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

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Date of decision: 23.05.2019

+ **W.P.(CRL.) 1321/2019**

ALOTAIBI SALMAN WUHAYAMIR T. Petitioner

Through: Mr. Ajay Garg, Ms. Tripti Gola and
Ms. Varnika Bajaj, Advs.

versus

STATE OF NCT OF DELHI Respondent

Through: Ms. Kamna Vohra, ASC with SI
Satyaveer, PS IGI Airport.

CORAM:

HON'BLE MR. JUSTICE A.K.CHAWLA

J U D G M E N T

A.K. CHAWLA, J. (ORAL)

By the instant petition, the petitioner, in effect, seeks issuance of a Writ of Certiorari to quash FIR No.15/2019 PS IGI Airport under Section 25/54/59 of the Arms Act.

2. Concisely, the facts relevant to the petition are that the petitioner, who is a Saudi Arabian national, had come to Delhi on a medical visa bearing No. VK8690281 valid from 14.01.2019 to 13.04.2019. He has been receiving medical treatment for 'Parkinsonism with extra pyramidal symptoms' at Fortis Memorial Research Institute, Gurgaon, since the year

2017. He came to India on 15.01.2019 on medical Visa to get his medicines from Fortis, Gurgaon. On 16.01.2019, he was to board the flight No. WY 0248 to go back to his country via Muscat and, as per the allegations, during the course of the checking of his hand baggage, one live cartridge of 6.35 mm with diameter of 0.8 cm and length 2.2 cm was recovered. It resulted into lodging of the subject FIR. Police released him on bail on his executing bond with surety of the Embassy official of the Kingdom of Saudi Arabia. By the instant petition, the petitioner seeks quashing of the subject FIR on the premise that the petitioner was unaware of the cartridge in his baggage. In pursuance of the directions of the Court, the prosecution has placed on record its status report.

3. It is the submission of the ld. counsel for the petitioner that the petitioner was not in conscious possession of the subject cartridge and therefore, Section 25 of the Arms Act was not attracted. In support of such submissions, ld. counsel places reliance upon **Michael Joseph Hayden vs. State (GNCT) of Delhi**, CrI. M.C. 282/2018 and **Sandeep Mukherjee v. State (NCT of Delhi)**, 245 (2017) DLT 641.

4. The status report, relevant to the context, records as under:

"..... During course of investigation, it was revealed that he does not know about the fact how the said bullet has been recovered in his baggage as he came India for his treatment....."

5. The averments made in the petition that the petitioner was unaware of the subject cartridge in his baggage, find support from the status report that

has come to be filed. The fact that the petitioner has been visiting Delhi off and on for the purposes of receiving the treatment for the ailment 'Parkinsonism with extra pyramidal symptoms', tend to support the plea of innocence of the petitioner. The ratio of the judgments (supra) relied upon by the ld. counsel for the petitioner, support his contention that the recovery of only the subject cartridge, in the absence of even an indication of an element of any criminal act or conduct attributable to him, moreso, in the absence of any fire arm, *mens rea* cannot be attributed to him, for being charged for the offence under Sections 25/54/59 of the Arms Act. The subject matter rests therewith.

6. For the foregoing reasons, the impugned FIR No.15/2019 PS IGI Airport under Section 25/54/59 of the Arms Act, is quashed.

A.K. CHAWLA, J.

MAY 23, 2019

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