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

Date of decision: 13.04.2022

+ **W.P.(CRL) 831/2021**

DEEPAK KUMAR SAXENA

..... Petitioner

Through: Mr. Amit Sharma, Mr. Mukesh Garg,
Advts.

versus

STATE NCT OF DELHI & ANR.

..... Respondents

Through: Ms. Kamna Vohra, ASC for State, SI
Vijay Singh, P.S. IGI Airport

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

CRL.M.A. 6874/2022

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

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3. The present writ petition has been filed seeking quashing of FIR No. 235/2019 dated 03.06.2019 registered u/s 25 of the Arms Act, 1959, P.S. IGI Airport against the petitioner.
4. It is the case of the petitioner that the petitioner is a doctor by profession and has a good reputation and is a respected citizen of the country.
5. It is submitted that the petitioner was apprehended on 02.06.2019 at



IGI Airport carrying 25 no. of 0.32-inch ammunition (cartridge). On screening at the second check of the airport, 25 cartridges were detected in the small outside pocket of the hand bag carried by the petitioner. It is submitted that while cleaning his bag, the petitioner took out the pistol but forgot to take out the cartridges which were inadvertently left in the hand bag.

6. The counsel for the petitioner states that the petitioner was mentally disturbed on the said date as the elder son of the petitioner, who has paralysis, did not pass urine for more than a day and as a result of which the petitioner was stressed. The petitioner submits that it was an inadvertent act which happened by mistake and not a deliberate one.

7. Lastly, the petitioner submits that the petitioner has inherited the 0.32 Bore Pistol No. 614211 and its cartridges from his father and he had applied for an arms licence in 1990 and since then he is holding an All India Arms Licence No. SDHN/12/1990/386 issued by the Licensing Unit, Commissioner of Police, Delhi, which was valid up to 31.12.2019.

8. Ms. Vohra, learned APP for the State, submits that the factum of the licence as well as the cartridges has been verified and seems to be genuine.

9. In **Adhiraj Singh Yadav Vs. State**, decided on 31.12.2020 in W.P.(CRL) 754/2020, this Court held that:

“12. In view of the above, it is well settled that an offence under Section 25 of the Arms Act would not be made out in cases where the suspect was not conscious that he was in possession of live ammunition.

14. This Court has in several cases held that unconscious possession would not attract the rigours of the said Act. [See: Surrender Kumar @ Surrender Kumar Singh v. The State (GNCT of Delhi) &Anr.: W.P.



(Crl) 2143/2019 decided on 27.09.2019; Aruna Chaudhary v. State & Ors.: W.P. (Crl.) 1975/2019 decided on 25.09.2019 and Paramdeep Singh Sran v. The State (NCT of Delhi) W.P.: (Crl) 152/2019 decided on 29.08.2019)].”

10. While deciding a similar matter titled ‘**Mitali Singh v. NCT of Delhi & Anr.**, decided 15.12.2020, W.P.(CRL) No. 2095/2020, this court made the following observation:

“8. The courts have in a number of decisions held that the conscious possession of an ammunition is sine qua non to prosecute the possessor under the Arms Act, 1959.

9. In **Gunwant Lal v. The State of Madhya Pradesh : (1972) 2 SCC 194**, the Constitution Bench of the Supreme Court has held as under:-

“The possession of a firearm under the Arms Act in our view must have, firstly the element of consciousness or knowledge of that possession in the person charged with such offence and secondly where he has not the actual physical possession, he has none-the-less a power or control over that weapon so that his possession thereon continues despite physical possession being in someone else. If this were not so, then an owner of a house who leaves an unlicensed gun in that house but is not present when it was recovered by the police can plead that he was not in possession of it even though he had himself consciously kept it there when he went out. Similarly, if he goes out of the house during the day and in the meantime someone conceals a pistol in his house and during his absence, the police arrives and discovers the pistol he cannot be charged with the offence unless it can be shown that he had knowledge of the weapon being placed in his house. And yet again, if a gun or firearm is given to his servant in the house to clean it, though the physical possession is with him nonetheless possession of, it will be that of the owner. The concept of possession is not easy to comprehend as writers of (sic) have had occasions to point out. In some cases under Section 19(1)(f) of the Arms Act, 1878 it has been held that the word "possession" means exclusive possession and the word "control" means effective control but this does, not solve the



problem. As we said earlier, the first precondition for an offence under Section 25(1)(a) is the element of intention, consciousness or knowledge with which a person possessed the firearm before it can be said to constitute an offence and secondly that possession need not be physical possession but can be constructive, having power and control over the gun, while the person to whom physical possession is given holds it subject to that power and control.”

10. *In Sanjay Dutt v. State through CBI Bombay (II), Crimes 1994 (3) 344 (SC) the Supreme Court has observed as under:-*

“20. 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. Accordingly, the ingredient of 'possession' in Section 5 of the TADA Act means conscious possession. This is how the ingredient of possession in similar context of a statutory offence importing strict liability on account of mere possession of an unauthorized substance has been understood.””

11. The above judgments require conscious possession or knowledge of the possession in order to attract the provisions of S 25 of the Arms Act. The Petitioner has been able to make out a case that he was not conscious about the possession of the live ammunition. He has also stated on record that he was feeling rather disturbed that due to his personal circumstances and the subsequent actions have taken place unknowingly. I have no reason to disbelieve the version of the petitioner nor anything has been stated in the status report to contradict the petitioner.

12. Noting the above, FIR No. 235/2019 dated 03.06.2019 registered u/s



NEUTRAL CITATION NO: 2022/DHC/001600

25 of the Arms Act, 1959, P.S. IGI Airport against the petitioner and the proceedings emanating therefrom is hereby quashed, subject to payment of costs of Rs. 15,000/- to the 'Indigent and Disabled Lawyers' Fund (A/c No. 010104000183451) of Bar Council of Delhi within 4 weeks and proof be filed, failing which, the file will be put up.

APRIL 13, 2022/dm

JASMEET SINGH, J

[Click here to check corrigendum, if any](#)

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