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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 2907/2017**

SATNAM KAUR Petitioner
Through: Ms. Upasana Nath, Adv.

Versus

STATE OF NCT OF DELHI Respondent
Through: Ms. Manjeet Arya, APP with SI Arun
Kumr, P.S. IGI Airport.

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

ORDER
% **31.10.2017**

Two live cartridges of KF 32 2 & WL calibre were recovered from the hand bag of the petitioner at the IGI Airport, New Delhi on 9th January, 2016, which had led to registration of FIR No. 14/2016 under Section 25 of the Arms Act at police station IGI Airport on the complaint of ASI Jayanta Biswas, CISF posted at IGI Airport, New Delhi. Petitioner has prayed for quashing of present FIR.

Learned counsel for the petitioner contends that petitioner is a widow who is settled in Washington, United States of America. Petitioner is a NRI and had come to India to visit her relatives and also to attend a marriage in Jalandhar, Panjab. On 9th January, 2016, petitioner was returning to

Washington by Flight No. OZ 768 when two live cartridges were recovered from her hand bag at the checking area of the Airport.

It is the case of the petitioner that during the aforementioned marriage at Jalandhar, petitioner's nephew gave her his licenced arms and some cartridges to keep the same in her hand bag. After the marriage she returned the arms and ammunition (cartridges) to her nephew. However, two live cartridges remained lying in her hand bag inadvertently which petitioner did not notice at that time. Petitioner was not in 'conscious possession' of the two live cartridges recovered from her bag in the security check area of the Airport. No evidence could be collected by the Investigating Officer during the investigation to show that petitioner was in 'conscious possession' of the cartridges.

Learned counsel has placed reliance 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 to contend that ingredients of offence under Section 25 of the Arms Act are not attracted in absence of the 'conscious possession'

of the cartridges by the petitioner.

The plea taken by the petitioner is a plausible plea that when she was returning to Washington she did not notice the live cartridges, which were lying in her handbag. In order to attract the ingredients of Section 25 of the Act, it is necessary that accused is in 'conscious possession' of the arms and ammunition. In this case, there is nothing to indicate that petitioner was in 'conscious possession' of the two live cartridges, which were recovered at the IGI Airport from her hand bag.

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 the three live cartridges.

For the foregoing reasons, aforesaid FIR and the consequent

proceedings emanating therefrom, are quashed. Petition is disposed of in the above terms. Miscellaneous application is disposed of as infructuous.

Dasti.

A.K. PATHAK, J.

OCTOBER 31, 2017
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