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

% *Date of decision: December 19, 2023*

+ **BAIL APPLN. 3662/2022**

PREM SINGH

..... Petitioner

Through: Mr. Sanjay Hegde, Senior Advocate with Mr. Ankit Karna, Mr. Randhir Kumar, Mr. Deepesh Pathak, Advocates.

versus

STATE(GNCT OF DELHI)

..... Respondent

Through: Ms. Rupali Bandhopadhyia, ASC with Mr. Akshay Kumar, Mr. Abhijeet Kumar, Advocates for State with Insp. Tej Dutt Gaur, P.S. Bawana.

+ **BAIL APPLN. 3374/2023**

PREM SINGH

..... Petitioner

Through: Mr. Sanjay Hegde, Senior Advocate with Mr. Ankit Karna, Mr. Randhir Kumar, Mr. Deepesh Pathak, Advocates.

versus

STATE(GNCT OF DELHI)

..... Respondent

Through: Ms. Rupali Bandhopadhyia,



ASC with Mr. Akshay Kumar, Mr. Abhijeet Kumar, Advocates for State with Insp. Tej Dutt Gaur, P.S. Bawana.

CORAM:
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN
J U D G M E N T (oral)

1. The court of Sh. Saurav Goyal, MM-05, North, Rohini Courts, Delhi vide order dated 04.12.2023 has granted interim bail to the petitioner for a period of thirty days in present FIR bearing no. 0706/2022 . The perusal of order dated 04.12.2023 reflects that in the said court, the Investigating Officer was not present and the said court granted interim bail by only calling the Status Report from the Central Jail-2.
2. It is pertinent to mention that the applications bearing no. 3662/2022 and 3374/2023 were filed on behalf of the petitioner for grant of regular bail and the extension of the interim bail were pending for consideration before this Court and after hearing the arguments, the judgments were reserved on 08.11.2023.
3. The court of Sh. Saurabh Goyal, MM-05, North, Rohini Courts, Delhi vide order dated 04.12.2023 should not have granted



interim bail once the judgments in bail applications no. 3662/2022 and 3374/2023 were reserved on 08.11.2023 . In these circumstances, the interim bail granted to the petitioner stands cancelled and the petitioner is directed to surrender immediately before the concerned jail or trial court without any delay. The court of Sh. Saurabh Goyal, MM-05, North, Rohini Courts, Delhi is also directed to initiate appropriate proceedings in case the petitioner fails to surrender either before the concerned court or jail superintendent.

BAIL APPLN. 3662/2022 (Regular Bail)

1. The present bail application is filed under section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the “Code”) on behalf of the petitioner Prem Singh for grant of regular bail in FIR bearing no.0706/2022 dated 12.09.2022 registered under section 25 of the Arms Act, 1959 (hereinafter referred as the “Arms Act”) at P.S. Bawana.

2. The factual background of the case is that SI Naveen Sharma and HC Mandeep on 12.09.2022, while on emergency duty, were coming back to the police station after attending a PCR call vide DD no. 141A dated 11.09.2022 and reached at Bhagat Singh Chowk,



Bawana Industrial Area, where they met with HC Chetan, Ct. Dheeraj and Ct. Manoj, who informed SI Naveen Sharma that a person is staying at premises bearing Khasra no. 112/6/7/8, Block-B, Vijay Nagar Colony, Village Bawana, Delhi along with a huge consignment of the illegal arms and ammunition, and he can be apprehended if the said premises is raided. Accordingly, SI Naveen Sharma constituted a raiding party, and the raiding party, along with the secret informer, reached the premises bearing Khasra no. 112/6/7/8, Block-B, VijayNagar Colony, Village Bawana. On the pointing of secret informer, Ct. Manoj, Ct. Dheeraj and Ct. Mandeep entered the said premises by scaling the wall, and after seeing police personnel, one person tried to run away but was apprehended. On search, one desi *katta* and one live cartridge was recovered from the possession of the said person, who was subsequently identified as Sachin s/o Ram Kumar. During interrogation, Sachin disclosed that he is staying on the said property along with another person, namely, Sonu @ Sheenu and both of them are supplying illegal arms. Sonu @ Sheenu was not found over there. Sachin, after further interrogation, disclosed that illegal arms and ammunition are also kept in the two



vehicles, i.e., the Mahindra Scorpio black color bearing registration no. DL8CAT0650 and the MG Hector white color bearing registration no. DL12CR2195.

3. On search of the two vehicles, the arms and ammunition as detailed in FIR were recovered. Thereafter, a *rukka* was prepared, and an FIR was registered under section 25 of the Arms Act. The subsequent investigation was handed over to HC Parveen. Sachin was further investigated, and during the investigation, Sachin stated that he met with the petitioner, who is the father of Neeraj Bawana and also met with other boys, namely, Arvind, Sonu@ Sheenu, Deepak Pakasmiyan. It was also disclosed that in the vehicle, as detailed hereinabove, the illegal arms and ammunition used to be kept which were used by other boys at the instance of the petitioner. Sachin was arrested, and the other boys, namely, Arvind, Sonu@ Sheenu, Deepak Pakasmiyan could not be traced. During further investigation, the petitioner was found to be the registered owner of the vehicle bearing registration no. DL8CAT0650. The petitioner was asked to join the investigation after the issuance of notice under section 41A of the Code.



4. The petitioner on 30.09.2022, was called for investigation, and during investigation, he admitted that the property from which the arms and ammunition were recovered belonged to him, and the petitioner was also arrested. During the investigation, the offence punishable under section 35 of the Arms Act and sections 39/192 of the Motor Vehicle Act, 1988(hereinafter referred to as “MV Act”) were also added. After the conclusion of the investigation, the charge-sheet was filed for the offences punishable under sections 25/35 of the Arms Act and under sections 39/192 of the MV Act. The petitioner was stated to be arrested on 29.09.2022 and has been in judicial custody since 01.10.2022.

5. The petitioner filed the present bail application and prayed for grant of bail on the ground that the petitioner is an old man with clean antecedents and has served as a conductor in Delhi Transport Corporation for more than 25 years. The petitioner has been falsely implicated in the case, and he has always cooperated in the investigation. The petitioner has been arrested for the offences punishable under sections 25/35 of the Arms Act, which prescribes the punishment less than 07 years. The petitioner has always been



available for investigation, but no notice under section 41A of the Code has ever been served upon the petitioner as per the guidelines given in **Arnesh Kumar V State of Bihar** passed in criminal appeal bearing no. 1277/2014. The vehicle bearing registration no. DL8CAT0650 was transferred in the name of the petitioner on 15.09.2022 i.e., after registration of the present FIR. The charge-sheet has already been filed after conclusion of investigation. It is prayed that the petitioner be released on bail.

6. The Additional Standing Counsel filed the Status Report on behalf of the respondent/State wherein, besides mentioning the facts as stated in the FIR, it is stated that the accused Sachin was found in possession of one *desi katta* and a live cartridge when he was present at the property bearing Khasra no. 112/6/7/8, Block-B, VijayNagar Colony, Village Bawana, Delhi and during his interrogation, the vehicle Mahindra Scorpio black color bearing registration no. DL8CAT0650 was searched by Ct. Dheeraj and on search, a huge consignment of illegal arms and ammunition was recovered and the said vehicle was found registered in the name of the petitioner. The property bearing Khasra no. 112/6/7/8, Block-B, VijayNagar Colony,



Village Bawana, Delhi was also found to be in the ownership of the petitioner.

7. The learned Senior Counsel for the petitioner argued that the petitioner is aged about 64 years old and without any criminal antecedents. The petitioner was arrested on 29.09.2022 i.e., after 17 days from the date of registration of FIR. The investigation has already been completed, and the petitioner is not required for further investigation.

8. The prosecution again alleged that the petitioner is the owner of the property bearing Khasra no. 112/6/7/8, Block-B, Vijay Nagar Colony, Village Bawana, Delhi, from where the co-accused Sachin was apprehended and illegal arms and ammunition were recovered. The petitioner was also found to be the owner of the vehicle Mahindra Scorpio black color bearing registration no. DL8CAT0650 from where arms along with live cartridges were recovered and seized.

9. As per the disclosure statement made by the accused Sachin, the petitioner used to regularly visit the house from where illegal arms and ammunition were recovered and was also found to use the



Mahindra Scorpio black color bearing registration no. DL8CAT0650.

It is further argued that the case of the prosecution is primarily based on the disclosure statement given by the petitioner and accused Sachin. Although the petitioner was not present at the time of seizure, he was stated to be in the conscious possession of the arms and ammunition, which was seized on 11.09.2022, from his house and the car owned by the petitioner. There is no incriminating material against the petitioner to indicate that he was in conscious possession of the legal arms and ammunition. The confessional statement given by the petitioner and the co-accused Sachin, were given in police custody as such, without any evidentiary value. The learned Senior Counsel for the petitioner also cited **Gunwantlal V State of MP** (1972) 2 SCC 194. The mere recovery of the arms and ammunition from the properties/premises stated to be owned by the petitioner does not reflect that he was in conscious possession and control of the illegal arms and ammunition as per section 25 read with section 35 of the Arms Act. There is serious discrepancy in the documents prepared during the investigation by the police. It is prayed that the petitioner be released on bail.



10. The Additional Standing Counsel for the respondent/State, besides referring to the contents of FIR and other investigation, argued that the petitioner was in conscious possession of the arms as per the subject matter of the present FIR. The term '*conscious possession*' has been discussed by the Supreme Court in case titled as **Gunwantlal V State of MP** (1972) 2 SCC 194. The allegations against the petitioner are serious in nature, and there is sufficient evidence to believe that the petitioner has committed a serious offence. The huge consignments of arms, including the customized magazines, were recovered from the property and car, which were under the control and occupation of the petitioner. The recovered arms and ammunition were generally used in organized crime related activities. The petitioner was served notices under section 41A of the Code on five occasions but has not complied with the notices. The petitioner was apprehended due to non-compliance of notice dated 29.09.2022. The co-accused, namely, Sonu @ Sheenu, Arvind and Deepak, have not been arrested. Proceedings under section 82 of the Code have already been initiated against them. The petitioners may



influence the witnesses. It is prayed that the bail application be dismissed.

11. It is reflected from the perusal of records that a police raiding party on 12.09.2022, conducted a raid at premises bearing Khasra no. 112/6/7/8, Block-B, Vijay Nagar Colony, Village Bawana, Delhi and during the raid and search, co-accused Sachin was apprehended. The co-accused Sachin, was found in possession of one desi *katta* and one live cartridge. The co-accused Sachin was interrogated, and on interrogation and on his pointing out, a huge consignment of arms and ammunition was recovered, as detailed in FIR bearing no. 0706/2022 from the vehicles Mahindra Scorpio black color bearing registration no. DL8CAT0650, which was found to be registered in the name of the petitioner and MG hector white color bearing registration no. DL12CR2195. The petitioner was also found to be the owner and in occupation/control of the property bearing Khasra no. 112/6/7/8, Block-B, Vijay Nagar Colony, Village Bawana, Delhi. The notices under section 41A of the Code were also issued, but the petitioner had not joined the investigation and was apprehended on the basis of notice under section 41A of the Code dated 29.09.2022.



12. The petitioner filed the first bail application in the court of Ms. Swati Gupta, MM-05, North-East District, Rohini Courts, Delhi, which was ordered to be dismissed vide order dated 01.10.2022. The relevant portion of the order reads as under:-

16. This court is of the considered view that the allegations in the present matter are grave; given the volume of arms and ammunitions including live rounds recovered. Prima facie complicity of the accused/applicant is apparent as ownership of the accused/applicant of the premises and one of the vehicles i.e. Scorpio car from where the recovery has been effected is not disputed. It is also apparent that investigation in the present offence is at a nascent stage and given the nature of allegations, sustained investigation is required in the present matter. Perusal of record shows that the five notices U/s 41A Cr.P.C mentioned by the IO all bear acknowledgement of the accused/applicant, thus, at this stage, this court does not find that no notice was served to the accused prior to his arrest.

13. The petitioner filed the second regular bail application bearing no. 2685/2022 under section 439 Cr.P.C. for FIR no. 0706/2022, which was dismissed vide order dated 07.10.2022 passed by the court of Sh. Satish Kumar, ASJ-03, North, Rohini Courts, Delhi. The relevant portion of the order dated 07.10.2022 is reproduced as under: -

...It is worth mentioning that Sachin S/o Raj Kumar R/o District Shamli, UP was arrested and a country made pistol with live catridges were recovered from his possession at



the instance of Sachin S/o Raj Kumar, illegal weapons and rounds were recovered from two vehicles i.e., Scorpio bearing no. DL8C-AT-0650 which is registered in the name of the applicant/accused Prem Singh and another vehicle MG Hector bearing no. DL12-CR-2195 registered in the name of Neeraj Bawana's wife Aarti. That Scorpio car has been modified as bullet proof. Two country made pistols, 68 live rounds and one magazine of sophisticated weapon was recovered from the said Scorpio and one country made pistol with 10 live rounds, one magazine and five cleaning rods were recovered from the vehicle MG Hector. The applicant/accused is the owner of the premises/plot where these two vehicles i.e., Scorpio and Mg Hector were parked. The applicant/accused is allegedly actively involved to keep illegal weapons and rounds alleged to have been recovered from the premises to which the accused is the owner. Therefore, in these facts and circumstances, this court is not inclined to grant bail to the applicant/accused and the bail application of the applicant/accused Prem Chand is hereby dismissed...

14. The petitioner filed the third regular bail application bearing no. 2806/2022 under section 439 Cr.P.C. for FIR no. 0706/2022, which was dismissed vide order dated 07.11.2022 passed by the court of Sh. Satish Kumar, ASJ-03, North, Rohini Courts, Delhi. The relevant portion of the order dated 07.10.2022 is reproduced as under: -

...The first bail application being filed by the counsel for the applicant/accused on the same facts and circumstances was dismissed by this court vide detailed order dated 07.10.2022 and there is no change of circumstances nor any fresh ground is made out to allow the bail application of the



accused. The investigation in the present case FIR is still going on and the chargesheet is yet to be filed. Therefore, in these facts and circumstances, no fresh ground is made out to allow the bail application of the accused. Hence, the bail application of the accused is hereby dismissed...

15. The petitioner as stated hereinabove that on the basis of raid conducted by the raiding party, the co-accused Sachin was arrested, who was found in possession of one live cartridge and one *desi katta* and thereafter, on pointing of the co-accused Sachin, huge consignment of arms and ammunition was recovered from two vehicles, out of which, one vehicle Mahindra Scorpio black color bearing registration no. DL8CAT0650 was found to be registered in the name of the petitioner. It was also observed that the terms '*conscious possession*' as discussed by the Supreme Court in case **Gunwantlal V State of MP (1972) 2 SCC 194**, which reads as under:-

5. What is meant by possession in the context of this section? Is it that the person charged should be shown to be in physical possession or is it sufficient for the purposes of that provision that he has constructive possession of any firearm or ammunition in contravention of Section 3 which prohibits him to be in such possession without a licence. It may be mentioned that under Section 19 of the Arms Act, 1878, an offence corresponding to Section 25(1)(a) is committed if a person had in his or under his control any arms or ammunition in contravention of Sections 14 and 15



of that Act. The word “control” under Section 25(1)(a) has been omitted. Does this deletion amount to the Legislature confining the offence only to the case of a person who has physical possession or does it mean that a person will be considered to be in possession of a firearm over which he has constructive possession or over which he exercises the power to obtain possession thereof when he so intends? If the meaning to be given to the word “possession” is that it should be a physical possession only, then certainly the charge as framed on the facts of the prosecution case will not be sustainable but if the meaning to be given to the word “possession” is wider than that of actual or physical possession then it is possible, if the evidence produced by the prosecution is such as would sustain a finding, that he had constructive possession on September 17, 1966, when he handed it over to Miroo and Miroo handed it over to Chhaganlal because if it was not seized from Chhaganlal, the appellant could have at any time got back the physical possession of the revolver through Miroo. 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 nonetheless 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 some one 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 Jurisprudence 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. In any disputed question of possession, specific facts admitted or proved will alone establish the existence of the de facto relation of control or the dominion of the person over it necessary to determine whether that person was or was not in possession of the thing in question. In this view it is difficult at this stage to postulate as to what the evidence will be and we do not therefore venture to speculate thereon. In the view we have taken, if the possession of the appellant includes the constructive possession of the firearm in question then even though he had parted with physical possession on the date when it was recovered, he will nonetheless be deemed to be in possession of that firearm. If so, the charge that he was in possession of the revolver on September 17, 1966, does not suffer from any defect particularly when he is definitely informed in that charge that he had control over that revolver. It is also apparent that the words “on or before” were intended to bring home to the accused that he was not only in constructive possession of it on September 17, 1966, but that he was in actual physical possession of it prior to that date when he gave it to Miroo. It is submitted, however, that the word “on or before” might cause embarrassment and prejudice to the defence of the accused because he will not be in a position to know what the prosecution actually



intends to allege. From a reference of Form XXVIII of Schedule 5 of the Code of Criminal Procedure, the mode of charging a person is that he “on or about”... did the act complained of. In view of the forms of the charge given in the Schedule to the Code, we think that it would be fair to the appellant if the charge is amended to read ‘on or about’ instead of ‘on or before’ which we accordingly order.

16. As reiterated by the two-Judge Bench of the Supreme Court in **Prasanta Kumar Sarkar Vs. Ashish Chatterjee And Another** (2010) 14 SCC 496, it is well-settled that the factors to be borne in mind while considering an application for bail which are:

1. whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
2. nature and gravity of the accusation;
3. severity of the punishment in the event of conviction;
4. danger of the accused absconding or fleeing, if released on bail;
5. character, behaviour, means, position and standing of the accused;
6. likelihood of the offence being repeated;
7. reasonable apprehension of the witnesses being influenced; and
8. danger, of course, of justice being thwarted by grant of bail.

17. A two-Judge Bench of the Hon’ble Supreme Court in **Mahipal Vs. Rajesh Kumar Alias Polia And Another** (2020) 2 SCC 118 observed: -

14. The provision for an accused to be released on bail touches upon the liberty of an individual. It is for this



reason that this Court does not ordinarily interfere with an order of the High Court granting bail. However, where the discretion of the High Court to grant bail has been exercised without the due application of mind or in contravention of the directions of this Court, such an order granting bail is liable to be set aside. The Court is required to factor, amongst other things, a prima facie view that the accused had committed the offence, the nature and gravity of the offence and the likelihood of the accused obstructing the proceedings of the trial in any manner or evading the course of justice. The provision for being released on bail draws an appropriate balance between public interest in the administration of justice and the protection of individual liberty pending adjudication of the case. However, the grant of bail is to be secured within the bounds of the law and in compliance with the conditions laid down by this Court. It is for this reason that a court must balance numerous factors that guide the exercise of the discretionary power to grant bail on a case by case basis. Inherent in this determination is whether, on an analysis of the record, it appears that there is a prima facie or reasonable cause to believe that the accused had committed the crime. It is not relevant at this stage for the court to examine in detail the evidence on record to come to a conclusive finding.

18. Hence, in view of the above mentioned facts and circumstances, it is appearing that the petitioner was having the conscious possession of the arms and ammunition as per the subject matter of the present FIR. The allegations against the petitioner are serious in nature and the petitioner cannot be released on bail. Hence, the present bail application stands dismissed.



19. A copy of this judgment be sent to the court of Sh. Saurabh Goyal, MM-05, North, Rohini Courts, Delhi for information and to take appropriate measures so that the petitioner can be arrested and be sent to the concerned jail.

DR. SUDHIR KUMAR JAIN
(JUDGE)

DECEMBER 19, 2023

N/ABK