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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: April 29, 2015

+ CRL.M.C. 2642/2014 & Crl.M.A.14383/2014

JUAN MANUEL SANCHEZ ROSAS Petitioner

Through: Mr. Avi Singh and Ms. Sumi
Anand, Advocates

versus

STATE THROUGH: NCT DELHI & ANRRespondents

Through: Mr.Vinod Diwakar, Additional
Public Prosecutor for respondent-
State with SI Vijay Singh

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

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(ORAL)

Petitioner is Lieutenant Colonel in the armed forces of Columbia and he was invited by the Government of India to participate in the 6th International Defence Exhibition on Naval and Land System – Defexpo India, held in New Delhi from 14th to 19th February, 2010. On 18th February, 2010 petitioner had gone to Indira Gandhi International Airport, Delhi to take return flight to his country and on checking of his baggage, two live bullets of 9 mm were found. Accordingly, FIR No.94/2010 under Section 25/54/59 of *Arms Act, 1959* was registered at Police Station IGI Airport, Delhi against petitioner. Quashing of

aforesaid FIR is sought in this petition on the ground that petitioner was not in conscious possession of two live bullets of 9 mm. In this FIR case, charge-sheet has been filed.

Upon notice of this petition, respondent-State has filed a status report, which discloses that as per the FSL report, the two cartridges recovered were live and could be fired through 9 mm caliber firearm.

Learned counsel for petitioner submits that the two live cartridges recovered from the possession of petitioner were issued to him in respect of his service revolver which petitioner had not carried with him when he came to this country and by sheer inadvertence, those two live cartridges were left in the baggage of petitioner. Attention of this Court is drawn to Apex Court decision in *Gunwantlal v. The State of Madhya Pradesh* (1972) 2 SCC 194 to submit that the possession of a firearm must be conscious to entail prosecution under the Arms Act. Reliance was also placed upon Apex Court decision in *Sanjay Dutt v. State Through CBI Bombay (II)* 1994(5) SCC 410 to submit that prosecution for an offence punishable under Section 5 of the *TADA Act*, the prosecution is required to prove that possession of firearms was conscious one. It is submitted on behalf of the petitioner that this Court in CrI.M.C.No. 1455/2014 *Manuel R. Encarnacion v. State Through NCT of Delhi & Anr.* had ruled on 22nd May, 2014 that possession of 3 live cartridges by Police Officer of New York Police Department was not the conscious one and had quashed the FIR.

Upon hearing and on perusal of the FIR of this case, copy of the charge-sheet filed, status report and the decisions cited, I find that it cannot be said that petitioner was in conscious possession of the two live

cartridges. When petitioner, a serving Lt. Colonel in Armed Forces of Columbia asserts that recovered cartridges were of his service revolver, there is no reason to discard his stand.

Applying the dictum of the Apex Court in *Gunwantlal* (supra) reiterated in *Sanjay Dutt* (supra) to the facts of the instant case, I find that continuance of proceedings would be an exercise in futility as the necessary ingredients to constitute the offence in question is lacking. Consequentially, this petition and application are allowed and FIR No.94/2010 under Section 25/54/59 of Arms Act, 1959 registered at Police Station IGI Airport, Delhi and proceedings emanating therefrom are hereby quashed.

(SUNIL GAUR)
JUDGE

APRIL 29, 2015

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