

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL APPLICATION NO.733 OF 2021

Pankajj Santoshkumar Bansal
Adult Indian, Occu.-Business,
Residing at – 16, Krishna Kunj,
Road No.2, Swastik Society,
JVPD Scheme, Vile Parle (W),
Mumbai – 400 056.

...Applicant

Versus

The State of Maharashtra
(Through Sahar Police Station
L.A.C. No.21/2021)

...Respondents

Mr. Shyam Kalyankar, for the Applicant.

Ms. S D. Shinde, A.P.P for the Respondent– State.

***CORAM : REVATI MOHITE DERE &
S. M. MODAK, JJ.***

DATE : 26th SEPTEMBER 2022

ORDER (Per Revati Mohite Dere, J.):

1. Heard learned counsel for the parties.
2. Rule. Rule is made returnable forthwith, with the consent of the parties and is taken up for final disposal. Learned A.P.P waives

notice on behalf of the respondent–State.

3. By this application, preferred under Section 482 of the Criminal Procedure Code, the applicant seeks quashing and setting aside of the FIR registered vide L.A.C. No.21 of 2021 with the Sahar Police Station, Mumbai, for the alleged offence punishable under Section 3 r/w Section 25 of the Arms Act, 1959.

4. The factual matrix of the prosecution case in short, is as under :-

According to the first informant – Giriraj Dinesh Patil, he was working as a Security Officer at Mumbai International Airport Limited. He has stated that on 23rd June 2021, he was on duty at Level – 4 and his duty was to check suspicious bags in check-in luggage of the passengers. He has stated that from security levels 1, 2 and 3, one suspicious bag of one passenger travelling by Indigo flight number 6E-831 to Goa was found and that as per the procedure the said bag was referred to him for physical checking. He has stated that

on physical checking of the bag, one pouch containing 5 live cartridges was found inside the said bag and hence the concerned staff of the Indigo Airlines was called alongwith CISF constable. The applicant, whose bag it was, when questioned admitted that they were his cartridges, i.e. of a licensed .32 bore revolver. The applicant also produced the original arms license. Since cartridges were found in the applicant's bag, the aforesaid complaint was registered vide L.A.C. No.21 of 2021 with the Sahar Police Station, Mumbai, alleging the aforesaid offences, as against the applicant.

5. Learned Counsel for the applicant submits that the applicant is a reputed businessman and a tax payee. He submits that the applicant has an arms license and that pursuant to the said license, he possesses a revolver for his personal protection. He submits that the said license was initially granted on 1st July 2015 and that the same has been renewed from time to time and as such the said arms license is valid till 1st July 2025. To the application, is annexed the arms license of the applicant at Exhibit – 'B' on page 16 of the application. He

submits that in the entire FIR, the only allegation as against the applicant is that he was carrying 5 live cartridges in his check-in baggage, whereas under the law, he can carry only 3 live cartridges and that he entered the Airport with the same. Learned Counsel for the applicant further submits that since the applicant has a valid license to carry a revolver and live cartridges all over the State of Maharashtra, he usually carried the same with him, whenever he is required to travel. He submits that the applicant inadvertently, without any intention to do so, forgot to remove the pouch containing 5 live cartridges from his bag and only removed his licensed revolver and kept it in his safe at his residence, before taking the flight. According to the learned counsel for the applicant, as per the Arms License granted, the applicant is permitted to carry 30 cartridges as mentioned in clause No.4 on page 11 of the license and that the same has not been altered or changed till date, whilst renewing his license from time to time. He submits that the applicant under a bonafide belief that he is permitted to carry 5 live cartridges with him alongwith the revolver would carry the same and that the same was

never objected till date, whilst checking/inspection. He submits that as per the terms of his License, he is permitted to carry maximum 30 cartridges and to purchase maximum 50 cartridges in a year. He submits that taking the prosecution case as it stands, no offence is disclosed as against the applicant, much less the alleged offence under the Arms Act. He submits that at the relevant time, the applicant was not carrying his revolver with him and that the pouch containing 5 cartridges got left inadvertently in the check-in bag. He submits that it was never the intention of the applicant to cause any threat or concern to the security or breach the security or create any panic. He submits that inadvertently in the hurry, the applicant failed to remove the pouch containing 5 live cartridges whilst removing the revolver from his bag, and keeping it in the safe, in his house. He submits that the applicant had no knowledge that the pouch containing 5 cartridges remained in his bag and as such was not in conscious possession of these 5 cartridges. According to the learned counsel for the applicant, the said cartridges could not have been used, *sans* the firearm. He submits that the entire incident was unintentional

and due to inadvertence, as he was in a hurry to catch the morning flight. He submits that in the absence of any intention i.e. *mens rea*, and the mistake being a bonafide mistake, the FIR in question be quashed and set aside.

6. In this connection, the learned counsel for the applicant relied on the judgment of this Court in the case of *Siddharth Upendra Singh v/s The State of Maharashtra*¹ and *Dr.Leena Ashay Nandeshwar v/s The State of Maharashtra and Ors*².

7. Learned APP opposed the application. Learned APP, however, does not dispute that the applicant holds a valid arms license for his .32 bore revolver.

8. Perused the papers with the assistance of the learned counsel for the parties. Admittedly, the applicant possesses an Arms License for his .32 bore revolver. The said arms license for .32 Bore

1 2018 SCC OnLine Bom 2089

2 Criminal Writ Petition No.4791 of 2019 dated 15.06.2022

Revolver of the applicant is at Exhibit – ‘B’ on page 16 of the application. Admittedly, the said license was granted initially in 2015 and was renewed from time to time and is valid till 1st July 2025. It appears from the license that the maximum cartridges the applicant is permitted to possess at one time is, 30 cartridges/ammunition and the maximum purchase permitted during the year is 50 cartridges. Admittedly, 5 live cartridges were recovered from the check-in luggage of the applicant. Admittedly, no weapon or firearm was found or recovered. Although, the learned counsel for the applicant submits that the applicant by virtue of the arms license is permitted to carry 30 cartridges, we do not wish to get into the controversy with respect to the number of bullets/cartridges permitted. It appears that the applicant had removed his licensed revolver from his bag, however, had inadvertently, left a pouch containing 5 cartridges in the bag. The applicant when questioned has not denied that the cartridges did not belong to him, however, has stated that he inadvertently failed to remove the pouch from the bag whilst removing the revolver. Hence, possession of the said cartridges cannot be said to be

‘conscious’ possession. Learned Counsel for the applicant submits that it was never the applicant’s intention to contravene the provisions of the Act. It is not in dispute that the applicant had a valid Arms License and that the bullets recovered were relatable to the said licenced weapon. The said 5 live cartridges/ammunition were found in the check-in baggage of the applicant *sans* the weapon. *Prima-facie*, having regard to the material on record, in the facts, we do not find any malafide intent or the requisite *mens rea* on the part of the applicant, who was found with 5 cartridges in his luggage. The possession cannot be said to be conscious.

9. It is also pertinent to note, that when the applicant was first confronted with the cartridges, he disclosed that he was not aware that the bullets were there in the luggage and later realised that he had forgotten to remove the bullets, although, he had removed his licensed weapon. The applicant has not denied that the bullets belonged to him. This clearly shows the intent of the applicant, was not to suppress the truth. Several Courts, in cases where there are no

malafides on the part of the accused, have quashed proceedings under the Arms Act. In the present case, having regard to the totality of the circumstances, we are of the opinion that the facts demonstrate that there was no malafide intention or *mens rea* on the part of the applicant, a licensed arms holder, who was found with 5 cartridges in his check-in bag, nor can the possession said to be conscious.

10. Considering the aforesaid, the application is allowed and the FIR registered vide L.A.C. No.21 of 2021 with the Sahar Police Station, Mumbai, and consequently the proceeding if any, arising therefrom, are quashed and set-aside.

11. Rule is made absolute in the aforesaid terms. Application is disposed of accordingly.

All concerned to act on the authenticated copy of this order.

S. M. MODAK, J.

REVATI MOHITE DERE, J.