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

+ CRL.M.C. 2010/2017

SAPKAR RONYA

..... Petitioner

Through :Mr. Varun Malik and Mr. Satya
Ranjan Swain, Advs.

versus

THE STATE NCT OF DELHI

..... Respondent

Through :Mr. M.S. Oberoi, APP with SI
Vasant Kumar, P.S. IGI Airport

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **23.08.2017**

By this petition under Section 482 Cr.P.C., petitioner has prayed that FIR No. 0257/2016 under Section 25 of the Arms Act, 1959 ('the Act', for short) registered at P.S. IGI Airport, may be quashed.

Brief facts are that petitioner is a student and was travelling back to his hometown in Arunachal Pradesh. He was travelling from New Delhi to Guwahati by Vistara Airlines flight no. UK868 on 13th July, 2016. On screening of his baggage by the X-ray machine, one live cartridge of 0.22 bore was recovered from his handbag. Consequently, aforesaid FIR was registered at Police Station IGI Airport on the complaint of Sh. Sumit

Gulati, Security Supervisor, Vistara Airlines,T-3, IGI Airport.Charge-sheet has been filed. Trial is pending.

Learned counsel for the petitioner has contended that petitioner has a valid arms licence issued by the ADM, Namsai, Arunachal Pradesh (Annexure P/3). He was possessing arms and ammunition, pursuant to the said licence. One live cartridge remained in the handbag inadvertently and he did not notice one live cartridge in his handbag and came to know about it only at the airport. Petitioner was not in ‘conscious possession’ of one live cartridge. Therefore, ingredients of Section 25 of the Act are not attracted. Reliance has been placed on Sanjay Dutt vs. State through CBI, Bombay, MANU/SC/0554/1994, Nurit Toker vs. The State of Maharashtra, 2012 Bom CR (Cri) 154, William Michael Hurtubise vs. The State of Odisha and Ors. MANU/OR/0016/2014, Gunwantlal vs. the State of Madhya Pradesh, MANU/SC/0130/1972 and Gaganjot Singh vs. State, MANU/DE/3227/2014.

Status report has been filed by the State. Learned APP has admitted that petitioner holds a valid licence issued by the competent authority. Meaning thereby, petitioner could have possessed the arms and ammunition within the territorial bounds of Namsai, Arunachal Pradesh. Case of the

petitioner is that one live cartridge remained in his handbag inadvertently, which he did not notice when he started his journey and came to know about it only at the airport. The plea taken by the petitioner is a plausible plea. There is nothing to indicate that petitioner was in 'conscious possession' of a live cartridge, which was recovered at the IGI Airport from his handbag.

In Sanjay Dutt (supra), Supreme Court held, thus, "the meaning of the first ingredient of 'possession' of any such arms etc. is not disputed. Even though the word 'possession' is not preceded by any adjective like 'knowingly', yet it is common ground that in the context the word 'possession' must mean possession with the requisite mental element, that is, conscious possession and not mere custody without the awareness of the nature of such possession. There is a mental element in the concept of possession." During the investigation, no material could be collected by the Investigating Officer to show that the petitioner was in conscious possession of a live cartridge.

For the foregoing reasons, FIR No. 0257/2016 under Section 25 of the Act registered at P.S. IGI Airport and the consequent proceedings emanating therefrom, are quashed.

Petition is disposed of in the above terms. Dasti.

A.K. PATHAK, J.

AUGUST 23, 2017

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