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

+ W.P.(CRL) 2153/2016

ASHISH BALIYAN

..... Petitioner

Through: Dr. N. Pradeep Sharma and Mr.
Pawan Kumar, Advocates

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Through: Ms. Richa Kapoor, ASC with Ms.
Seema Patnaha and Mallika Parmar,
Adv. for State with SI Vasant Kumar,
PS IGI Airport

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

17.10.2016

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The petitioner has preferred the present writ petition to seek the quashing of FIR No.217/2015 registered at IGI Airport under Section 25/54/59 of the Arms Act, 1959 and the proceedings arising therefrom.

The case of the petitioner is that he is a software engineer working with Wipro Limited. The petitioner's uncle Chain Singh Baliyan, who was earlier serving in police and is now retired was holding an authorised arms license and had voluntarily purchased 8 mm cartridge/ ammunition from an authorised arms dealer on 21.09.2013. While the petitioner was in Delhi, he was asked by his employer to proceed to Bangalore. The petitioner had gone to his home town Meerut and his uncle had provided him his baggage, so that the petitioner could use the same for travelling to Bangalore. Unmindful of the fact the 8 mm cartridge in question of his uncle was kept

in the suitcase, the petitioner had used the said suitcase to pack his baggage and while he was at the airport to board the flight to Bangalore, the said cartridge was discovered at the airport upon x-ray check of the baggage.

The case of the petitioner is that he was unaware of the fact that the cartridge was on the baggage borrowed by him from his uncle. The petitioner has no license for any fire arm and he had no use of the said cartridge. The petitioner had no reason to take a single cartridge recovered from the baggage to Bangalore with him.

The petitioner has placed on record the copy of the arms license obtained by his uncle, which shows that the petitioner's uncle had purchased 10 cartridges at a time and also shows an endorsement for purchase of cartridges from time to time upto 2013. The petitioner has also placed on record a copy of his passport which shows that the place of birth is Meerut. Thus, the case of the petitioner that his home town is Meerut, where his uncle resides is also established.

Ms. Kapoor submits the investigation shows that he has travelled to Meerut before proceeding to the airport to board the flight from Delhi to Bangalore.

It is well settled that mere possession of ammunition *per se* would not attract penal consequences, unless circumstances show that the same is conscious possession by the person not authorised to possess the same. In this regard, reference may be made to the decision of a Division Bench of this in **Gaganjot Singh v. State**, W.P. (CrI.) No. 1169/2014 decided on 01.12.2014, MANU/DE/3227/2014.

In the circumstances of this case, it is highly unlikely that the possession of the cartridge in question by the petitioner as found in the

baggage at the airport was conscious. The petitioner had no reason to come into possession with the said cartridge, since he does not own or possess the requisite arms to put the cartridge to use. The recovery of a solitary cartridge also rules out the possibility of the petitioner seeking to smuggle the cartridge with him from Delhi to Bangalore. The fact that the petitioner's uncle has a license for fire arm; had the authority to procure 10 cartridges of the kind recovered, and; that he had acquired cartridges from time to time including 2013 is also evident from the documents placed on record.

Though it is also open to the petitioner to bring all the aforesaid aspects to the notice of the Trial Court in case a charge sheet is filed, in my view, the petitioner should not be subjected to undue harassment. The petitioner is a young and qualified person working with a reputed company and it would tantamount to undue harassment to him, which would also impede his daily routine and work. Accordingly, the petition is allowed and the FIR and the proceedings arising therefrom are quashed.

It goes without saying that the present order is passed in the facts and circumstances of this particular case, since the aspects whether possession of the ammunition is conscious would have to be assessed by the court in each particular case.

Petitions stands disposed of. Dasti.

VIPIN SANGHI, J

OCTOBER 17, 2016

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