R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 01ST DAY OF SEPTEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.6227 OF 2024 (GM - POLICE)

C/W

WRIT PETITION No.5800 OF 2024 (GM - POLICE)

IN WRIT PETITION No.6227 OF 2024

BETWEEN:

SRI AMIT ASHOK VYAS
S/O ASHOK VYAS,
AGED ABOUT 41 YEARS,
RESIDING AT FLAT NO.B/306
HARIKRISHNEAST, THANE DISTRICT,
MUMBAI – 421 201
PRESENTLY RESIDING AT NO.79,
STRUAN PLACE, INVERKEITHING,
SCOTLAND, KY 11PB,
UNITED KINGDOM.

... PETITIONER

(BY SRI RAVINDRANATH K., ADVOCATE)

AND:

1 . UNION OF INDIA
MINISTRY OF EXTERNAL AFFAIRS,
SO(DB) 74 B SOUTH BLOCK,

NEW DELHI – 110 001
REPRESENTED BY CHIEF SECRETARY.

2 . THE CHIEF IMMIGRATION OFFICER
BUREAU OF IMMIGRATION,
MUMBAI INTERNATIONAL AIRPORT
MAHARASHTRA – 400 099.

3 . THE STATION HOUSE OFFICER
BASAVANAGUDI WOMEN POLICE STATION,
REPRESENTED BY SPP,
HIGH COURT BUILDING,
BENGALURU – 560 001.

4 . THE COMMISSIONER OF POLICE
INFANTRY ROAD,
BENGALURU – 560 001.

... RESPONDENTS

(BY SRI ARVIND KAMATH K., ADDL. SOLICITOR GENERAL OF INDIA A/W
SRI H.SHANTHI BHUSHAN, DSGI FOR R-1 AND R-2;
SRI HARISH GANAPATHY, HCGP FOR R-3 AND R-4;
MS.SARAH SUNNY, ADVOCATE FOR PROPOSED APPLICANT I.A.NO.1/2024 (DR.RENUKA V.N., SIGN LANGUAGE INTERPRETER FOR MS.SARAH SUNNY)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE R-3 AND 4 TO RECALL THE LOOKOUT CIRCULAR ISSUED IN CONNECTION WITH THE CRIME NO. 227/2023 BASAVANAGUDI WOMEN POLICE STATION FOR THE OFFENCE UNDER SECTION 498(A), 504, 506 OF IPC R/W SECTION 3 AND 4 OF D.P.ACT ON THE FILE OF THE 37TH ACMM BENGALURU CITY FORTHWITH THE PERMIT THE PETITIONER TO TRAVEL ABOARD VIDE ANNX-G.

IN WRIT PETITION No.5800 OF 2024

BETWEEN:

SAVITHA PAREEK
AGED ABOUT 34 YEARS
W/O AMIT ASHOK VYAS
RESIDING AT NO.16, JOSHI NIKETAN
4TH CROSS, MANJUNATHA LAYOUT
R.T.NAGAR
BENGALURU – 560 032.

... PETITIONER

(BY MS.SARAH SUNNY, ADVOCATE)

AND:

1 . UNION OF INDIA
THROUGH ITS JOINT SECRETARY
MINISTRY OF HOME AFFAIRS
NORTH BLOCK
NEW DELHI – 110 001.

2 . INDIAN BUREAU OF IMMIGRATION
AT CHHATRAPATI SHIVAJI MAHARAJ
INTERNATIONAL AIRPORT
THRUGH COMMISSIONER OF IMMIGRATION
NAVPADA VILE, PARLE EAST
VILE PARLE
MUMBAI – 400 099.

3 . STATE OF KARNATAKA
THROUGH COMMISSIONER
OF POLICE BENGALURU CITY
INFANTRY ROAD,
BENGALURU, KARNATAKA – 560 001.

4. INSPECTOR OF POLICE
BASAVANAGUDI WOMEN POLICE STATION
9TH MAIN ROAD, BASAVANAGUDI
BENGALURU, KARNATAKA – 560 004.

5. AMIT ASHOK VYAS
AGED ABOUT 39 YEARS
S/O ASHOK VYAS
R/O FLAT NO.336
HARIKRISHNA SO
MANPADA ROAD
NEAR PANDURANG SCHOOL
DOMBILVIL EAST, THANE CITY
MAHARASHTRA – 421 201.

... RESPONDENTS

(BY SRI K.ARVIND KAMATH, ADDL.SOLICITOR GENERAL OF INDIA
A/W
SRI H.SHANTHI BHUSHAN, DSGI FOR R-1 AND R-2;
SRI HARISH GANAPATHY, HCGP FOR R-3 AND R-4;
SRI RAVINDRANATH K., ADVOCATE FOR R-5)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE SECTION 41(A) NOTICE ISSUED BY THE R-4 VIDE ANNX-Q; DIRECT THE R-4 TO ARREST R-5 AND PRODUCE BEFORE THE JURISDICTIONAL MAGISTRATE IN ACCORDANCE WITH LAW; DIRECT THE R-3 TO INITIATE DEPARTMENTAL ENQUIRY AGAINST THE SUB INSPECTOR OF POLICE AND THE HEAD CONSTABLE OF BASAVANAGUDI WOMEN POLICE STATION; DIRECT THE R-3 TO CONSTITUTE SPECIAL INVESTIGATION TEAM (SIT) / REFER THE MATTER TO CENTRAL BUREAU OF INVESTIGATION (CBI) FOR A COURT MONITORED INQUIRY / INQUEST INTO THE MATTER AND REGISTER AN FIR AGAINST THE SUB INSPECTOR OF POLICE AND THE HEAD CONSTABLE OF BASAVANAGUDI WOMEN POLICE STATION, UNDER THE RELEVANT PROVISION OF THE INDIAN PENAL CODE, 1860 AND THE PREVENTION OF CORRUPTION ACT,

1988; DIRECT THE R-1 TO ISSUE A DETAILED GUIDELINES REGARDING THE PROCEDURE TO BE FOLLOWED WHEN A PERSON AGAINST WHOM A LOOK OUT CIRCULAR BEING ISSUED, ARRIVES IN THE TERRITORY OF INDIA.

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

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

Both these petitions are preferred by the husband and wife. In writ Petition No.5800 of 2024 wife is the petitioner and Union of India, Bureau of Immigration, the State, the Station House Officer of jurisdictional Police Station and the husband are the respondents.

Writ Petition No.6227 of 2024 is filed by the husband seeking prayers *inter alia* for recall of the Look Out Circular ('LOC' for short) hanging on his head. The respondents therein are the Union of India, Chief Immigration Officer, Station House Officer of Basavanagudi Women's Police Station, Commissioner of Police, City of Bangalore.

2. The prayer in Writ Petition No.5800 of 2024 filed by the wife is quashment of Section 41A Cr.P.C., notice issued against the 5th respondent/husband and a consequential mandamus seeking a direction to arrest the 5th respondent, produce him before the jurisdictional Magistrate and to initiate a departmental inquiry against the officers who had let him off and a further mandamus to issue detailed guidelines regarding procedure to be followed.

3. Heard Ms. Sarah Sunny, learned counsel appearing for the petitioner in W.P.5800 of 2024 and for the proposed applicant in W.P.No.6227 of 2024 along with Dr. Renuka V.N., Sign Language Interpreter for Ms. Sarah Sunny; Sri K.Arvind Kamath, learned Solicitor General for respondents 1 and 2 in both the writ petitions; Sri Harish Ganapathi, learned High Court Government Pleader appearing for respondents 3 and 4 in both the writ petitions and Sri K.Ravindranath, learned counsel appearing for respondent No.5 in W.P.No.5800 of 2024 and for the petitioner in Writ Petition No.6227 of 2024.

4. Facts, in brief, germane are as follows:-

4.1. For the sake of convenience the parties to the *lis* in both these petitions would be addressed as per their relationship i.e., husband and wife. One Amit Ashok Vyas is the husband and one Smt. Savitha Pareek is the wife. In terms of the averments in the petition filed by the husband, he goes to Scotland for his higher studies and has been continuously residing in Scotland. The husband later becomes a citizen of United Kingdom after several years of residence in Scotland. On becoming a citizen of United Kingdom, the husband now has a passport of United Kingdom. On 01-04-2019 the husband got divorce from his first wife through a Court of law in Scotland. The averment is that, since the husband became single after the divorce, his family members uploaded his resume in a marriage portal namely All India Pareek Vaivahik Samiti.

4.2. The parents of the wife after looking several profiles, are said to have agreed to get their daughter married to the husband. On 05-04-2023, the parents of both the husband and the wife fixed

the marriage on 21-05-2023. The wife claims that it is for the first time she saw the husband live on the said date. The next day i.e., on 22-05-2023 the marriage comes to be registered. On 23-05-2023 an incident crops up and according to the narration in the complaint by the wife, she comes across a message on the phone of the husband from one Ms.Trupti, which according to the wife was inappropriate and sexually explicit conversation. This is said to have caused distress to the wife. When the wife confronts with the husband, it is the allegation that the husband physically assaulted her and whipped with his belt. This incident has happened on 23-05-2023. The husband returns to Scotland, resumed his work and the marriage has not even consummated.

4.3. Several allegations galore by the wife that the husband and his family members have ill-treated her for demand of dowry. Two months passed by. Four proceedings are instituted by the wife – the first proceeding by registering a complaint on 27-07-2023 for offences punishable under Sections 498A, 504 and 506 of the IPC read with Section 3 and 4 of the Dowry Prohibition Act, 1961; the second proceeding is seeking annulment of marriage before the

Family Court in M.C.No. 4893 of 2023 on 31-07-2023; the third proceeding seeking maintenance from the hands of the husband under Section 125 of the Cr.P.C., in Criminal Miscellaneous No.637 of 2023 which was filed on 01-08-2023 and the fourth proceeding in Criminal Miscellaneous No. 116/2023 before the Magistrate Court under the Prevention of Women from Domestic Violence Act, 2005 which was also filed on 01-08-2023. Therefore, between 27-07-2023 and 01-08-2023 four proceedings sprang from the hands of the wife. The husband all through was in Scotland. Subsequent to filing of the FIR, notices were issued to the husband. When he failed to appear, the notices were served through the Consulate General of India at Scotland. But the husband never appeared. On 18-02-2024 owing to certain medical emergency of his sister, the husband lands in India. The moment he lands, he was detained by the Immigration Authorities, at Mumbai. He then comes to know that there has been a crime registered against him before the Basavanagudi Women's Police Station in Crime No.227 of 2023.

4.4. On 18-02-2024, it appears that since the crime was registered before the Basavanagudi Women's Police Station, he was

brought to Bangalore. On 19-02-2024 the husband communicates to his employer that there is a LOC issued against him, seeks leave of absence and then would both these petitions emerge, one by the wife for the aforesaid prayer and the other by the husband seeking recall of the LOC. The matter was being heard with short dates.

4.5. During the hearing of the matter, it appears that the husband suppressing pendency of the subject petition and day-to-day hearing of the matter, files an application before the learned Magistrate where Crime No.227 of 2023 was pending adjudication. The application was for recall of the LOC. The learned Magistrate without hearing any person except the State, recalls the LOC, permits the husband to travel back to Scotland. The next day, the husband prefers a memo seeking to withdraw the petition filed by him. It is then this Court requested the Additional Solicitor General of India and the Deputy Solicitor General of India to appear and assist the Court whether the learned Magistrate would have recalled the LOC and permitted the husband to travel back to Scotland, as the act of the learned Magistrate in entertaining an application for

recall of the LOC was on the face of it without jurisdiction. The matter was heard at that stage.

5. The learned counsel appearing for the husband who has preferred W.P.No.6227 of 2024 files a memo seeking to withdraw the writ petition. The memo reads as follows:

> "MEMO FOR WITHDRAWAL
>
> The undersigned hereby requesting this Hon'ble Court to please to pass an order permitting to withdraw the above writ petition as not pressed. Hence, this memo.
>
> Sd/- Advocate for petitioner Sd/- Petitioner"

Nothing is stated in the memo for withdrawing the writ petition. The memo is dated 14-03-2024. This Court from time to time in Writ Petition No.6227 of 2024 preferred by the husband, had passed on 28-02-2024, 04-04-2024 and 08-04-2024, the following orders:

> "28-02-2024.
>
> 1. The petitioner calls in question the lookout circular issued against the petitioner pursuant to registration of crime in Crime No.227/2023 for the offences punishable under Sections 498(A), 504, 506 of IPC read with Sections 3 and 4 of Dowry Prohibition Act.
>
> 2. The petitioner in the companion petition is the complainant who is the wife of the present petitioner. Several grievances are projected by the wife in the complaint made before the Jurisdictional Police/ Commissioner of Police. The

investigation has commenced against the petitioner and others who are arraigned as accused in Crime No.227/2023. Therefore, lookout circular is issued as originated from the hands of Deputy Commissioner of Police as obtaining under the Circular issued by the Ministry of External Affairs of the Year 2021.

3. Therefore, the petitioner is now seeking quashment and interim order of stay of the lookout circular. The projection is that he is an employee of Blackrock, Edinburgh Branch, Scotland and he would lose his employment, if he would not get back to Scotland. He would further submit that he is only an Overseas Citizen of India card holder and holds a citizenship of United Kingdom.

4. In the light of the crime so registered and necessity of the petitioner for investigation, learned HCGP shall place on record the stage of investigation on the next date of hearing. It is needless to observe that the petitioner shall co-operate in the investigation. Consideration of interim prayer would be made on the next date of hearing after looking into the stage of investigation and co-operation of the petitioner in the investigation.

5. Learned counsel for the petitioner-husband submits that the crime was registered in the month of August and six months have passed, but the Investigating Officer has not proceeded with the investigation.

6. List the matter on 06.03.2024 in the fresh matter/s list.

7. Learned counsel appearing for the respondent-husband at this juncture would submit that he is ready and willing to settle the dispute with the wife, if she is so willing. The pendency of this petition or the aforesaid order will not come in the way of couple sitting and settling the issues, on any date before the next date of hearing."

…

"04-04-2024

Heard the learned counsel appearing for petitioners, learned Additional Solicitor General of India Sri Arvind Kamath

and learned Deputy Solicitor General of India Sri H.Shanthi Bhushan appearing for the respondent/Union of India.

Learned counsel Miss. Sarah Sunny submits that she has already entered appearing for the petitioner/wife in W.P.No.5800 of 2024. Learned counsel Miss. Sarah Sunny has a disability, she is hearing and speech impaired.

In the circumstance, I deem it appropriate to direct the Registry of the Court to secure a sign language interpreter for the hearing and speech impaired Advocate on record. The Registry shall communicate to the Ministry of Electronics and Information Technology and secure a sign language interpreter from the All India Institute of Speech and Hearing to be present to assist Miss. Sarah Sunny, learned counsel on the next date of hearing.

Registry is directed to take steps towards appropriate communication forthwith.

Learned counsel appearing for the petitioner in the companion petition submits that the husband has filed a criminal petition in Crl.P.No.3276 of 2024. Since the entire issue is being dealt with by this Court, the Registry to tag Criminal Petition No.3276 of 2024 along with these matters and post them all before the Court on 8-04-2024 for further hearing at 2.30 p.m."

…

"08-04-2024

W.P.No.5800 of 2024:

Learned Additional Solicitor General of India ('ASGI' for short) files an application calling in question the order which recalled the Look Out Circular ('LOC' for short) issued against the husband/respondent No.5. Learned ASGI has placed the memorandum of facts on the ground that the LOC is an executive order and the learned Magistrate would not get jurisdiction to entertain or even tinker the said executive order. Learned ASGI would submit that all the Magistrates of the State are time and again passing such orders either quashing the LOC or recalling the LOC permitting travel.

Learned ASGI would submit that this has lead to chaos i.e., a situation where executive orders are being entertained by the Magistrate where a Bureau of Immigration or the Originator is not made a party and the State Public Prosecutor is heard and orders are passed. Therefore, the application is taken on record.

Learned counsel Sri.Ravindranath.K. appearing for husband/respondent No.5 would submit that he would wish to file objections, not on the issue of Magistrates entertaining the executive orders, but the order now that is called in question is an order pursuant to which the husband was permitted to travel abroad, by a recall of the LOC, by the learned Magistrate. Learned counsel Sri.Ravindranath.K is permitted to file his statement of objections.

This Court on 04.04.2024 had passed the following order:

> "Heard the learned counsel appearing for petitioners, learned Additional Solicitor General of India Sri.Arvind Kamath and learned Deputy Solicitor General of India Sri.H.Shanthi Bhushan appearing for the respondent/Union of India.
>
> Learned counsel Miss.Sarah Sunny submits that she has already entered appearance for the petitioner/wife in W.P.No.5800 of 2024. Learned counsel Miss.Sarah Sunny has a disability, she is hearing and speech impaired.
>
> In the circumstance, I deem it appropriate to direct the Registry of the Court to secure a sign language interpreter for the hearing and speech impaired Advocate on record. The Registry shall communicate to the Ministry of Electronics and Information Technology and secure a sign language interpreter from the All India Institute of Speech and Hearing to be present to assist Miss.Sarah Sunny, learned counsel, on the next date of hearing.
>
> Registry is directed to take steps towards appropriate communication forthwith.
>
> Learned counsel appearing for the petitioner in the companion petition submits that the husband has filed a criminal petition in Crl.P.No.3276 of 2024. Since the entire issue is being dealt with by this Court, the Registry to tag Crl.P.No.3276 of 2024 along with these matters and post

them all before the Court on 08.04.2024 for further hearing at 2.30 p.m."

The Registry was directed to co-ordinate with the DSGI to secure assistance of a sign language interpreter from the All India Institute of Speech and Hearing, a Government of India institution. The Union of India has taken steps to secure the sign language interpreter, for the Advocate on record who suffers from speech and hearing impairment. Therefore, the efforts put up by the Union of India through the Deputy Solicitor General of India and ASGI merits appreciation, apart from the Registry of the Court which has co-ordinated with the Union of India.

The State Legal Services Authority is directed to pay the necessary fees to the sign language interpreter Smt.Rubby, AIISH, Mysuru, for the appearance today and whenever she would appear in the case at hand.

Learned counsel for the petitioner/wife Miss.Sarah Sunny has made elaborate submissions through the sign language interpreter. The submissions of Miss. Sarah Sunny merits appreciation, as despite being in the world of silence she is now the voice of the petitioner/wife, albeit, through the sign language interpreter.

Crl.P.No.3276 of 2024:

Learned Government Advocate is directed to accept notice for the 1st respondent. Miss.Sarah Sunny, learned counsel accepts notice for the 2nd respondent.

The State if the investigation is not complete, in the garb of investigation shall not take any coercive steps against the mother-in-law and father-in-law i.e., petitioners 2 and 3. However, petitioners 2 and 3 are directed to cooperate with the investigation, if the investigation is not complete. The Investigating Officer shall conclude the investigation qua petitioners 2 and 3 as expeditiously as possible.

Insofar as 4th and 5th petitioners are concerned, learned counsel for petitioners submits that they are the residents of Bombay and have nothing to do with the squabble between the petitioner, mother-in-law, father-in-law and the 2nd

respondent/wife. The only role that they had played is that they had sat for deliberations at the time when the marriage proposal was being moved. This, in the considered view of this Court, would not mean that it attract the offence under Section 498A of the IPC. Therefore, investigation against petitioners 4 and 5 shall remain stayed.

Investigating Officer shall place the investigation material on the next date of hearing.

Heard in part.

List these matters on 19.04.2024 at 2.30 p.m. for further hearing."

Between 02-03-2024 and 08-04-2024 The learned Magistrate passes an order on the memo filed by the husband seeking to recall the LOC. The order passed by the learned Magistrate is on 13-03-2024. It reads as follows:

"ORDERS ON RECALL OF L.O.C.

The accused No.1 by name Mr. AMITH ASHOK VYAS has filed application seeking direction to the P.I of Basavanagudi Women P.S. to recall LOC issued against him.

2. In the application, it is stated that, the accused is presently residing at Scotland and he is having office at Exchange place, U.K., and that he joined for service on 31.10.2022 and stated that he being citizen of U.K., he is not able to stay more days and he has intimated his employer that he will come back on 6-03-2024 and stated that he has obtained anticipatory bail in the instant case and his family members are residing in Mumbai and if he does not go back to his work, he will lose his job and that he has no other source of income and sought to recall the

LOC. The accused No.1 has produced list of copies of documents.

3. Per contra, the learned Senior APP has filed objections to the said application and sought to reject the application. I.O. has also filed report stating that case is still under investigation and also stated that accused may abscond and flee from justice and sought to reject the application.

4. Heard arguments on both sides and I have perused the materials on record.

5. The following point arise for my determination:

(1) Whether the accused No.1 has made out sufficient grounds for issuance of direction to the Basavanagudi Women P.S. for withdrawal of LOC (Lookout notice)?"

6. My finding to the above point is in the affirmative for the following:

REASONS

7. **Point No.1:** On going through the materials on record, it depicts that the Police Sub-Inspector of Basavanagudi Women Police Station has registered FIR in Cr.No.227 of 2023 against the accused No.1 to 5 for the offence punishable u/s 498A,504, 506 of IPC & Sec.3 and 4 of Dowry Prohibition Act. It is to be noted that accused No.1 has been granted anticipatory bail by the Hon'ble District Court in Criminal Miscellaneous No.1795 of 2024. Subsequently, accused No.1 has entered appearance and has been enlarged on bail. Thereafter, accused No.1 has filed the instant application.

8. It is to be noted that the accused No.1 claims that he is working in Scotland and that he has to join back to his work. In the ruling reported in 2000 (1) ALD Cri 20, II decided between Gian Singh v. State of Rajasthan at para-5 it is held:

> **"5. To ensure his attendance in the court when trial begins, we may make a provision, We agree that it would be difficult for the appellant to be present on all posting dates in the trial Court. Therefore, we**

permit him to appear through counsel except on days when his presence is imperatively needed. He must file an application before the trial Court through counsel and seek dispensation of his personal presence and ensure that his counsel would be present on his behalf on days except when his presence is indispensable. If he makes such an application the trial court shall dispense with his physical presence in Court.

9. In the ruling decided in Crl.A.No.179 of 2008 between Suresh Nanda v. C.B.I decided on 24-01-2008, the Hon'ble Apex Court has held that under Article 21 Constitution, no person can be deprived of his right to travel except according to procedure established by law. In the ruling reported in 1989 (43) ELT 3 Bom decided between JitsinghKalirai, Assitt.Collr... v. Kulbir Singh Ahuja decided on 9th June 1989 at para-7 held that:

> **7. In all such cases, it is not that once a case is registered against accused person, he cannot be allowed to go out of the jurisdiction of the Court at all. It is well known that these days the cases do not get over within a short time and if any such thinking is permitted it might as well mean confinement of the accused without trial for years, which is patently improper and illegal. Therefore, each case has to be considered on its own merits and when accused makes an application for the purpose of leaving the jurisdiction of the Court, may be out of Bombay, may be outside India, such an application has to be considered on its merit and the facts and circumstances of each case.**

10. In the light of the principles laid down above, considering the grounds urged in the application as accused No.1 is working in Scotland, he cannot be deprived to visit the said country to carry on with his livelihood. However, to secure the presence of accused during the course of trial and till conclusion of the trial, this Court finds it necessary to impose conditions and the apprehension of prosecution can also be met with. Accordingly, I answer the above Point No.1 in the "Affirmative", and I proceed to pass the following:

ORDER

The application filed by the accused No.1 seeking direction to the Basavanagudi Women P.s. for removal of Lookout notice is hereby allowed. Consequently, PSI of Basavanagudi Women P.S. is hereby directed to withdraw the Lookout notice issued against accused No.1 subject to following conditions:

1. Accused No.1 shall furnish copy of the passport/visa and shall also furnish his official address/residential address and phone numbers before the Court.

2. Accused No.1 shall appear before this Court as and when directed.

3. Accused No.1 shall represent through his counsel during course of trial without assigning any reason.

Put up after final report."

(Emphasis added)

The learned Magistrate venturing far beyond the pale of his authority, arrogated unto himself the power to adjudicate whether the husband had established sufficient grounds to warrant the withdrawal of the LOC. With a stroke of his pen the Magistrate commands its recall thereby enabling the accused to depart the very next day to Scotland, almost immediately thereafter. A perfunctory memo is filed before this Court seeking withdrawal of the writ petition. The act of filing a memo though procedurally unobjectionable, it is

steeped in disquieting undertones. It is therefore this Court cannot but record its grave displeasure at the impropriety of the Magistrate in entertaining such an application, for such jurisdiction vests solely within the constitutional canopy of this Court. While the petition itself stands dismissed as withdrawn, the unsettling act of judicial overreach by the Magistrate, demands a censure which shall be addressed in the companion petition, W.P.No.5800 of 2024.

W.P.No.5800 of 2024:

6. The subject petition is preferred by the wife seeking following prayer:

> "A. Issue the Writ of Certiorari by quashing the Section 41(A) Notice issued by the Respondent No.4 vide ANNEXURE-Q
>
> B. Issue the Writ of Mandamus directing the Respondent No.4 to arrest Respondent No.5 and produce before the Jurisdictional Magistrate in accordance with law.
>
> C. Issue the Writ of Mandamus directing the Respondent No.3 to initiate departmental enquiry against The Sub Inspector of Police and the Head Constable of Basavanagudi Women Police Station.
>
> D. Issue the Writ of Mandamus directing the Respondent No.3 to constitute Special Investigation Team (SIT)/ refer the matter to Central Bureau of Investigation (CBI) for a court monitored Inquiry/inquest into the matter and register an FIR against The Sub Inspector of Police and

the Head Constable of Basavanagudi Women Police Station, under the relevant provision of the Indian Penal Code, 1860 and The Prevention of Corruption Act, 1988.

E. Issue the Writ of Mandamus directing the Respondent No.1 to issue a detailed guidelines regarding the procedure to be followed when a person against whom a Look Out Circular being issued, arrives in the territory of India.

F. Pass such other order/s or reliefs deemed fit under the facts and circumstances of the case."

As observed hereinabove, while permitting withdrawal of the companion petition and the husband travelling back to Scotland, all the prayers that are sought in the petition would become unnecessary to be considered, as those are all events that have already taken place. What remains is the prayer (e) where a mandamus is sought directing issuance of guidelines regarding procedure to be followed when a person against whom a LOC circular is issued arrives on the soil of the nation.

7. The issue need not detain this Court for long or delve deep into the matter. This Court, considering entire spectrum of law, in

the case of **HARSHAVARDHANA RAO K., v. UNION OF INDIA**[1], has held as follows:

"…. …. ….

> **8**. **The issue in the case at hand is not with regard to merit of cases pending between the petitioner and his wife. The issue is with regard to restriction on travel of the petitioner beyond the shores of this nation on the strength of a LOC. LOC issued by Government of India is required to be noticed for a resolution of the lis. Before considering the issue, it is germane to notice the protagonist that would come about in the execution of LOC. LOC is issued by the Police or the Court in some circumstances. Therefore, they are referred as the originator. LOC is transmitted to the Bureau of Immigration to execute the said LOC and the person against whom LOC is issued is the subject of the LOC. Therefore, originator, originates LOC against the subject and transmits the same to the executant viz., Bureau of Immigration. This is the broad framework and how the LOCs are executed. The manner of execution as quoted hereinabove is not in dispute. Once LOC is issued, the Immigration Authorities are bound by the mandates of the said circular to stop the subject, from travelling beyond the shores of the nation for whatever purpose it would be and the Bureau of Immigration would continue to stop every time he seeks to travel, till subsistence of LOC, as it has to be recalled or withdrawn by the originator, the State Police. It is thus a powerful tool at the hands of the State to direct Bureau of Immigration to stall the march of travel of a subject of LOC beyond the shores of the nation**.
>
> **9.** In effect, right to travel, which is a vested right of Article 21 of the Constitution of India, would be taken away by the act of issuance of LOC. Therefore, it is germane to notice the genesis and progress of LOC issued from time to time. The LOC has no specific legal definition. **Statutory sanction for**

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[1] **2022 SCC OnLine Kar. 1713**

issuance of LOC can be traced to Section 10A and 1 OB of the Passports Act, 1967. It is this stand that is being taken by Government of India in all the constitutional courts where LOCs have been questioned. The object for issuance of LOC is to ensure that the subject of LOC becomes available for interrogation, trial or any inquiry. The Official Memorandum issued by Government of India on 27-10-2010 was in response to a judgment rendered by the High Court of Delhi in the case of *Vikram Sharma* v. *Union of India*, 2010 SCC OnLine Del 2475 and *Sumer Singh Salkan* v. *Assistant Director*, ILR (2010) 6 Del 706. The relevant excerpts of the LOC issued on 27-10-2010 as found in para-7, reads as follows:

> **"7. The High Court has answered these questions in its judgment dated 11.8.2010 which arereproduced below for guidance of all concerned agencies:**
>
> **a) Recourse to LOC can be taken by investigating agency in cognizable offences under IPC or other penal laws, where the accused was deliberately evading arrest or not appearing in the Trial Court despite NBWs and other coercive measures and there was likelihood of the accused leaving the country to evade trial/arrest**
>
> **b) The investigating Officer shall make a written request for LOC to the officer as notified by the circular of Ministry of Home Affairs, giving details & reasons for seeking LOC. The competent officer alone shall give directions for opening LOC by passing an order in this respect.**
> **c) The person against whom LOC is issued must join investigation by appearing before I.O. or should surrender before the court concerned or should satisfy the court that LOC was wrongly issued against him. He may also approach the officer who ordered issuance of LOC & explain that LOC was wrongly issued against him. LOC can be withdrawn by the authority that issued and can also be rescinded by the Trial Court where case is pending or having jurisdiction over concerned police station on an application by the person concerned.**
>
> **d) LOC is a coercive measure to make a person surrender to the investigating agency or Court of law. The subordinate courts jurisdiction in affirming or cancelling LOC is**

commensurate with the jurisdiction of cancellation of NBWs or affirming NBWs."

(Emphasis supplied)

In terms of paragraph-7(a) of the Official Memorandum recourse to LOC can be taken by the investigating agency in cognizable offences under the IPC or any other penal laws where the accused was deliberately evading arrest or not appearing before the Trial Court despite issuance of non-bailable warrant and other coercive measures and there was likelihood of the accused leaving the country to evade trial/arrest. The Investigating Officer who investigates into a crime would make a written request for issuance of LOC to the officer notified in the circular giving details and reasons for seeking LOC. The competent officer alone has the power to give directions for opening LOC by passing an order in that respect. The subject against whom the LOC is issued must join investigation by appearing before the Investigating Officer or should surrender before the Court concerned or to satisfy the Court that LOC was wrongly issued against him. LOC may be withdrawn by the authority that issued and also can be rescinded by the Trial Court where the case is pending or having jurisdiction over the concerned Police Station on an application by the subject. This is the broad frame work as to how LOC generates.

10. After issuance of the aforesaid official memorandum several official memoranda have been issued by Union Government. The latest that is said to be in operation is the one issued on 22-02-2021 which is in furtherance of the judgment rendered by the High Court of Delhi in various cases. Therefore, it becomes necessary to notice the conditions stipulated for issuance of LOC in the said official memorandum and relevant clauses of the guidelines stipulated therein read as follows:

"6. The existing guidelines with regard to issuance of Look Out Circulars (LOC) in respect of Indian citizens and foreigners have been reviewed by this Ministry. After due deliberations in consultation with various stakeholders and in supersession of all the existing guidelines issued vide this Ministry's; letters/O.M. referred to in para 1 above, it has

been decided with the approval of the competent authority that the following consolidated guidelines shall be followed henceforth by all concerned for the purpose of issuance of Look Out Circulars (LOC) in respect of Indian citizens and foreigners:—

(A) The request for opening an LOC would be made by the Originating Agency (OA) to the Deputy Director, Bureau of Immigration (BOI), East Block - VIII, R.K. Puram, New Delhi - 110066 (Telefax:0U-26192883, email:boihq@nic. in) in the enclosed Proforma.

(B) The request for opening of LOC must invariably be issued with the approval of an Originating Agency that shall be an officer not below the rank of—

(i) Deputy Secretary to the Government of India; or
(ii) Joint Secretary in the State Government; or
(iii) District Magistrate of the District concerned; or
(iv) Superintendent of Police (SP) of the District concerned; or
(v) SP in CBI or an officer of equivalent level working in CBI; or
(vi) Zonal Director in Narcotics Control Bureau (NCB) or an officer of equivalent level [including Assistant Director (Ops.) in Headquarters of NCB); or

(vii) Deputy Commissioner or an officer of equivalent level in the Directorate of Revenue Intelligence or Central Board of Direct Taxes or Central Board of Indirect Taxes and Customs; or

(viii) Assistant Director of Intelligence Bureau/Bureau of Immigration (BOI); or

(ix) Deputy Secretary of Research and Analysis Wing (R & AW); or

(x) An officer not below the level of Superintendent of Police in National Investigation Agency; or

(xi) Assistant Director of Enforcement Directorate; or

(xii) Protector of Emigrants in the office of the Protectorate of Emigrants or an officer not below the rank of Deputy Secretary to the Government of India; or

(xiii) Designated officer of Interpol; or

(xiv) An officer of Serious Fraud Investigation Office (SFIO), Ministry of Corporate Affairs not below the rank of Additional Director (in the rank of Director in the Government of India); or

(xv) Chairman/Managing Directors/Chief Executive of all Public Sector Banks.

(C) LOC can also be issued as per directions of any Criminal Court in India. In all such cases, request for opening of LOC shall be initiated by the local police or by any other Law Enforcement Agencies concerned so that all parameters for opening LOCs are available.

(D) The name and designation of the officer signing the Proforma for requesting issuance of an LOC must invariably be mentioned without which the request for issuance of LOC would not be entertained.

(E) The contact details of the Originator must be provided in column VI of the enclosed Proforma. The contact telephone/mobile number of the respective control room should also be mentioned to ensure proper communication for effective follow up action. Originator shall also provide the following additional information in column VI of the enclosed Proforma to ensure proper communication for effective follow up action:—

(i) Two Gov/NIC email IDs
(ii) Landline number of two officials
(iii) Mobile numbers of at least two officials, one of whom shall be the originator.

(F) Care must be taken by the Originating Agency to ensure that complete Identifying particulars of the person, in respect of whom the LOC is to be opened, are indicated in the Proforma mentioned above. It should be noted that an LOC cannot be opened unless a minimum of three identifying parameters viz. name & parentage, passport number or Date of Birth are available. However, LOC can also be issued if name and passport particulars of the person concerned are available. It is the responsibility of the originator to constantly review the LOC requests and proactively provide additional parameters to minimize harazzment to genuine passengers. Details of

Government identity cards like PAN Card, Driving License, Aadhaar Card, Voter Card etc, may also be included in the request for opening LOC.

(G) The legal liability of the action taken by the immigration authorities in pursuance of the LOC rests with the originating agency.

(H) Recourse to LOC is to be taken in cognizable offences under IPC or other penal laws. The details in column IV in the enclosed Proforma regarding 'reason for opening LOC' must invariably be provided without which the subject of an LOC will not be arrested/detained.

(I) In cases where there is no cognizable offence under IPC and other penal laws, the LOC subject cannot be detained/arrested or prevented from leaving the country. The Originating Agency can only request that they be informed about the arrival/departure of the subject in such cases.

(j) The LOC opened shall remain in force until and unless a deletion request is received by 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 in 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, may not be covered by the guidelines above, whereby departure of a person from India may be declined at the request of any of the authorities mentioned in clause (B) above, if it appears to such authority based on inputs received that the departure of such person is detrimental to the sovereignty or security or integrity of India or that the same is detrimental to the bilateral relations with any country or to the strategic and/or economic interests of India or if such person is allowed to leave, he may potentially indulge in an act of terrorism or offences against the State and/or that such departure ought not be permitted in the larger public interest at any given point in time.

(M) The following procedure will be adopted in case statutory bodies like the NCW, the NHRC and the National Commission for Protection of Children's Rights request for preventing any Indian/foreigner from leaving India. Such requests along with full necessary facts shall be brought to the notice of law enforcement agencies like the police. The Superintendent of Police (S.P.) concerned will then make the request for issuance of an LOC upon an assessment of the situation, and strictly in terms of the procedure outlined for the purpose. The immigration/emigration authorities will strictly go by the communication received from the officers authorized to open LOCs as detailed in Clause (B) above.

(N) For effective and better interception of LOC subjects, following guidelines shall be followed by the Originator

(i) Specific action to be taken by the Immigration authorities on detection must be indicated in the filled LOC proforma.

(ii) In case of any change in parameters/actions/investigating officer/Originator contact details or if any court order is passed in the case, the same should be brought to the notice of the BoI immediately by the originating agency concerned for making necessary changes in the LOC.

(iii) For LOCs originated on court orders, the concerned PS/10 should send the identifying parameters of the subject to the BoI as court orders contain only name and parentage of the subject/

(iv) In case an LOC is challenged and stayed by the concerned court or a court issues any directive with regard to the LOC, the Originator must inform the BoI urgently and accordingly seek amendment/deletion of the LOC.

(v) Whenever the subject of LOC is arrested or the purpose of the LOC is over, a deletion request shall be sent by the Originator immediately to the BoI.

(vi) The Originator must respond promptly whenever the subject/likely match is detected a the ICP. The confirmation regarding the identity of the subject and action to be taken must be informed immediately to the ICP.

(vii) The BOI would form a team to coordinate matters regarding the LOC. This team would contact the LOC issuing agencies to get the status of LOC updated.

(viii) Each LOC Originating Agency referred in para 6 (B) above will appoint a Nodal officer as indicated in Annexure - 1 for coordination/updation of LOC status with BoI. The said team of BoI [as mentioned in para 6(N)(vii)] would remain in constant touch with this Nodal Officer.

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

(Emphasis added)

On a coalesce of the afore-quoted clauses of guidelines of the official memorandum of 2010 read with the one issued in 2021, LOC against a subject can be issued in cognizable offences where the accused is deliberately avoiding arrest and not appearing before the Trial Court despite non-bailable warrant and other coercive measures being taken; despite all of which there was likelihood of the accused leaving the country to evade trial or his arrest. The guidelines also indicate that

in exceptional cases LOC can be issued even in cases where the guidelines do not cover whereby the departure of a person from India may be declined if such a person is detrimental to the sovereignty or security or integrity of India or detrimental to the bilateral relations with any country or economic interest of India, if such person is allowed to leave the shores of the nation. The guidelines cover all the circumstances for issuance, subsistence and deletion of LOC. The guidelines also indicate certain duties to be performed by the originator. The originator has to inform the Bureau of Immigration if the LOC is challenged, stayed by a concerned Court or a Court issues any directive with regard to the LOC whereby the LOC must be sought to be amended or deleted by the originator. Therefore, issuance of LOC in terms of the official memorandum does take away the right of a person to travel.

11. The contention of the Learned Counsel appearing for the petitioner, that the petitioner should be afforded an opportunity or a prior notice pursuant to issuance of LOC is unacceptable, as the frame work of LOC itself bars such notice to be issued. Above all, this very contention is urged before a Division Bench of this Court in Dr.Bavaguthuraghuram Shetty v. Bureau of Immigratioin, Ministry of Home Affairs, New Delhi [ILR 2021 Kar 2963.] , wherein this Court answered a specific contention which was urged as follows:

"14.7 He would submit that Learned single Judge erred in opining that petitioner ought to have been issued "prior notice" as it would defeat the purpose of LOC, inasmuch as, it is the specific case of the petitioner that after issuance of LOC petitioner ought to have been notified so as to enable the petitioner to exercise his available legal remedies and it is this violation of right which had been canvassed before the Learned single Judge, but was not considered. Hence, he prays for allowing the writ appeal by setting aside the order of Learned single Judge and consequently prays for allowing the writ petition ……"

(Emphasis supplied)

The answer to the contention by the Division Bench is as follows:

> 22. It is the specific act emerging from the said OMs, which the petitioner seeks to assail in the writ petition and when examined in this background, it would emerge from the authoritative pronouncement of the Apex Court in the case of Maneka Gandhi's , wherein the Hon'ble Apex Court (per Hon'ble Mr. Justices Bhagawati, Untwalia and Fazal Ali) have observed that procedure established by law under Article 21 must meet the requirement of Article 14 and it has been further held the right to travel abroad cannot be regarded as forming part of Articles 19(1)(a) or 19(1)(g), since such right is not guaranteed and such right cannot be inferred as a peripheral or concomitant right under Article 19(1). It is further held by the Apex Court to the following effect:
>
> "34. The right to go abroad cannot, therefore, be regarded as included in freedom of speech and expression guaranteed under Article 19(1)(a) on the theory of peripheral or concomitant right. This theory has been firmly rejected in the All India Bank Employees Association's case and we cannot countenance any attempt to revive it, as that would completely upset the scheme of Article 19(1) and to quote the words of RajagopalaAyyanger, J., speaking on behalf of the Court in All India Bank Employees Association's case "by a series of ever expending concentric, circles in the shape of rights concomitant to concomitant rights and so on, lead to an almost grostesque result So also, for the same reasons, the right to go abroad cannot be treated as part of the, right to carry on trade, business, profession or calling guaranteed under Article 19(1)(g). The right to go abroad is clearly not a guaranteed right under any clause of Article 19(1) and section 10(3)(c) which authorises imposition of restrictions on the right to go abroad by impounding of passport cannot be held to be void as offending Article 19(1)(a) or (g), as its direct and inevitable impact is on the right, to go abroad and not on the right of free speech and expression or the right to carry on trade, business profession or calling."
>
> "54. The next question is whether the right to go out of India is an integral part of the right of free speech and expression and is comprehended within it. It seems to me impossible to answer this question in the affirmative as is contended by the petitioner's Counsel, Shri Madan Bhatia. It

is possible to predicate of many a right that its exercise would be more meaningful if the right is extended to comprehended an extraneous facility. But such extensions do not form part of the right conferred by the Constitution. The analogy of the freedom of press being included in the right of free speech and expression 4-119SCI/78 is wholly misplaced because the right of free expression incontrovertibly includes the right of freedom of the press. The right to, go abroad on one hand and the right of free speech and expression on the other are made up of basically different constituents, so different indeed that one cannot be comprehended in the other.

55. Brother Bhagwati has, on this aspect considered at length certain American decisions like Kent (1), Apthekar (2) and Zemel (3) and illuminating though his analysis is, I am inclined to think that the presence of the due process clause in the 5th and 14th Amendments of the American Constitution makes significant difference to the approach of American Judges to the definition and evaluation of constitutional guarantees. The content which has been meaningfully and imaginatively poured into "due process of law" may, in my view, constitute an important point of distinction between the American Constitution and ours which studiously avoided the use of that expression. In the Centennial Volume. "The Fourteenth Amendment" edited by Bernard Schwartz, is contained in an article on 'Landmarks of Legal Liberty by Justice William J. Brennan in which the Learned Judge quoting from Yeat s play has this to say: In the service of the age old dream for recognition of the equal and inaleinable rights of man, the 14th Amendment though 100 years old, can never be old.

"Like the poor old women in Yeat's play, "Did you see an old woman going down the path?" asked Bridget. "I did not," replied Patrick, who had come into the house after the old woman left it, "But I saw a young girl and she had the walk of a queen."

Our Constitution too strides in its majesty but, may it be remembered, without the due process clause, I prefer to be content with a decision directly in point, All India Bank Employees Association (4) In which this Court rejected the contention that the freedom to form associations or unions contained in article 19(1)(c) carried with it the right that a workers union could do all that was necessary to make that right effective, in order to achieve the purpose for which the

union was formed. One right leading to another and that another to still other, and so on, was described in the abovementioned decision as productive of a "grotesque result".

56. I have nothing more to add to what Brother Bhagwati has said on the other points in the case. I share his opinion that though the right to go abroad is not included in the right contained in article 19(1)(a), if an order made under section 10(3)(c) of the Act does in fact violate, the right of free speech and expression, such an order could be struck down as unconstitutional. It is well-settled that a statute may pass the test of constitutionality and yet an order passed under it may be unconstitutional. But of that I will say no more because in this branch, one says no more than the facts warrant and decides nothing that does not call for a decision. The fact that the petitioner was not heard before or soon after the impounding of her passport would have introduced a serious infirmity in the order but for the statement of the Attorney General that the. Government was, willing to hear the petitioner and further to limit the operation of the order to a period of six months from the date of the fresh decision, if the decision was adverse to the petitioner. The order, I agree, does not in fact offend against article 19(1)(a) or 19(1)(g).

23. It has also been held by the Hon'ble Apex Court (per Hon'ble the Chief Justice-Mr. Beg and per Hon'ble Mr. Justice Kailasam) that a passport may be impounded without giving prior opportunity and subsequently hearing must be provided. Hence, petitioner cannot be heard to contend that his right of hearing has been taken away and thereby act of the respondents are hit by Article 14 of the Constitution.

24. In the instant case, we notice that the extant OMs provide for an opportunity to the petitioner namely, the petitioner being entided to appear before the third and fourth respondent-Banks and explain the circumstances which perforced the Banks for issuing LOC was not prevailing and both the Banks are required to examine, consider and then pass an order on the said plea. Though Sri. Mukul Rohatgi has made an attempt to contend that post decisional hearing is an empty formality we are not inclined to accept the same, inasmuch as, Hon'ble Apex Court in MANEKA GANDHIs case, has held that though prior opportunity at the time of impounding the passport is not

required, the subsequent opportunity as to why such impounding is not required to be continued, should be considered as inherent in fair hearing. It has been further held to the following effect:

"14. Now, as already pointed out, the doctrine of natural justice consists principally of two rules, namely, nemo debt esse judex propria cause: no one shall be a judge in his own cause, and audi alteram partem: no decision shall be given against a party without affording him a reasonable hearing. We are concerned here with the second rule and hence we shall confine ourselves only to a discussion of that rule. The Learned Attorney General, appearing on behalf of the Union of India, fairly conceded that the audi alteram partem rule is a highly effective tool devised by the courts to enable a statutory authority to arrive at a just decision and it is calculated to act as a healthy check on abuse or misuse of power and hence its reach should not be narrowed and its applicability circum-scribed. He rightly did not plead for reconsideration of the historic advances made in the law as a result of the decisions of this Court and did not suggest that the Court should re-trace its steps. That would indeed have been a most startling argument coming from the Government of India and for the Court to accede to such an argument would have been so act of utter retrogression. But fortunately no such argument was advanced by the Learned Attorney General. What he urged was a very limited contention, namely that having regard to the nature of the action involved in the impounding of a passport, the audi alteram partem rule must be held to, be excluded, because if notice were to be given to the holder of the passport and reasonable opportunity afforded to him to show cause why his passport should not be impounded, he might immediately, on the strength of the passport, make good his exit from the country and the object of impounding the passport would be frustrated. The argument was that if the audi alteram partem rule were applied, its effect would be to stultify the power of impounding the passport and it would defeat and paralyse the administration of the law and hence the audi alteram partem rule cannot in fairness be applied while exercising the power to impound a passport. This, argument was sought to be supported by reference to the statement of the law in A.S. de Smith, Judicial Review of Administrative Action, 2nd ed., where the Learned author says at page 174 that "in administrative, lawa prima facie right to prior notice and opportunity to be heard may be

held to be excluded by implication- where an obligation to give notice and opportunity to be heard would obstruct the taking of prompt action, especially action of a preventive or remedial nature Now, it is true that since the right to prior notice and opportunity of hearing arises only by implication from the duty to act fairly, or to use the words of Lord Morris of Borth-y-Gest, from fair play in action, it may equally be excluded where, having regard to the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provision, fairness in action does not demand its implication and even warrants its exclusion. There are certain well recognised exceptions to the audi alteram partem rule established by judicial decisions and they are summarised by S.A. de Smith in Judicial Review of Administrative Action, 2nd ed., at page 168 to 179. If we analyse these exceptions a little closely, it will be apparent that they do not in any way militate against the principle which requires fair play in administrative action. The word 'exception' is really a misnomer because in these exclusionary cases the audi alteram partem rule is held inapplicable not by way of an exception to "fair play in action", but because nothing unfair can be inferred by not affording an opportunity to present or meet a case. The audi alteram partem rule is intended to inject justice into the law and it cannot be applied to defeat the ends of justice, or to make the law 'lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation'. Since the life of the law is not logic but experience and every legal proposition must, in the ultimate analysis, be tested on the touchstone of pragmatic realism, the audi alteram partem rule would, by the experiential test, be excluded, if importing the right to be heard has the effect of paralysing the administrative process or the need for promptitude or the urgency of the situation so demands. But at the same time it must be remembered that this is a rule of vital importance in the field of administrative law and it must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. It is a wholesome rule designed to secure the rule of law and the court should not. be too ready to eschew it in its application to a given case. True rue it is that in questions of this kind a fanatical or doctrinaire approach should be avoided, but that does not mean that merely because the traditional methodology of a formalised hearing may have the effect of stultifying the exercise of the statutory power, the audi alteram partem should be wholly excluded. The court must make every effort to salvage this cardinal rule to the

maximum extent permissible in a given case. It must not be forgotten that "natural justice is pragmatically flexible andis amenable to capsulation under the compulsive pressure of circumstances". The audi alteram partem rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. The core of it must, however, remain, namely, that the person affected must have a reasonable opportunity of being heard and the Hearing must be a genuine hearing and not an empty public relations exercise. That is why Tucker, L.J., emphasised in Russel v. Duke of Norfolk (1), that "whatever standard of natural justice is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case". What opportunity may be regarded as reasonable would necessarily depend on the practical necessities of the situation. It may be a sophisticated full fledged hearing or it may be a hearing which is very brief and minimal: it may be a hearing prior to the decision or it may even be a post-decisional remedial hearing. The audi alteram partem rule is sufficiently flexible to permit modifications and variations to suit the exigencies of myriad kinds of situations which max, arise. This circumstantial flexibility of the audi alteram partem rule was emphasised by Lord Reid in Wiseman v. Someman , (supra) when he said that he would be "sorry to see this fundamental general principle degenerate into a series of hard and fast rules" and Lord Hailsham, L.C., also observed in Pearl-Berg v. Party (2) that the courts "have taken in increasingly sophisticated view of what is required in individual cases". It would not, therefore, be right to conclude that the audi alteram partem rule is excluded merely because the power to impound a passport might be frustrated, if prior notice and hearing were to be given to the person concerned before impounding his passport, the Passport Authority may proceed to impound the passportwithout giving any prior opportunity to the person concerned to be heard, but as soon as the order impounding the passport is made, and opportunity of hearing, remedial in aim, should be given to him so that he may present his case and controvert that of the Passport Authority and point out why his passport should not be impounded and the order impounding it recalled. This should not only be possible but also quite appropriate, because the reasons for impounding the passport are required to be supplied by the Passport Authority after the making of the order and the person affected would, therefore, be in a position to make a representation setting forth his case and plead for setting

aside the action impounding his passport. A fair opportunity of being heard following immediately upon the order impounding the passport would satisfy the mandate of natural justice and a provision requiring giving of such opportunity to the person concerned can and should be read by implication in the Passports Act, 1967. If such a provision were held to be incorporated in the Passports, Act, 1967 by necessary implication, as we hold it must be, the procedure prescribed by the Act for impounding a passport would be fight, fair and just and it would not suffer from the vice of arbitrariness or unreasonableness. We must, therefore, hold that the procedure 'established' by the Passports Act, 1967 for impounding a passport is in conformity with the requirement of Article 21 and does not fall foul of that article.

25. This view also gets fortified from the law laid down by the Apex Court in the matter of Maneka Gandhi v. Union of India , (supra) referred to herein supra where under Justice Krishna Iyer concurring with the opinion rendered by Bhagawati, Untwalia and FazalAli, JJ, held that any order passed under Section 10(3)(c) of the Passports Act, 1967, is subject to a limited judicial scrutiny. It is further held:

"189. In the result, I hold that the petitioner is not entitled to any of the fundamental rights enumerated-in Article 19 of the Constitution and that the Passport Act complies with the requirements of Art. 21 of the Constitution and is in accordance with the procedure established by law. 1 construe section 10(3)(c) as providing a right to the holder of the passport to be heard before the passport authority and that any order passed under section 10(3) is subject to a limited judicial scrutiny by the, High Court and the Supreme Court."

Hence, the contention raised by Sri. Mukul Rohatgi, Learned Senior Counsel appearing for the petitioner that subsequent hearing of the petitioner would be an empty formality or in other words, such post decisional hearing is impermissible cannot be accepted. However, it is needless to state that notwithstanding the conclusion arrived at by respondent Nos. 3 and 4 for issuance of LOC against the petitioner, prayer of the petitioner for revoking the same shall be considered independently and without being influenced by any conclusion already arrived by them and

without being influenced by any observations made either by the Learned Single Judge or by this Court."

(Emphasis supplied)

…. …. ….

12. Even if it is construed that procedure established by law by way of official memorandum, right to travel being curtailed against the subject of the LOC, he would at least become entitled to a copy of the LOC, not at any time prior to his being stopped from travelling abroad, but only at the time when he is stopped from travelling out the shores of this nation. The subject of the LOC would then become aware as to why his liberty to travel, which is a facet of fundamental right is being taken away. The contention of Government of India that a copy of the LOC need not be furnished to the subject at any time before getting apprehended is acceptable only upto the point that he gets apprehended. At the time when he is stopped and handed over to the originator, he is, in the considered view of this Court, entitled to know why his travel is being stopped with a copy of the LOC handed over to his hands. This becomes the only requirement of principles of natural justice in the cases that emanate from the LOC.

13. If the facts of the case are considered on the bedrock of what is considered hereinabove, it would depict that, the petitioner wants to travel on account of his official duty. The case registered against him no doubt is for offences punishable under the POCSO Act and the case is not stayed or quashed by any competent court of law, since the impugned crime is neither eclipsed nor extinguished, by any competent judicial fora, the prayer of the petitioner for a direction to recall the LOC cannot be granted. All that the petitioner would be entitled to, in such a case, would be the knowledge of the reason for stalling his travel i.e., a copy of the LOC issued against him. This becomes all the more important as the petitioner has been enlarged on bail in Criminal Miscellaneous No. 8707 of 2021. The Court granting him bail has imposed the following conditions:

"1. The petitioner has to execute personal bond for - f 1,00,000/- and to furnish two solvent sureties (out of which 1 should be a Government Employee) for the like sum to the satisfaction of this Court.

2. The petitioner shall not tamper with any of the prosecution witnesses either directly or indirectly.

3. The petitioner shall appear before the Court regularly in default of which this bail will automatically stands cancelled.

4. Issue intimation to the J.C. to release the petitioner forthwith if his presence is not required in any other case."

There is no condition restricting his travel. An accused who is enlarged on bail should be made known as to why his travel is being interrupted. Therefore, the supply of the copy of LOC along with request from the originator is **sine qua non** for execution of the LOC. Therefore, it is for the originator to furnish the copy and the reasons to the executant and the executant shall furnish the same to the subject of the LOC, not at any time earlier, but at the time when the subject of the LOC would be subjected to rigors of the LOC."

(Emphasis supplied)

This Court considered the entire spectrum of law with regard to LOC hanging on any person's head and compliance thereof. Therefore, the prayer seeking guidelines need not be gone into all over again. I, therefore, felt it appropriate to paraphrase what is held by this Court.

8. Now what requires an answer is, an application I.A.No.3 of 2024 filed by the Union of India, calling in question an order of the concerned Court which answers the LOC, and permits the husband to travel beyond the shores of the nation. The observations with

regard to how the concerned Court has answered the application and permitted the husband to travel beyond the shores are already noticed in the course of the order. In the light of the said action of the concerned Court, the Union of India has filed an application and in support of it an affidavit, the contents of which are necessary to be noticed. They read as follows:

> "I, Janardhan Zalki, S/o Shri Narsing Rao Zalki aged about 52 years, working as Assistant Director, Foreigners Regional Registration Officer, Ministry of Home Affairs, Government of India at Bangalore, do hereby solemnly affirm and state as follows:
>
> 1. I have been duly authorised to swear this counter affidavit. I have read the contents of the Writ Petition under reply and I have also gone through the relevant records pertaining to this case and hence, I am well acquainted with the facts and circumstances of this case as such I am filing this Affidavit on behalf of other Respondent also.
>
> 2. I state that respondent No.5 i.e., Amit Ashok Vyas has also preferred a writ petition in W.P.No.6227 of 2024 on 26-02-2024 seeking a writ of mandamus directing the Station House Officer, Basavanagudi Women Police Station and the Commissioner of Police to recall the lookout circular issued in connection with the Crime No.227 of 2023 for the offence under Section 498A, 504, 506 of IPC r/w Section 3 and Section 4 of the D.P. Act and also sought for interim relief of the stay of the lookout circular.
>
> 3. I state that while the matter was taken up on 28-02-2024, this Hon'ble Court was pleased to pass the following order:
>
> > 1. The petitioner calls in question the lookout circular issued against the petitioner pursuant to registration of crime in Crime No.227/2023 for the offences punishable

under Sections 498(A), 504, 506 of IPC read with Sections 3 and 4 of Dowry Prohibition Act.

2. The petitioner in the companion petition is the complainant who is the wife of the present petitioner. Several grievances are projected by the wife in the complaint made before the Jurisdictional Police/ Commissioner of Police. The investigation has commenced against the petitioner and others who are arraigned as accused in Crime No.227/2023. Therefore, lookout circular is issued as originated from the hands of Deputy Commissioner of Police as obtaining under the Circular issued by the Ministry of External Affairs of the Year 2021.

3. Therefore, the petitioner is now seeking quashment and interim order of stay of the lookout circular. The projection is that he is an employee of Blackrock, Edinburgh Branch, Scotland and he would lose his employment, if he would not get back to Scotland. He would further submit that he is only an Overseas Citizen of India card holder and holds a citizenship of United Kingdom.

4. In the light of the crime so registered and necessity of the petitioner for investigation, learned HCGP shall place on record the stage of investigation on the next date of hearing. It is needless to observe that the petitioner shall co-operate in the investigation. Consideration of interim prayer would be made on the next date of hearing after looking into the stage of investigation and co-operation of the petitioner in the investigation.

5. Learned counsel for the petitioner-husband submits that the crime was registered in the month of August and six months have passed, but the Investigating Officer has not proceeded with the investigation.

6. List the matter on 06.03.2024 in the fresh matter/s list.

7. Learned counsel appearing for the respondent-husband at this juncture would submit that he is ready and willing to settle the dispute with the wife, if she is so willing. The pendency of this petition or the aforesaid order will not come in the way of couple sitting and settling the issues, on any date before the next date of hearing."

4. I state that writ petition filed by Amit Ashok Vyas was directed to be taken up along with the instant petition. I state that in the meantime, the Respondent No.5 approached the trial Court by filing an Interlocutory Application seeking a direction to the Police Inspector of Basavanagudi Women P S. to recall the LOC issued against him. The trial Court vide order dated 13-03-2024 was pleased to allow the Application and directed the Police Inspector of Basavanagudi Women P S to withdraw the look out notice circular subject to the conditions.

5. I state that the conduct of the Respondent No.5 is wholly mischievous in nature. I state that the said Respondent had questioned the validity of the impugned LOC before this Hon'ble Court and as such the said issue was sub judice before this Hon'ble Court Under such circumstances, by suppressing the above facts, the Respondent No.5 mislead the trial Court into passing the impugned order.

6. The LOC is an executive order and its validity can be questioned only before this Hon'ble Court in exercise of its writ jurisdiction. The leaned Magistrate has no jurisdiction to direct recall of the LOC. Notwithstanding the said submission, having already challenged the LOC before this Hon'ble Court, the Respondent No.5 ought not to have sought its recall before the learned Magistrate.

7. The impugned order of the learned Magistrate constitutes interference with the administration of justice by this Hon'ble Court, particularly, as this Hon'ble Court is seized with the issue of the legality and validity of the impugned LOC. The impugned order of the learned Magistrate is an overreach over the jurisdiction of this Hon'ble Court and as such, the said order needs to be set aside forthwith.

8. The impugned order sets a wrong precedent of exercise of jurisdiction that it not conferred on the Magistrate's Court. Examined from any angle, the impugned order is not at all sustainable in law, and therefore, it deserves to be nullified with immediate effect.

> **9. The main relief in the above writ petition is regarding the validity of the impugned LOC. While the adjudication of that issue is pending consideration of this Hon'ble Court, the learned Magistrate has erroneously issued directions for recall of the said LOC. The relief sought by this application is in aid of the main relief sought in the above writ petition. As such, these Respondents are justified and entitled to seek the relief of setting aside the impugned order by this application.**
>
> 10. The impugned order is ex facie illegal and without jurisdiction and it would cause serous issues in the administration of justice and executive decisions. Therefore, it is just and essential to grant the relief sought in this application.
>
> Wherefore, it is prayed that this Hon'ble Court may be pleased to allow the accompanying application as prayed for and grant such other and further reliefs as just in the facts and circumstances of the present case."
>
> (Emphasis added)

The prayer sought in the application is to set aside the order dated 13-03-2024 by which the concerned Court permits the husband to travel beyond the shores by entertaining an application seeking the recall of the LOC. The petitioner had raised a challenge before this Court to the LOC and though the proceedings were being taken up by this Court on day-to-day basis, he had approached the concerned Court challenging the LOC. Since the husband/accused No.1 has already travelled beyond the shores of the nation, setting aside the LOC would be no avail.

9. **The LOC, as observed hereinabove, is an executive edict - administrative in its conception and effect, and therefore, beyond the ken of trial Courts to annul or tamper with. The role of such concerned Court is confined strictly to adjudicating the criminal *lis* before them in accordance with the established procedure. The power to scrutinize, rescind, or uphold a LOC flows solely from the font of constitutional jurisdiction, vested in the writ Courts. To countenance any encroachment upon this settled demarcation of Authority would be to invite anarchy into the administration of justice, eroding both comity and coherence within the judicial framework. Therefore, the trial Court has acted beyond its jurisdiction.**

10. The learned counsel for the husband/accused No.1 submits that the trial Courts are entertaining such applications day in, and day out. It has, therefore, become necessary to answer this application, notwithstanding the fact that the husband/accused No.1 has already travelled beyond the shores of this nation and has undertaken that he would cooperate with the investigation. The

criminal proceedings are stayed at the hands of this Court in Criminal Petition No.3276 of 2024 which would be answered separately.

11. **In the light of the power of the trial Court not available to consider the LOCs, it is made clear that henceforth the trial Courts shall not entertain any challenge concerning Lookout circulars nor direct the Police Stations to remove LOCs, as is done in the case at hand. Any such action of concerned Courts would be viewed seriously, as they are acts beyond the jurisdiction of trial Courts. In that light, while observing that all other prayers in Writ Petition No.5800 of 2024 today have become unnecessary to be considered, prayer No. (e) and the application in I.A.No.3/2024 filed seeking to set aside the order dated 13-03-2024 are answered accordingly.**

12.1. Before I say *omega* to this order, it becomes imperative to record, with a sense of admiration, the remarkable efforts of ***Miss Sarah Sunny***, learned Advocate representing the wife, who is

hearing impaired. Miss Sarah Sunny is a distinguished member of the bar who, despite being hearing impaired, **has demonstrated that true advocacy transcends barriers of sound.** Around the globe, history bears testimony to the inspiring journeys of hearing impaired lawyers, who have left indelible marks, within the hallowed halls of justice.

12.2. An article published in the New York Times on 24th March, 1982 chronicles a moment of profound significance – the appearance of the first hearing impaired lawyer before the Supreme Court of the United States who represented a 10 years old hearing impaired girl. On that occasion, the Court, for the first time in history, permitted the use of special electronic equipment within its precincts. The matter concerned a determination of whether, Westchester School District was obliged under the **Education For All Handicapped Children Act of 1975,** to provide a Sign Language Interpreter to Amy Rowley, a counsel representing the hearing impaired, a 4th grade student from Cortlandt, New York, who stood in the top half of her class. It is recorded that, every query posed by the learned Judges was met with precise and

persuasive responses through the medium of the Sign Language Interpreter, thus heralding a new era of accessibility and inclusion in the corridors of justice. **Since then, jurisprudence and scholarship have been enriched by numerous writings on the imperative of appointing qualified interpreters for hearing impaired individuals engaged in legal proceedings and the hearing impaired advocates have shattered the sound barrier.** The Courts in Australia have made way, for similar accommodations. The United Kingdom has, through enlightened legislation, extended inclusion to even hearing impaired jurors, which marks a testament to humanity's collective march towards equality.

12.3. In the case at hand, Miss Sarah Sunny, a hearing impaired lawyer had sought permission of this Court to represent the wife through the assistance of an official Sign Language Interpreter, to ensure that her submissions could be made with clarity and effect. **Miss Sarah Sunny defied every decibel of doubt, delivered her arguments, with composure and**

eloquence, which resonated with the same conviction, of any seasoned advocate.

12.4. It is an undeniable truth that hearing impaired advocates constitute, a rare minority. **The Constitutional Courts, which are the guardians of equality, bear a solemn duty, to facilitate and empower such advocates to help them break the sound barrier, that stands between them and their full participation, in the judicial process.** It is therefore, this Court deeming it fit and just to permit Miss Sarah Sunny to avail herself of interpretive assistance of Dr. Renuka V N, a Sign Language Interpreter, in order to present her case effectively. Her performance before this Court was nothing short of being exemplary. Her submissions, though conveyed through an Interpreter, bore the hallmarks of refined advocacy.

12.5. This Court, therefore records with profound admiration, its appreciation for Miss Sarah Sunny, who has transcended the boundaries of silence. Her endeavour shall remain an enduring

inspiration, **a luminous reminder that justice in its truest form, not only listens through the ear, but through the heart**.

13. For the aforesaid reasons, the following:

O R D E R

(i) **Writ Petition No.6227 of 2024 is disposed as withdrawn,** in view of the memo filed by the petitioner/husband.

(ii) **Writ Petition No.5800 of 2024 also stands disposed.**

(iii) **It is hereby declared and clarified with unmistakable emphasis that the learned Magistrates before whom criminal proceedings are pending, shall not entertain, under any guise or pretext, applications assailing or seeking the recall, suspension or modification of a LOC. Any indulgence by the trial Courts in this regard, shall**

be deemed to be an act in excess of jurisdiction and will invite serious disapproval.

(iv) The Registry of this Court is directed to forthwith circulate a copy of this order to all the criminal Courts within the State, to bear in mind the observations made in the course of order, if and when the litigant attempts to question or undermine the Look Out Circular before any such *fora.*

Consequently, all other pending applications also stand disposed.

Sd/-
(M.NAGAPRASANNA)
JUDGE

Bkp
CT:MJ