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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 9th July, 2021

Decided on: 3rd August, 2021

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CRL.REV.P. 1205/2019 &

CRL.M.(BAIL) 600/2021 (for suspension of sentence)

AMIR alias SALEEM & ORS.

..... Petitioner

Represented by: Mr.Akshay Bhandari, Advocate for
the petitioner No.1.
Mr.Wajih Shafiq, Advocate with
Ms.Ramsha Shan, Advocate for the
petitioner Nos. 2 and 3.

Versus

STATE

.... Respondent

Represented by: Mr.Amit Gupta, APP for the State
with SI Amit, P.S. Crime and
Railways.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By this petition the petitioners Amir @ Saleem, Sonu @ Zakir and Shahjad @ Abid seek setting aside of the judgment dated 6th November, 2019 whereby the learned Additional Sessions Judge dismissed the appeal filed by the petitioners challenging the judgment of the learned CMM dated 31st January, 2019 convicting the petitioners for offence punishable under Section 25 Arms Act and the order on sentence dated 5th February, 2019 directing them to undergo sentence of simple imprisonment for a period of three years and a fine of ₹1000/ each.

2. Learned counsel for the petitioner contends that the material witness of the prosecution Inspector Sunil Kumar to whom the information was

passed and on whose directions the raiding team was constituted was not examined before the Court. The sanction granted by the DCP concerned is without application of mind for the reason pistol allegedly recovered from the petitioner was not placed before the sanctioning authority. No public witness was joined at the time of apprehension of the petitioners. No efforts were made by the investigating agency to trace the source of arms and ammunition allegedly recovered from the petitioners. There are glaring discrepancies in the deposition of the prosecution witnesses. It is further contended that no case was made out before the learned CMM for awarding the maximum sentence imprisonment for a period of three years.

3. Learned APP for the State has taken this Court to the impugned judgment of conviction and order on sentence and contends that there is no error therein and no case for reduction of the sentence is also made out. The sanction was granted by the competent authority after going through all the material documents and the exhibits are not required to be sent to the sanctioning authority for grant of sanction.

4. Case of the prosecution based on the statement of the witnesses is that on 23rd March, 2017 upon receipt of secret information, arrival of one Saleem @ Amit along with his associate, who is an accomplice of gangster Nasir, lodged in jail was received; as per which Saleem @ Amir along with associates was to come from East Azad Nagar along with illegal arms. Information in this regard was given to Insp. Sunil Kumar, the senior officer and a raiding team was constituted comprising of SI Neeraj, ASI Vikal, ASI Rakesh Kumar, ASI Surender Pal etc., which team along with secret informer reached East Azad Nagar in three separate vehicles. Passerbys were requested to join the investigation, however none cooperated. On

reaching H.No. A-53, one Masood Hasan, R/o Top floor of the same building was present. He was also requested to join the raiding team, however he also refused citing his ill health and age. In the meantime, three persons got down from the stairs of the building and one of them was identified as Saleem @ Amir by the informer. They tried to flee away from the spot but were apprehended by the raiding team. The three persons coming down disclosed their names as Saleem @ Amir, Sonu @ Zakir and Shahjad @ Abid.

5. On the personal search of Saleem @ Amir one pistol loaded with two live cartridges; Sonu @ Zakir with one pistol and three live cartridges and Shahjad @ Abid with one pistol and two live cartridges were recovered. The sketches of pistols and cartridges recovered were prepared and they were seized vide the seizure memo. Rukka was sent from the spot on which FIR No. 42/2017 under Section 25 Arms Act was registered at PS Crime Branch.

6. Disclosure statements of the accused were recorded and the case property was deposited in the malkhana from where it was sent to FSL. As per the FSL report, the recovered articles were arms and ammunitions as defined under the Arms Act and witnesses who appeared in the witness box supported the case of the prosecution and nothing material could be elicited in their cross-examination.

7. Contention of learned counsel for the petitioner that public witnesses were not associated and hence the Police witnesses should not be believed deserves to be rejected. As noted above, efforts were made to join the public witnesses including one who was resident of the same building at the fourth floor, however they refused to join the raiding party. Further, nothing

material has been elicited in the cross-examination to come to the conclusion that the Police witnesses were inimical to the petitioner or had the motive to falsely implicate them. As held by the Supreme Court in the decision reported as (2009) 7 SCC 178 Karamjit Singh Vs. State of Punjab, testimony of the witnesses cannot be discarded merely because they are Police officials.

8. As regards the issue of sanction is concerned, the only ground of challenge is that the recovered pistols and cartridges were not produced before the sanctioning authority. Once the case property is deposited in the malkhana, the only place where it is required to be sent is the FSL and after receipt from the FSL it is required to be deposited in the malkhana to be produced in the Court and the prosecution is bound to prove the chain of custody of the articles so as to rule out tampering therein. The case property cannot be taken out for being examined by the competent authority for grant of sanction who has relied upon the entire material collected during the course of investigation including the statements of the witnesses and the FSL report received. The order granting sanction dated 4th August, 2017 specifically mentions the FSL report dated 25th May, 2017 of the Senior Scientific Assistant, Ballistic, FSL, Govt. of NCT Delhi.

9. In support of the contention regarding harshness of the sentence awarded, learned counsel for the petitioner No.1 has relied upon the decision of the Supreme Court in CRL.A. 992-993/2016 Samir Ahmed, Rafiq Ahmed Ansari Vs. State of Gujarat wherein in the Supreme Court held as under:

“7. Section 25(1AA) of the Arms Act deals with manufacture, sale, transfer etc. of the prohibited arms. In this case, the prosecution has not adduced any evidence to show that the appellant-accused had indulged in manufacturing of arms or

prohibited ammunition in contravention of section 7. Since the prosecution has not adduced any evidence to substantiate the allegation of manufacture, in our view, the conviction of the appellant-accused under Section 25(1AA) cannot be sustained.

8. *The question falling for consideration is that what is the offence for which the appellant is to be convicted for the possession of the country made pistol loaded with live cartridges and for possession of two other live cartridges. Section 3 deals with licence for acquisition and possession of firearms and ammunition. As per Section 3(1) no person shall acquire, have in his possession, or carry any firearm or ammunition unless he holds a licence issued in accordance with the provisions of the Arms Act and the Rules made thereunder. Contravention of Section 3 is punishable under Section 25(1B) (a) with imprisonment for a term which shall not be less than one year but which may extend to three years and also be liable to fine. Both the Courts recorded concurrent findings that the appellant was found in possession of country made pistol loaded with live cartridges and in possession of two other live cartridges which act is clearly in violation of Section 3 of the Act. It is not the case of the appellant that he has a licence for possession of country made pistol. The possession of the country made pistol without licence is punishable under Section 25(1B)(a) of the Arms Act. The appellant is said to have undergone the sentence of imprisonment for 1 ½ years (vide this Court order dated 17.10.2016).*

9. *In the result, the conviction of the appellant under Section 25(1AA) of the Arms Act is modified to Section 25(1B)(a) and the sentence of imprisonment is modified to the period already undergone. The appellant is on bail. His bail bonds shall stand discharged.”*

10. Undoubtedly, even in the present case except the disclosure statement there is no material before the Court to come to the conclusion that the petitioners were possessing the arms and ammunition as punishable under Section 25(1AA). By virtue of Section 25(1AA) any person who has in his

possession for sale, transfer, conversion, repair, test or proof, any prohibited arms or ammunition in contravention of Section 7 shall be punishable for imprisonment which shall not be less than 7 years but which may extend to imprisonment for life. The petitioners have not been convicted for violation of Section 7 of the Arms Act but for Section 3(1) of the Arms Act which provides for imprisonment not less than 1 year and which may extend to 3 years.

11. A perusal of the nominal roll of the three petitioners would reveal that except Shahjad the two other accused have other multiple involvements including in serious offences. Further, the manner in which the three accused were coming down together armed with the pistols along with live cartridges, it is evident that the purpose of possession was for some unlawful activity.

12. In view of the discussion aforesaid, this Court finds no error in the impugned judgment of conviction as also no ground to modify the order on sentence. Petition and application are accordingly dismissed.

(MUKTA GUPTA)
JUDGE

AUGUST 03, 2021
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