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

+ CRL.M.C. 1619/2017

NEERAJ PUNDIR

..... Petitioner

Through: Mr. Sumit Chaudhary, Mr. Anil Rana
and Mr. Kanwar Kochar, Advs.

versus

STATE (GOVT OF NCT OF DELHI) & ANR Respondents

Through: Ms. Meenaksh Dahiya, APP with SI
Mukesh, P.S. IGI Airport.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **12.01.2018**

By this petition under Section 482 Cr.P.C., petitioner has prayed for quashing of FIR No.387/2014 under Section 25/25(54)/59 of the Arms Act, 1959 registered at P.S. IGI Airport, New Delhi.

On 18th October, 2014, at about 4 pm bag of the petitioner was searched at the Delhi airport by the security personnel when 8 live cartridges of 7.65 caliber were noted in the said bag on x-ray machine and were seized. Petitioner failed to produce a valid arms licence, accordingly, aforesaid FIR was registered.

Learned counsel for the petitioner submits that petitioner is resident of Dehradun, Uttarakhand. He was going to Indore via Delhi. He was to take Air India Flight No. 1636 from Delhi Airport for going to Indore. Petitioner

holds a valid arms licence for arms and ammunition within the State of Uttarakhand. Licence of the petitioner was issued by the Competent Authority that is, District Magistrate, Haridwar. When petitioner commenced his journey, he was not aware that 8 live cartages were lying in his hand bag. Petitioner took the hand bag lying in his house and kept his articles without checking the hand bag properly. He himself was surprised to notice that 8 live cartridges were there in his hand bag.

Learned counsel for the petitioner contends that to attract the ingredients of offence under Section 25 of the Arms Act, prosecution has to establish that petitioner was in 'conscious possession' of the arms and ammunition. Petitioner was not in 'conscious possession' of these 8 live cartridges which were recovered from his hand bag at the Delhi Airport. Petitioner was having a valid arms licence and had kept live cartages in his hand bag earlier. Arms licence has been verified by the Investigating Officer, therefore, aforesaid FIR may be quashed.

He has placed reliance on Sanjay Dutt vs. State through CBI, Bombay, MANU/SC/0554/1994, Nuri 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.

The plea taken by the petitioner is a plausible plea that when he started his journey, he did not notice the live cartridges in his hand bag. It is trite law that 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 8 live cartridges, which were recovered at the IGI Airport from his 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, petitioner produced his arms licence before the Investigating Officer and the same has been verified. No material could be collected by the Investigating Officer to show that the petitioner was in 'conscious possession' of the 8 live cartridges recovered from him.

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

Petition is disposed of in the above terms.

Dasti.

A.K. PATHAK, J.

JANUARY 12, 2018

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