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

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***Reserved on: 15.03.2023
Pronounced on: 18.04.2023***

+ **CRL.M.C. 1736/2023**

IRFAN KHAN

..... Petitioner

Through: Ms. Srishti Agnihotri,
Advocate.

versus

STATE (NCT) OF DELHI

..... Respondents

Through: Mr. Satish Kumar, APP for the
State with SI Sunil Verma,
P.S. Govind Puri.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant petition has been filed by the petitioner under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') for quashing of proceedings arising out of FIR bearing No. 477/2022 registered at Police Station Govindpuri, New Delhi, for offences punishable under Sections 25/54/59 of the Arms Act, 1959.

2. Briefly stated, the facts of the present case are that on 09.07.2022, the accused/petitioner was apprehended by police

officials in a state of delirious euphoria, loitering near the corner of a park at Pravasi Ekta Bhumiheen Camp, Govindpuri, New Delhi. Despite being subjected to a barrage of questioning by the police officials, the accused had proved incapable of providing any satisfactory responses, thereby arousing suspicion. Consequently, upon a thorough search of the petitioner, the police officers had recovered a sharp-edged button knife, measuring 31.5 cm, from the right pocket of the petitioner's trousers, which was promptly confiscated. It is the case of prosecution that the accused had committed a blatant violation of the DAD Notification No. F/13/451/79-Home(G), dated 29.10.1980, pertaining to the offence under Sections 25/54/59 of Arms Act. Subsequently, chargesheet had been filed by the investigation agency.

3. Learned counsel for the petitioner vehemently argues that the petitioner has been falsely implicated in this case, since there is no specific allegation against him that he was in possession of the said knife for sale or test in order to bring the same within the purview of DAD Notification dated 29.10.1980. It is submitted that the contents of the chargesheet are replica of the FIR which simply reiterates the facts of the case. It is contended by learned counsel for petitioner that there are no independent eye witnesses to support the story of the prosecution. It is also stated that the petitioner was arrested in connection of an offence under Section 380 IPC arising out of e-FIR bearing no. SED-GP-000569/2022, however, the petitioner was not named in the e-FIR and was granted bail by learned Trial Court *vide*

order dated 01.07.2022, and was thereafter, arrested in the present case on 09.07.2022.

4. *Per contra*, learned APP for the State opposes the present petition and states that there are multiple cases registered against the present petitioner and the recovery of the alleged weapon is also from the possession of the petitioner. It is also contended that the judgments/orders relied upon by the petitioner are of the stage of acquittal and the present case is listed for arguments on charge. At this stage, no ground for quashing of FIR is made out.

5. This Court has heard arguments on behalf of both the parties and has perused the material on record.

6. Before advertng to the merits of the case, this Court takes note of the relevant portion of DAD Notification No. F/13/451/79-Home(G), dated 29.10.1980, of which the petitioner is alleged to have committed a violation, which is reproduced as under:

“...Now, therefore in exercise of the powers under rule 19 of the Arms Rules, 1962 read with the Govt. of India, Ministry of Home affairs’ Notification No. 2/2/69-UTL(ii) dt./ 21st June,1969, the Administrator Delhi is pleased to direct that “no person in the Union Territory of Delhi shall manufacture, sale or possess for sale or test spring actuated knives, garidar knives, bottondar knives and other knives which open or close with any other mechanical device with a sharp edged blade of 7.62 cms or more in length and 1.72 cms or more in breadth in the Union Territory of Delhi unless he holds a license issued in accordance with provisions of the Arms Act 1959(No. 54 of 1959) and Arms Rules 1962 framed thereunder with effect from the publication of this Notification in Delhi Gazette...”

7. As far as exercise of inherent powers under Section 482 Cr.P.C. is concerned, the Hon'ble Apex Court has laid down the guidelines for quashing of FIR in case of *State of Haryana v. Bhajan Lal* 1992 SCC (Cri) 426, which are extracted herein-under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.
2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer

without an order of a Magistrate as contemplated Under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

8. Recently, the Hon’ble Apex Court in ***CBI v. Aryan Singh*** 2023 SCC OnLine SC 379 has expressed that the Courts while exercising the powers under Section 482 Cr.P.C., have a very limited jurisdiction and are only required to consider “whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not”.

9. It is the case of the prosecution that the petitioner was apprehended on spot with the alleged weapon i.e., buttondar knife, whose possession is prohibited by law *vide* DAD Notification No. F/13/451/79-Home(G), dated 29.10.1980, and upon interrogation, the petitioner failed to give a satisfactory answer as to why he was carrying that weapon or the purpose behind it, due to which present FIR was registered under Sections 25/54/59 of the Arms Act, 1959. The said notification expressly prohibits possession of weapons including buttondar knife for the purpose of sale or test. At this stage, this Court cannot come to a conclusion that the button knife recovered from the possession of petitioner was not for the purpose of sale or test which is prohibited as per the said notification since the same can only be determined during the course of trial.

10. Considering the facts and circumstances of the present case, this Court finds that the present case is not covered under the guidelines laid by Hon'ble Apex Court for quashing of FIRs in caterna of judgments including ***Bhajan Lal (supra) and Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra & Ors. 2021 SCC OnLine SC 315*** since the recovery of alleged weapon had taken place from the petitioner itself, and upon interrogation, the petitioner had failed to provide any satisfactory remarks as to why he was in possession of the said weapon. The petitioner is also involved in another criminal case where he was enlarged on bail *vide* order dated 01.07.2022 by the concerned Trial Court. Moreover, the argument that there are no independent witnesses to support the case of prosecution cannot be considered and dealt with at this stage. Also taking note of

the facts and circumstances of the case, the allegations levelled in the FIR cannot be termed as absurd or improbable.

11. Charge-sheet in the instant case already stands filed and charges are yet to be framed. Needless to say, the contentions raised before this Court can be raised before the learned Trial Court at the time of framing of charge.

12. In view thereof, this Court does not deem it fit to exercise the discretion of quashing the present FIR.

13. Accordingly, the present petition stands dismissed.

14. It is, however, clarified that nothing expressed herein-above shall tantamount to be an expression on the merits of the case.

15. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

APRIL 18, 2023/zp

