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

+ CRL.M.C. 2836/2017

KOMAL PREET MALLAHI

..... Petitioner

Through: Mr. Mohit Mathur, Sr. Adv. with Mr.
Vikas Manchanda and Mr. Ashish
Nayyar, Advs.

versus

STATE OF DELHI

..... Respondent

Through: Ms. Meenakshi Chauhan, APP with
SI Sunil Kumar, P.S. IGI Airport.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **17.11.2017**

By this petition under Section 482 of the Code of Criminal Procedure,

1973 petitioner has prayed for quashing of FIR No. 182/2015 under Sections 25/54/59 of the Arms Act, 1959, registered at police station IGI Airport, on the complaint of Chief Security Officer, British Airways, IGI, New Delhi.

Brief facts of the case are that petitioner is a Canadian National of Indian origin. Petitioner had come to India to meet her relatives. While she was going back to Toronto by British Airline Flight No. BA256 on 6th May, 2015, her checked in baggage was physically searched when 7 live cartridges of .30-06 bore were found. Petitioner was not aware about the live cartridges in her bag. Her husband was having a licenced weapon and had kept the cartridges in the bag long ago which remained unnoticed when petitioner commenced her journey. FIR was registered. 7 live cartridges

were seized. Petitioner was de-boarded, however, subsequently she was allowed to leave on the next day.

Learned senior counsel for the petitioner has contended that 7 live cartridges belong to petitioner's husband who was having an arms license. The live cartridges remained lying in the bag unnoticed by the petitioner when she commenced her journey along with her three minor children. The cartridges were kept in bag long ago and remained lying in the bag inadvertently. Petitioner was not in 'conscious possession' of the recovered live cartridges. Learned counsel for the petitioner has placed reliance on *Sandeep Mukherjee vs. State (NCT of Delhi)* 2017 SCC OnLine Del 7888 and *Sonam Chaudhary vs. The State (Govt. of NCT of Delhi)* 2016 SCC OnLine Del 47.

It is trite law that, to attract the ingredients of offence under Section 25 of the Arms Act, it has to be demonstrated that accused was in 'conscious possession' of the arm and ammunition. In *Sanjay Dutt vs. State through CBI, Bombay*, MANU/SC/0554/1994, Supreme Court has 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.”

In the judgments, reliance whereof upon has been placed by the petitioner, FIRs have been quashed where live cartridges were recovered at the airport. It is held in these judgments that ‘conscious possession’ of the recovered cartridges is must for attracting the offence under Sections 25/54/59 of the Arms Act. During the investigation, no material has been collected by the respondent to show that petitioner was in ‘conscious possession’ of the recovered live cartridges. The plea taken by the petitioner that cartridges remained lying in the baggage inadvertently is a possible and plausible plea.

For the forgoing reasons, aforesaid FIR and the consequent proceedings emanating therefrom are quashed.

Petition is disposed of in the above terms.

A.K. PATHAK, J.

NOVEMBER 17, 2017

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