnel, including the Petitioner, were knowingly complicit in facilitating these fraudulent transactions with their affiliated companies. The outstanding balance from these fraudulent trading activities exceeded INR 3,000/- Crores, with approximately INR 2,400/- Crores linked to PLPL and PLIPL, both of which have defaulted on their repayments. The Petitioner, being a Director of these entities, is implicated in these financial irregularities.

4.4. The investigation also uncovered that PLL had made substantial investments in its group entities based in overseas jurisdictions. However,

¹⁸ "PLPL"

¹⁹ "PLIPL"



most of these foreign investments were eventually lost, having incurred significant financial losses. These losses were subsequently written off, leading to a substantial erosion of PLL's net worth. This caused loss of funds to the public sector banks and financial institutions who were the major lenders of PLL.

Proceedings under the Black Money Act

4.5. Additionally, in the proceedings under Section 10 of the Black Money Act, on 20th February, 2024, a show cause notice was issued to Mr. Shiv Punj, requiring him to provide details and clarify his association with certain entities and bank accounts as the beneficial owner. In his response dated 16th March, 2024, Mr. Shiv Punj confirmed that Mr. Atul Punj was the beneficial owner of these entities, companies, bank accounts and trusts. He further stated that his involvement in these entities was solely at the behest of his father, driven by familial affection, and that he had no active role or involvement in their operations. This submission was taken into consideration, and in the order dated 30th March, 2024, it was formally concluded that Mr. Atul Punj is the beneficial owner of various foreign entities.

Flight Risk

4.6. In the previous writ petitions, the Petitioner had previously sought relief to travel abroad from this Court citing consultancy work organized by Domus Llyod Contracting Limited²⁰ and Ecolibrium Incorporated Limited.

²⁰ "DLCL"



DLCL is a related entity of the Petitioner himself and therefore, the invitation annexed by the Petitioner as proof of consultancy related work is bogus and not genuine. The Court dismissed petition declining the relief sought by the Petitioner through a detailed order. The Petitioner in his second writ petition filed in the year 2023, had very cleverly omitted the mention of DLCL and had cited consultancy and other related work for Ecolibrium Incorporated Limited as an excuse to travel abroad. However, even the said writ petition was dismissed as withdrawn. In the present writ petition, the Petitioner has not provided any specification or detail as to what exactly is the purpose of the alleged meeting for which the Petitioner intends to travel abroad. The purported invitations are vague, merely stating a generic reason of “discussing business opportunities” without elaborating on the agenda or the nature of the project. This lack of detail renders the invitations suspicious, suggesting that they may have been fabricated with ulterior motives and *malafide* intentions.

4.7. The Petitioner, fearing imminent adverse action against himself, is attempting to abscond from the jurisdiction of this country to evade potential action from various investigative and regulatory bodies. The Petitioner’s actions thus far have been marked by an evident lack of cooperation, exemplified by both his and his son’s failure to provide critical information, as well as his own refusal to appear before the concerned authorities. In light of these circumstances, there is a genuine concern that if the Petitioner is permitted to depart from the country, he may choose not to return, thereby



evading accountability and undermining the legal process.

ANALYSIS AND FINDINGS

5. A Look Out Circular serves as a preventive measure to restrict an individual from leaving the country, particularly when there are reasonable grounds to believe that such departure may hinder legal proceedings or jeopardize investigations into serious transgressions. While the issuance of an LOC aims to safeguard the interests of justice, it must be reconciled with the constitutional guarantees of personal liberty. The right to travel abroad has been recognized as an integral aspect of the right to life and personal liberty enshrined under Article 21 of the Constitution of India. This principle was firmly established in the landmark judgments of ***Maneka Gandhi v. Union of India***²¹ and ***Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer and Ors.***²² where the Supreme Court held that restrictions on such a right must be just, fair and reasonable, adhering to the requirements of procedural due process.

6. The Ministry of Home Affairs,²³ as the nodal ministry responsible for issuing guidelines for international travel, has stipulated that an LOC may be issued in cases of cognizable offences under the Bharatiya Nyaya Sanhita, 2023 and other penal laws. Its scope can only be expanded under exceptional circumstances. Clause 'J' of the Office Memorandum dated 27th October, 2010, and its subsequent amendment through the Office

²¹ (1978) 1 SCC 248

²² AIR 1967 SC 1836



Memorandum dated 5th December, 2017, are instructive in this regard, which read as under:

“Office Memorandum dated 27th October, 2010

"g) 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.

h) In cases where there is no cognizable offence under IPC or 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.

XX ... XX ... XX

j) In exceptional cases, LOCs can be issued without complete parameters and/or case details against CI suspects, terrorists, anti/national elements etc. in larger national interest."

Office Memorandum dated 27th October, 2010, as amended on 5th December, 2017

“Amendment-

“In exceptional cases, LOCs can be issued even in such cases, as would 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) of the above-referred OM, 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 Indian 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.

Instead of:

“In exceptional cases, LOCs can be issued without complete parameters and/or case details against CI suspects, terrorists, anti/national elements etc. in larger national interest.”

7. The MHA consolidated these guidelines through Office Memorandum

²³ “MHA”



“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 suppression 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:-

(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 BOI 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 to BoI 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, as 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.”

8. These guidelines highlight that an LOC can be issued without fulfilling all parameters only in exceptional cases, in larger public interest. Such restrictions must therefore, be founded on strict compliance with the law and justify the compelling circumstances.

9. The scope of “detrimental to the economic interest of India,” as mentioned in Clause ‘L’ of the 2021 Office Memorandum, has been interpreted narrowly by a Coordinate Bench of this Court in **Prateek Chitkara v. Union of India**.²⁴ The Court observed:

“82. The term “detrimental to economic interest” used in the Office Memorandum is not defined. Some cases may require the issuance of a look-out circular, if it is found that the conduct of the individuals concerned affects public interest as a whole or has an adverse impact on the economy. Squandering of public money, siphoning off amounts taken as loans from banks, defrauding depositors, indulging in hawala transactions may have a greater impact as a whole which may justify the issuance of look-out circulars. However, issuance of look-out circulars cannot be resorted to in each and every case of bank loan defaults or credit facilities availed of for business, etc. Citizens ought not to be harassed and deprived of their liberty to travel, merely due to their participation in a business, whether in a professional or a non-executive capacity. The circumstances have to reveal

²⁴ 2023 SCC OnLine Del 6104



a higher gravity and a larger impact on the country.”

10. Thus, mere inability to repay loans, absent any criminal wrongdoing or material to show or squandering or siphoning off public money, cannot justify curtailing an individual’s right to travel, as guaranteed under Article 21 of the Constitution of India.²⁵

11. In light of the legal framework and decisions noted above, this Court shall now proceed to examine the allegations levelled against the Petitioner, to determine whether the apprehensions raised by the investigative agencies justify the continued imposition of restrictions on Petitioner’s right to travel.

Previous Writs for Suspension of LOC

12. To address the Respondents’ objection of *res judicata*, it is necessary to examine whether the present petition raises issues that were conclusively adjudicated in W.P.(Crl.) 2332/2022. The said petition, filed by the Petitioner seeking suspension of the LOC, was dismissed through order dated 24th November, 2022. The relevant observations made in the said decision are as follows:

“6. The learned counsel for the SFIO on the other hand submits they are investigating the matter qua cheating by the petitioner’s company of the banks to the tune of Rs.12,300 Crores approx. and gave a list of 38 such banks in its status report. It is alleged the petitioner has been the Managing Director of PLL and has been in direct and indirect control of the affairs of PLL and its subsidiaries, based in India or in overseas jurisdiction and has been associated with more than 100 such like companies.

7. It is alleged the petitioner is not co-operating in the investigation and is giving evasive replies and is shirking from holding any accountability and is deliberately seeking time to provide information. He has admitted his son Mr.Shiv Punj was also associated in the business of PLL.

²⁵ **Vikas Goel v. Union of India**, W.P.(C) 14837/2022, decided on 12th July, 2024



8. The learned counsel also highlighted the role of the petitioner in M/s.Domus Lloyd Contracting Limited (DLCL) in which PLL has a major stake. He refers to the statement of Mr.Rahul Maheshwari who stated PLL manages to generate liquidity for Mr.Shiv Punj in Dubai and both father and son, the promoters of PLL, have been transferring money outside India viz. transferring it to their own accounts or accounts of their relatives who would finally on their directions would transfer the money back to the promoters. PLL on the directions of the petitioner has done substantial investment in DLCL, registered in overseas jurisdiction as stated in the status report.

9. It is alleged M/s.Chirag Techno FZCO is in actual control of the petitioner and it is nothing but a camouflage for hiding diverting assets, funds and evading legal and law enforcement consequences after duping public sector banks money borrowed by PLL. It has been found the amount receivable from vendors of PLL has been directly remitted to DLCL instead of receiving such amount in trust and retention account. The reports states the payment to DLCL had been made prior to making the payments to the secured creditors. It has also come to the notice payments of huge amounts have been made to number of entities in the name of consultancy fee in overseas from PLL and its group companies and also to the promoters of PLL i.e., the petitioner and his son. Further it is stated the petitioner is associated with M/s.Cawdor Enterprises Limited registered in British Virgin Islands (BVI), which is a major shareholder of PLL whose beneficiary is the petitioner herein and he has received a huge amount as dividend from PLL.

10. Though the petitioner herein has bank account with the First Abu Dhabi Bank but he had denied having any account related to him. The investigation also reveal infusion of funds through ATM cash deposits to the tune of AED 10,461,076.77 and it has further come to the notice these accounts receive huge value inward wire transfer from many companies including M/s.Uphill Profit Worldwide Limited, wherein the petitioner and his son are the beneficial owners.

11. Similarly, the Income Tax Department has also found in investigation a quantum of 1.7 million USD being sent to M/s.Trejo Associated SA in British Virgin Islands (BVI). Secondly, an amount of GBP 2,12,907 first parked in the Julius Baer Bank Singapore account of petitioner was transferred to M/s.Uphill Profit Worldwide Limited in which the petitioner and his son are the beneficial owners. It is alleged replies have been received from the competent authority and EOI request is still pending.

12. Thus, it is argued LOC was necessitated by the fact the petitioner has committed multiple violations including a bank fraud of siphoning off funds to offshore accounts thereby creating foreign assets as a mean of escaping



the consequences of his actions. His son is staying abroad and has not returned to India in the last two years and the facts do disclose the petitioner and his family have means to sustain outside country. There exist foreign interests which can well take care of their life and livelihood away from the consequences of their actions in India that hold them liable for punishment.

XX ... XX ... XX ...

20. Thus, considering the fact the investigation is at initial/crucial stage and the petitioner allegedly is evading queries and has promised to give replies only on 09.12.2022 and millions have been transferred by him to foreign accounts per investigation till date, hence the discretion needs to be exercised cautiously moreso when the petitioner's son has not returned to India for the last two years and is not co-operating. Thus, considering the allegations of siphoning off huge amounts and the investigation under the Black Money (Undisclosed Foreign income and assets) and Imposition of Tax Act, 2015 being at initial stage I am not inclined to suspend the LOC at this stage. The petition is thus dismissed. Pending application(s), also stands disposed of."

[Emphasis Supplied]

13. The principle of *res judicata*, enshrined in Section 11 of the Code of Civil Procedure, 1908, precludes a Court from adjudicating an issue that has been directly and substantially decided in a prior proceeding between the same parties. However, the doctrine of *res judicata* does not rigidly apply to writ proceedings, especially in cases where ongoing violations of fundamental rights are alleged. Even the principle of constructive *res judicata* which is often applied to ensure judicial finality, cannot prevent the enforcement of fundamental rights when the cause of action has undergone change. When subsequent developments alter the factual or legal matrix, courts retain the flexibility to revisit and adjudicate such matters to ensure



justice.²⁶ In such cases, courts must adopt a pragmatic approach, balancing the need for judicial finality with the imperative to protect constitutional rights in light of new and compelling circumstances. Thus, the doctrine of *res judicata* or constructive *res judicata* cannot be stretched to perpetuate restrictions on fundamental rights, particularly when the justification for such restrictions has dissipated.

14. In the present case, while Petitioner's earlier request for suspension of the LOC in W.P.(Crl.) 2332/2022 was declined, the doctrine of *res judicata* cannot mechanically bar the current petition. This is because the dismissal of the earlier writ petition was premised in the nascent stage of the SFIO investigation and the preliminary nature of the proceedings under the Black Money Act at that time. However, the circumstances prevailing at the time of adjudicating W.P.(Crl.) 2332/2022 have significantly changed. The assessment proceedings under the Black Money Act have since been concluded. These proceedings have quantified the taxable undisclosed assets of the Petitioner at INR 4,37,19,020/-, resulting in a computed tax liability of INR 1,31,15,710/-. This assessment is currently under challenge by the Petitioner before the Commissioner of Income Tax (Appeals)-31, New Delhi. Moreover, *vide* Assessment Order dated 30th March, 2024, the total quantified taxable undisclosed assets of the Petitioner's son, Mr. Shiv Punj, has been assessed at NIL.

15. Hence, the primary factor that influenced the Court's decision in W.P.

²⁶ See also: *Devilal Modi v. States Tax Officer, Ratlam and Others*, 1964 SCC OnLine SC 17



(Crl.) 2332/2024 to deny relief to the Petitioner is no longer applicable.

Proceedings under the RBI Master Circular on Fraud

16. The proceedings initiated by IDBI Bank under the RBI's guidelines, alleging siphoning of funds by PLL, merit consideration. The classification of PLL's account as "fraud" by IDBI Bank was previously challenged before this Court in W.P.(C) 10796/2020. On 12th May, 2023, this Court set aside the Financial Monitoring Report and the classification of PLL's account as fraudulent. However, this decision was rendered on account of procedural infirmities, resting on the lack of an opportunity of hearing provided to PLL rather than a substantive adjudication on the merits of the allegations. SFIO has correctly contended that the ruling did not exonerate PLL or the Petitioner but was limited to ensuring compliance with principles of natural justice.

17. Following this decision, IDBI Bank issued a fresh order on 5th July, 2024, again classifying PLL's account as fraudulent. The Petitioner challenged this order in W.P.(C) 9461/2024, leading to an interim order dated 16th July, 2024, whereby this Court stayed the operation of the impugned classification. Pertinently, the stay order granted liberty to IDBI Bank to report its findings to the RBI and to approach the CBI or the Police for appropriate proceedings against the Petitioner, in accordance with law. Pursuant to this liberty, IDBI Bank submitted a Financial Monitoring Report dated 18th July, 2024, to the RBI. According to the SFIO, IDBI Bank is yet to file a formal complaint with the CBI, though this step is anticipated.



18. While these proceedings signal the gravity of the allegations, they remain at a preliminary stage. As of now, no formal complaint has been filed by IDBI Bank, nor any FIR has been registered against the Petitioner or PLL. This lack of conclusive action demonstrates that the allegations have yet to translate into definitive findings of wrongdoing.

19. Furthermore, the reliance placed on the RBI's guidelines on Fraud Classification must be tempered by the recognition that such classifications, while indicative, do not constitute judicial or quasi-judicial findings. The Supreme Court in *State Bank of India v. Jah Developers Pvt. Ltd.*²⁷ observed that the classification of an account as fraudulent under the RBI framework carries significant consequences for borrowers and associated individuals. Such classifications are intended as administrative measures for safeguarding the banking system and cannot, by themselves, justify punitive actions or restrictions on personal liberty without proper judicial or statutory adjudication.

20. In the instant case, in absence of any definitive findings or legal proceedings, an imminent risk warranting the continuation of the LOC against the Petitioner cannot be established.

Status of SFIO Investigation

21. The SFIO has laid significant emphasis on allegations of fraudulent activities by PLL and its group entities, asserting that these entities engaged in unlawful trading transactions, which ultimately led to their default on

²⁷ (2019) 6 SCC 787



financial obligations. The Petitioner's role as Director during the relevant period has been highlighted to establish his involvement in these activities.

22. The SFIO investigation against the Petitioner commenced on 22nd May, 2019. However, despite the passage of more than five years, no interim or final report has been filed under Sections 212(11) and 212(12) of the Companies Act, 2013. The Petitioner, on his part, has actively participated in the investigation by attending hearings and providing documents upon request. While the SFIO alleges non-cooperation, it must be noted that the Petitioner cannot be compelled to self-incriminate. Article 20(3) of the Constitution of India guarantees protection against self-incrimination, and the obligation of the Petitioner is limited to submitting documents, providing truthful responses, and disclosing relevant assets. The principle that failure to confess cannot be equated to non-cooperation was explicitly upheld in *Santosh s/o Dwarkadas Fafat v. State of Maharashtra*,²⁸ where the Court observed that demanding a confession would violate constitutional safeguards.

23. In any event, SFIO possesses the mechanism to obtain evidence independently, including through forensic analyses of PLL's financial accounts. The liquidator of PLL, appointed during the liquidation proceedings, holds custody of all relevant company records, which are readily accessible to the SFIO for their investigation. It is also noteworthy that the investigating agencies are already apprised of the Petitioner's

²⁸ 2017 9 SCC 714



foreign assets, leaving little room for concealment or evasion. Crucially, there have been no credible allegations of evidence tampering, witness intimidation, or any conduct by the Petitioner that could potentially derail the investigation. In such circumstances, the indefinite continuation of the LOC imposed on the Petitioner cannot be justified. As observed in multiple judgments, including *Maneka Gandhi v. Union of India*,²⁹ any restriction on personal liberty must meet the test of proportionality and be reasonably connected to the legitimate aims sought to be achieved. Here, the prolonged nature of the investigation, coupled with the absence of tangible progress or imminent charges, raises questions about the necessity and proportionality of continued restrictions on the Petitioner's movement.

24. In sum, while the SFIO's concerns regarding the gravity of the allegations cannot be dismissed outright, investigations must not become an instrument for imposing indefinite constraints on an individual's fundamental rights, particularly when no substantive evidence has been presented to establish non-cooperation or obstruction by the Petitioner.

Discharge from Personal Guarantees

25. Another significant development that merits mention is the discharge of the Petitioner from his personal guarantees. The DRT, New Delhi, in two separate orders dated 5th March, 2022³⁰ and 6th May, 2022,³¹ relieved the Petitioner of liabilities arising from personal guarantees furnished in

²⁹ (1978) 1 SCC 248

³⁰ in O.A. No. 02/2020 titled *IDBI v. Atul Punj*

³¹ in O.A. No. 400/ 2022 titled *SBI v. Atul Punj & Ors*



connection with PLL's financial obligations. These orders determined that the Petitioner's guarantees were no longer enforceable, thereby extinguishing his direct liability towards the creditors of PLL.

26. Furthermore, an application filed by the Union Bank of India under Section 95 of the Insolvency and Bankruptcy Code, 2016,³² seeking to invoke the Petitioner's personal guarantees, was dismissed by the NCLT in its order dated 10th January, 2024. The NCLT's relied on the DRT's findings, which had already discharged the Petitioner from his personal guarantees.

CONCLUSION

27. The right to travel abroad, being an essential component of the right to personal liberty under Article 21 of the Constitution, cannot be curtailed arbitrarily or indefinitely. Restrictions such as an LOC must pass the test of proportionality and necessity, ensuring that they are imposed only when supported by credible material. In the present case, while the State's interest in investigating allegations of financial impropriety is undeniable, this Court finds that the absence of tangible material on record of the Petitioner's intent to abscond or tamper with the investigation tilts the balance in favour of permitting conditional travel.

28. The LOC against the Petitioner is primarily stemming from the financial defaults of the company for which the Petitioner served as Director. In the absence of conclusive findings after five years of



investigation and with the Petitioner's continued cooperation, the prolonged restrictions on his right to travel cannot be justified. Furthermore, the Petitioner has expressed his willingness to furnish security to mitigate flight risk. However, keeping in mind the nature of allegations levelled against the Petitioner, in the opinion of the Court, blanket quashing of the LOC at this stage would be premature. Therefore, in order to balance Petitioner's right to travel abroad and the State's interest in ensuring his availability for investigation, this Court is inclined to permit the suspension of LOC against the Petitioner by the Respondents to allow him to travel to the United Kingdom for a period of 15 days commencing from 1st February, 2025 i.e., till 15th February, 2025, subject to following conditions:

- (a) Petitioner shall deposit, by way of a security, an FDR amounting to INR 5 Crores with the Registrar General of this Court, which shall be kept on an auto-renewal mode.
- (b) Petitioner shall deposit the original title deeds of the property (valued at INR 53.89/- Crores), which is in the name of his wife, with the Registrar General of this Court. This security shall be accompanied by an undertaking submitted by the Petitioner's wife that she would have no objection in case the afore-noted property is forfeited in the event any of the aforesaid conditions imposed on Petitioner are violated. In the undertaking to be submitted before the Registrar, Petitioner's wife shall also specifically undertake that she shall not alienate or mortgage the afore-noted property

³² in (IB)-68(PB)/2021 titled *Union Bank of India v. Atul Punj*



without the permission of the Court, subject to further orders.

(c) Petitioner shall file a detailed affidavit disclosing his complete itinerary, including his stay at various locations abroad as well as telephone numbers and residential/ hotel addresses. He shall also file an undertaking that he shall strictly adhere to the itinerary mentioned in the affidavit and not visit any other stations. He shall also furnish a copy of the air tickets purchased by him before the Registrar General.

(d) Petitioner shall file an undertaking before the Registrar General that he shall return to the country by 15th February, 2025. Petitioner shall intimate the Registrar General before leaving as well as within 72 hours of his return from abroad.

(e) Petitioner shall also provide contact numbers where he shall be available during his stay abroad and at least one of the said contact numbers shall be kept operational at all times, subject to all fair exceptions, including the period he is on board the aircraft.

(f) Petitioner shall file a self-attested copy of his passport to the Court, along with a copy of the visa, on his return to India.

(g) Petitioner shall also deposit the passport of his wife in India with the Registrar General of this Court.

29. The permission to travel abroad given in this order shall be subject to all other applicable conditions and shall not be deemed as a direction to any other authority. In case any of the afore-noted conditions are violated, the security shall be forfeited.



30. With the above directions, the present petition is disposed of. The Petitioner is granted liberty to approach the Court upon the completion of the SFIO investigation for seeking quashing or suspension of the LOC issued by the Respondents, should the circumstances warrant such action.

31. List before the Registrar General for verification on 14th January, 2025.

SANJEEV NARULA, J

JANUARY 7, 2025

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