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

+ W.P.(CRL) 3008/2016

PANKAJ KAPRI

..... Petitioner

Through: Ms. Ritu Rastogi and Ms. Sasmita
Tripathy, Adv.

versus

STATE

..... Respondent

Through: Ms. Srilina Roy for Ms. Nandita Rao,
ASC with SI Dinesh Kumar

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

28.02.2017

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The status report has been filed and perused.

The petitioner has preferred the present writ petition to seek quashing of FIR No. 0138 of 2015 registered at PS – IGI Airport, PALAM, New Delhi under Sections 24/54/59 of the Arms Act, 1959 and the proceedings arising therefrom.

The case of the petitioner is that on 28.12.2015, while travelling to Goa along with his other family members, he was apprehended at IGI Airport, after physical checking of his check-in baggage. It was alleged that 8 bullets (KF 32 SNW .L) were recovered from the petitioner's bag. The

DIAL Security staff offloaded the baggage and referred the matter to the Domestic Airport Police Station and an FIR bearing No. 0138 of 2015 was lodged against the petitioner. It is also stated that the charge sheet has been filed in the meantime.

The petitioner submits that he has a valid license issued from Nainital Uttarakhand for revolver under license no. 2451/G-II-HLD/2001, to be used within the territorial jurisdiction of Uttarakhand, and he has never used or carried the revolver with above mentioned license outside Uttarakhand.

The case of the petitioner is that the cartridges were inadvertently left out in the pocket of the suitcase. The petitioner further submits that he was travelling with his family and he would never take such a risk of carrying ammunition intentionally in a High alert Zone. He submits that the possession of the cartridges/ ammunition was not conscious and relied upon the judgment of this Court in *Sonam Chowdhary vs. Govt. of NCT of Delhi* 2016 (1) JCC 307 in this regard. The petitioner states that no case under Section 24 of the Arms Act is made out since he is holder of a valid license.

The petitioner has placed on record the copy of the arms license and the acknowledgment issued by the competent authority for the weapon (0.32 Revolver). The State vide its status report dated 28.11.2016 has also verified the said License from the Distt. Magistrate Nainital, Uttarakhand which shows the license to be valid for the State of Uttarakhand and renewed till the date as stated by the petitioner.

As per the submissions made and copy of license placed on record on behalf of petitioner, there is no shadow of doubt that the petitioner is a holder of an authorized arms license. Thus, the presence of bullets/ammunition, 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 bullet/ammunition, since if he were to consciously carry the cartridge he would have carried the weapon along as well. The recovery of infinitesimal number of cartridges also rules out the possibility of the petitioner seeking to smuggle the cartridge with him from Delhi to Goa 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** wherein it 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 aforesaid, 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 cartridges with the petitioner was to his knowledge and such possession was conscious. Accordingly, the FIR in question including the charge sheet 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.

Petition stands disposed of.

VIPIN SANGHI, J

FEBRUARY 28, 2017