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

+ **CRL.M.C. 4069/2023, CRL.M.A. 15290/2023**

GABRIEL ALLEN CODER

..... Petitioner

Through: Mr. Sanjay Jain, Sr. Adv. Mr. Abhijit Mittal, Mr. Ajay Rao, Ms. Shaivya Singh, Ms. Avni Kritika and Mr. Anukalp Jain, Advs.

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Hemant Mehla, APP and SI Sameer Singh, PS IGI Airport.

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Date of Decision: 04.09.2023.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. The present petition has been filed seeking the quashing of case FIR No. 0329/2023 dated 22.05.2023 under section 25 Arms Act, 1959 registered at PS IGI Airport.
2. The FIR was lodged on the statement of Imnameren against the accused/Mr. Gabriel Allen Coder, a Citizen of the United States of America was travelling from Delhi to Helsinki. At the IGI airport, New Delhi, when the accused placed his hand baggage for screening, there was an image of ammunition and his bag was referred for physical

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check. On physical checking, 06 live ammunition mark Hornady .357 MAG Caliber was recovered from his hand baggage. The accused was not carrying any valid license for possession of such ammunition in his handbag and all 06 of the ammunition carried were sealed at the IGI airport Police Station.

3. Learned senior counsel for the petitioner submits that in fact the petitioner is a US citizen and had come to India on 17.04.2023 for a month-long backpacking and mountaineering course organised by the National Outdoor Leadership School (NOLS) at Ranikhet, Uttarakhand, India.
4. Learned senior counsel further submits that the petitioner was on his way back to the United States of America when the petitioner was stopped at the security check and during the screening of his handbag, it was informed to the petitioner that six live cartridges of MARK HORNADY .357 MAG CALIBRE were found in his handbag. It has been submitted that the cartridge belonged to his gun back in the United States of America. The petitioner was unaware that the same was in his baggage of possession from his travel to India from the USA in April 2023
5. Learned senior counsel submits that the said cartridges were purchased on 24.02.2023 in the USA and that the petitioner is a citizen of the State of Oregon in the United States of America and it is absolutely casual and normal to possess firearms and ammunition as there is no



licensing requirement to possess and own the same and therefore, no license was required to possess such cartridges.

6. It has submitted that the petitioner has no criminal history as reported by the US, Department of Justice, Federal Bureau of Investigation vide communication dated 05.06.2023. It has also been submitted that even petitioner was enlarged on bail he and had already undergone counselling. Now, the petitioner wants to travel back to his country and continue with his education and wants to seek medical help on account of his medical health conditions.
7. Learned senior counsel further submits that the possession of the ammunition was not in the knowledge of the accused and it was not a conscious possession, learned senior counsel has relied upon various judgements of the Coordinate Bench of this court in ***Shubhangi Singh v. State of NCT of Delhi*** CrI. M.C. 3/2022 DHC, ***Jaswinder Singh v. Govt. of NCT of Delhi*** CrI. M.C 375/2020 DHC, ***Mohd. Nazim v. State*** CrI. M.C. 2697/2021 DHC and ***Namanpreet S. Dhillon v. State*** CrI. M.C.1530/2022 DHC wherein the FIR and all the subsequent proceedings against the accused under section 25 Arms Act, 1959 were quashed.
8. Learned APP has submitted that the petitioner was found in possession of the live cartridges and the status report has been filed. It has been submitted that he was travelling without any valid license and has committed an offence under section 25 of the Arms Act and therefore, the impugned FIR cannot be condemned.



9. The question as to the unconscious possession has come before this court. It is a well-settled law that 'conscious possession' is the core ingredient to establish guilt for the offence under section 25 of the Arms Acts. The question of conscious possession has also been dealt with by the Constitution bench of the Supreme Court in the case of **Gunwantal v. State of Madhya Pradesh** (1972) 2 SCC 194 where it was *inter-alia* held as under:-

"the possession of a firearm under the Arms Act 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 besides physical possession being in someone else. The first pre-condition for an offence under Section 25(1)(a) is the element of intention, consciousness or knowledge with which a person possessed the fire arm 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. Learned counsel has further relied on the case of **Sanjay Dutt v. State** 1994 (5) SCC 410 Supreme Court *inter-alia* held that:-



"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."

11. The petitioner was in possession of the ammunition, however, he was not aware that the same was in his handbag and was inadvertently carrying the cartridges. The petitioner is a young boy who had come to India for the purpose which is narrated above. The cartridges carried by the accused belonged to the gun he had in the USA. The petitioner has also placed on record the license issued by the Oregon Department of Fish and Wildlife to the petitioner.
12. I consider that looking into the facts and circumstances the petitioner unconsciously carried live cartridges in his handbag till the same was seized by the authorities. Therefore, this court considers it apposite to allow the present petition as the court is of the view that the same would meet the ends of justice.
13. Accordingly, FIR No. 0329/2023 dated 22.05.2023 under section 25 Arms Act, 1959 registered at PS IGI Airport and all the proceedings emanating therefrom are quashed.
14. The present petition stands disposed of.



DINESH KUMAR SHARMA, J

SEPTEMBER 4, 2023/AR