

Anand

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

WRIT PETITION NO. 6340 OF 2021

Pravin Selvi Kanakraja .Petitioner
Age : 22 yrs, Occu : Student,
R/o. 13-3-20/ Mehruji Road,
Palanichettipatti Post,
District - Them
Tamilnadu.

Vs.

1. The State of Maharashtra .Respondents
Through Sahar Police Station,
Andheri (E),
Mumbai.
2. Roshan David Lobo, Adult,
Age : 33 yrs, Occu : Service,
R/o. R. No. 22, Friends Housing
Society, A. B. Compound,
Khairani Road, Near Gurudwara,
Sakinaka,
Mumbai - 400 072.

Mr. Mateen Shaikh a/w Mr. Arshad Shaikh, Ms Muskan Shaikh
i/b. Mr. K. D. Hadkar, Advocate, for the Petitioner
Ms S. D. Shinde, APP, for Respondent No. 1 - State
Mr. Tejas S. Bhide, Advocate, for Respondent No. 2/Complainant

**CORAM : SUNIL B. SHUKRE AND
M. M. SATHAYE, JJ.**

DATE : 28 MARCH 2023

ORAL JUDGMENT (PER : SUNIL B. SHUKRE, J.)

. Heard.

2. Rule.

3. Rule is made returnable forthwith. With the consent of the parties, the Petition is taken up for final disposal at the stage of admission.

4. Learned counsel for the Petitioner submits that live cartridge recovered from the bag of the Petitioner was not within the knowledge of the Petitioner and therefore, it cannot be said that Petitioner was in conscious possession of the live cartridge of the fire arm and as such, no offence punishable under Section 25 r/w 3 of the Arms Act is constituted in the present case.

5. Learned APP submits that at the time of seizure of the live cartridge in question, an explanation was called for from the Petitioner as to how his bag was found to be carrying one live cartridge of the fire arm, whereupon the Petitioner had stated that while in America, he had visited one club at 42, North Gun Range, Stock, Bridge, Georgia, USA, where he had fired from his fire arm some cartridges while few of them were retained by him and that is how his bag was found to be containing one of those

cartridges. According to her, this statement clearly shows that the Petitioner was in conscious possession of the live cartridge in question.

6. Learned counsel for Respondent No. 2/Complainant submits that this Court may pass an appropriate order.

7. Even if we do not consider admission given by the Petitioner about his having knowledge of his bag containing live cartridge in question still the submission pertaining to conscious possession or no conscious possession is something which is required to be decided on merits of the matter and that would be possible only at the time of the appreciation of evidence, a stage relating to final hearing of the case. Besides, there is no dispute about the fact that the bag containing live cartridge in question belongs to the Petitioner. The Petitioner has not denied that the bag in question was not his bag. Therefore, there would be presumption in law that whatever is found to be contained in the bag is owned by the Petitioner. It belongs to the Petitioner and it was in the bag with the knowledge of the Petitioner. This presumption is of course rebuttable. Therefore, in our opinion, this is not a fit case for making any interference in the matter.

8. Learned counsel for the Petitioner has relied upon two Judgments rendered by other Bench of this Court (i) *Rachelle Joel Oseran Vs. The State of Maharashtra and Ors.* in *Cri. W. P. No. 323 of 2017* decided on *06.04.2018* and (ii) *Ms Bosky Ramanlal Patel Vs. State of Maharashtra & anr.* in *Cri. W. P. No. 2568 of 2022* decided on *12.10.2022*. In both these Judgments, other co-ordinate Benches of this Court have considered the meaning of words, “conscious possession” and it was found that there was no material available on record to attribute knowledge to the accused persons involved in those Petitions.

9. In the present case, such material is indeed there and it is in the nature of the ownership of the bag from which live cartridge has been recovered being with the Petitioner and it is this ownership of the bag which has given rise to the presumption of conscious possession of the live cartridge on the part of the Petitioner and now, the burden to rebut such presumption is upon the Petitioner, which burden can be discharged only when full trial is held. Therefore, facts of this case are quite different from the facts of the cases relied upon by

the Petitioner and therefore, those cases would not render any assistance to the Petitioner in the present case.

10. In the result, we find that this Petition is without any substance. The Petition stands dismissed. Rule is discharged.

(M. M. SATHAYE, J.)

(SUNIL B. SHUKRE, J.)