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

+ W.P.(CRL) 3516/2016

ABDUL NASIR BARICH

..... Petitioner

Through: Mr. Varun Malik & Mr. Satya Ranjan
Swain, Advocate.

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Sanjay Lao, ASC along with SI
Vinod Kumar, PS-IGI Airport, for the
State.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

19.12.2016

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The petitioner has preferred the present writ petition to seek quashing of the FIR No.417/2016 under Section 25 of the Arms Act registered at IGI Airport against the petitioner and the proceedings arising therefrom.

The petitioner is a national of Islamic Republic of Afghanistan. He came to India along with his father, his brother and uncle for treatment of his father at Fortis Hospital, Okhla on 20.10.2016. His father was advised a kidney transplant. The petitioner and others, therefore, decided to go back to Afghanistan to arrange for the Kidney and come again. On 01.06.2016, when the petitioner and others were boarding the Flight No.FG312 of Ariana

Afghan from New Delhi to Kabul at Terminal T-3, of IGI Airport, the petitioner was detained as 08 live rounds (bullets) were detected from his check-in baggage. Consequently, the aforesaid FIR came to be registered.

The submission of the petitioner is that he was not conscious of the fact that the said 8 bullets were lodged in his check-in baggage. The petitioner submits that the father of the petitioner had a licensed revolver and the said bullets had been issued in respect of the said licensed revolver. The petitioner was required to and has placed on record the license issued in the name of his father in respect of the aforesaid firearm. The arms license placed on record by the petitioner has already been got verified as is evident from the status report itself.

Mr. Lao has pointed out that the petitioner and three others, including the petitioner's father, were on their way to board the flight in question. While the other three, including the petitioner's father had deboarded the flight, the petitioner was detained since 8 live cartridges were recovered from his check-in baggage.

The Division Bench of this Court in *Gaganjot Singh Vs. State*, W.P. (Crl.) No. 1169/2014 decided on 01.12.2014, took note of the decisions of the Supreme Court in *Gunwantlal Vs. The State of Madhya Pradesh*, AIR 1972 SC 1756, wherein the Supreme Court has held that possession of a firearm under the Arms Act must have an element of conscious possession in the person charged with such offence, and where he has not the actual physical possession, he has none-the-less a power or control over that weapon so that his possession thereon continues despite physical possession being in someone else. In the present case, the bullets were not in the conscious physical possession of the petitioner when found in his checked-in

baggage.

It appears that the petitioner's possession of the 8 live cartridges in his check-in baggage was not conscious. The petitioner was evidently not aware that the said 8 cartridges form part of his check-in baggage. The possession of the said 8 live cartridges has been sufficiently explained by the petitioner as his father, who was also a co-passenger, had a licensed revolver to which those cartridges related.

Accordingly, no useful purpose would be served in proceeding further with the FIR in question and the proceedings emanating therefrom. The same are hereby quashed.

Dasti.

DECEMBER 19, 2016

B.S. Rohella

VIPIN SANGHI, J