

via Video-conferencing

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P. (CRL) 1488/2020 & CRL.M.A. No. 12946/2020
DEVEM KATHURIAPetitioner
Through: Mr. Aamir Chaudhary & Mr.Kashif
Zafar, Advs.
versus
STATE OF NCT OF DELHI & ANR.Respondents
Through: Mr. Chaitanya Gosain, Adv. for Mr.
Rahul Mehra, Senior Standing
Counsel (Criminal) for the State.
Mr. Ramwungchan Kachui, ASI/Exe
in CISF, R2 in person.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **21.09.2020**

The petitioner is an accused in case FIR No. 322/2019 dated 16.07.2019 registered under section 25 Arms Act at P.S.: I.G.I. Airport, Delhi.

2. Mr. Aamir Chaudhary, learned counsel for the petitioner submits that the petitioner is a 26-year old registered pharmacist, who runs a pharmacy at NIT, Faridabad, Haryana.
3. Counsel submits that, as recited in the petition, the petitioner was found to be carrying 3 Nos. live cartridges of .32 (S & W.L) caliber while boarding a flight from Delhi to Bangalore along with his relatives on 16.07.2019; whereupon the subject FIR came to be registered on a complaint made by the CISF. It is further stated in the petition that upon discovery of the cartridges, the petitioner immediately informed the security personnel that he was unaware

of the presence of the cartridges in his baggage; that he neither tried to conceal the cartridges; nor did he flee from the spot. To be sure, no fire arm was recovered from the petitioner or his baggage.

4. Counsel for the petitioner submits that in fact the cartridges belong to his father, who has a valid All India Arms License, issued by the Commissioner of Police, Faridabad on 11.02.2013, which is valid till 30.10.2022. The father acquired the gun license since he has to deal with large amounts of cash running a pharmacy.
5. Mr. Chaudhary submits that ‘unconscious possession’ of the cartridges does not amount to an offence in law.
6. Issue notice.
7. Mr. Chaitanya Gosain, learned counsel appears on behalf of Mr. Rahul Mehra, learned Senior Standing Counsel (Criminal) for the State on advance copy; accepts notice; and submits that the respondents/State has already filed a status report dated 20.09.2020, which however is not on record.
8. Let the status report be brought on record.
9. A copy of the status report has been forwarded *via* e-mail and has been perused.
10. Mr. Gosain points-out, that as recorded in the status report, it stands verified that the petitioner’s father Sh. Kedar Nath Kathuria does indeed have a valid All India Arms License issued by the Commissioner of Police, Faridabad; and further that the 03 cartridges found were part of 25 cartridges which the father had purchased on 29.11.2018 from M/s Faridabad Gun House, NIT, Faridabad, Haryana, all of which is well-documented.

11. The status report further records that the arm license and its validity have also been duly verified, as also the purchase of the ammunition. However, the status report records that the cartridges have been sent for FSL's opinion sometime in July 2019, which report is still awaited.
12. Mr. Gosain, on instructions of I.O./A.S.I. Sunil Gaur, P.S.: IGI Airport, Delhi confirms that no fire arm was found in the possession of the petitioner or in his baggage during the pre-embarkation security check; that the petitioner has no prior or other criminal involvement; and that the State does not doubt that the possession of cartridges was not 'conscious possession', since the petitioner just happened to be carrying his father's travel bag on that day.
13. Mr. Chaudhary responds to submit, that since there is no contest that the cartridges recovered were 'live', and the purchase and source of the cartridges against a valid Arms License has been verified, no purpose will be served by awaiting the FSL opinion.
14. Mr. Chowdhury also draws attention to the decisions of this court and of the Bombay High Court in the following cases :
 - (a) *Jerusalem vs. State of Maharashtra* in W.P.(CRL) 3569/2011 ;
 - (b) *Hasib Ahmed Fazli vs. State of NCT of Delhi* in W.P. (CRL) 2988/2019 ;
 - (c) *Surender Kumar Singh vs. The State (GNCT of Delhi) & Anr.* in W.P. (CRL) 2143/2019 ;
 - (d) *Gurpreet Singh Mangat vs. State of Delhi & Anr.* in W.P. (CRL) 337/2020 ;

- (e) *Davinder Singh Dhindsa vs. The State (N.C.T. of Delhi)* in W.P. (CRL) 344/2019 ;
- (f) *Michael Joseph Hayden vs. State of NCT of Delhi* in CRL.M.C. 282/2018; and
- (g) *Jasbir Chahal vs. State of (GNCT of Delhi)* in CRL.M.C. 854/2018.

in support his submission that the settled legal position is that the expression ‘possession’ under section 25 of the Arms Act 1959 refers to possession backed with requisite mental element, that is to say, it must be ‘conscious possession’; and that mere custody without awareness of the nature of the possession, does not constitute an offence under the Arms Act.

- 15. Mr. Gosain does not contest the submissions made on behalf of the petitioner, except to say that ordinarily the State would file a cancellation report; but the position is that such report cannot be filed until a formal FSL opinion is obtained, which may take a very long time considering that the FSL report was sought sometime in July 2019 and more than a year has elapsed since, without the report being received.
- 16. In the circumstances, this court is satisfied that no purpose will be served by permitting the investigation in the subject FIR to continue; that prosecution in the matter would be a waste of precious judicial time since, in view of the stand taken by the State, the chance of conviction is less than bleak; and that, to permit investigation and prosecution in the present matter to continue would be an exercise in futility, if not an abuse of the process of law.

17. Accordingly, this court is persuaded to accept the petition; whereby, FIR No. 322/2019 and all proceedings enumerating therefrom, are hereby quashed.
18. The petition stands disposed of.
19. Pending applications, if any, also stand disposed of.

ANUP JAIRAM BHAMBHANI, J.

SEPTEMBER 21, 2020/uj