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

+ W.P.(CRL) 354/2017

VINAY KHANDELWAL Petitioner

Through: Mr. Satvinder Singh, Advocate.

versus

STATE & ANR. Respondent

Through: Mr. Sanjay Lao, ASC along with SI
Mukesh Baliyan, PS – IGI Airport,
for the State.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

03.02.2017

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Crl.M.A. No. 1948/2017

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(CRL) 354/2017

Issue notice. Mr. Lao accepts notice on behalf of the State.

He has tendered a status report, which is taken on record.

The petitioner has preferred the present writ petition to seek the quashing of FIR No.81/2016 registered at PS – IGI Airport, Delhi under Section 25 of the Arms Act, 1959 and the proceedings emanating therefrom.

The case of the petitioner is that he is the Executive Director of Khandelwal College of Management Science and Technology and Khandelwal College of Architecture and Design in Bareilly, Uttar Pradesh. He submits that on 24.02.2016, he along with his friend, while travelling to Ahmadabad to pursue his course of Management Development Programme at IIM Ahmadabad via flight no. AI-010, Air India was apprehended during

the security check at the IGI Airport, as, while scanning his bag, it was claimed that two live cartridges of 0.32 MM and a Magazine had been recovered from his hand bag. The CISF Personnel brought the petitioner to the police station IGI Airport and the FIR No. 81/2016 dated 24.02.2016 u/s 25 Arms Act was lodged against the petitioner.

The petitioner submits that he is the holder of Arms License for 0.32 Pistol vide valid License No. 896/Nov-05 dated 11.11.2015, P.S. Prem Nagar issued by District Magistrate Bareilly, Uttar Pradesh in his name and the same has been got regularly renewed by him and is valid upto 16.09.2017.

The case of the petitioner is that the magazine containing the two live bullets was left out in his handbag inadvertently, due to sheer oversightness and bona fide mistake. He submits that he was in a hurry to catch the flight and took his back pack without realizing that it contained the bullets and magazine. He submits that the possession of the said bullets and magazine was not conscious, and relies upon the decisions in *Gunwantlal Vs. The State of Madhya Pradesh*, AIR 1972 SC 1756; *Sanjay Dutt vs State through CBI, Bombay* 1994 SCC (5) 410, to corroborate his submission that mere possession of bullets – without any consciousness of such possession, would not constitute an offence under Arms Act

The petitioner has placed on record a copy of the arms license with the acknowledgment of renewal of the license upto 16.09.2017 by the District Magistrate Bareilly. The State vide its status report has also verified the issuance of the said License from the Distt. Magistrate Bareilly, Uttar Pradesh, which shows the license to be valid for the State of Uttar Pradesh in the name of the petitioner and renewed till the date as stated by the

petitioner.

The petitioner, as aforesaid, is a holder of an authorized arms license, thus, the presence of live bullets and a magazine, obtained to use that arm for which the license exists, in his possession cannot be ruled out. In the circumstances of this case, it seems probable that the petitioner may have inadvertently carried the ammunition, since if he were to consciously carry the cartridge he would have carried the weapon along as well. The recovery of two cartridges also rules out the possibility of the petitioner seeking to smuggle the cartridges with him from Bareilly to Delhi and further to Ahmadabad or pose any threat to the public or police officials.

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 said decision, the Division Bench 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 light of the above, I am of the view that the FIR in question cannot be sustained since it does not bring out the fact on its reading that the possession of the bullets and magazine with the petitioner was to his

knowledge and such possession was conscious. Accordingly, the FIR in question 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.

The petitions stands disposed of.

VIPIN SANGHI, J

FEBRUARY 03, 2017