



2024:DHC:7770



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

% ***Reserved on : 29<sup>th</sup> August, 2024***

***Pronounced on: 4<sup>th</sup> October, 2024***

+ **BAIL APPLN. 1028/2024, CRL.M.A. 14914/2024 &  
CRL.M.(BAIL) 1183/2024**

**PREM SINGH SEHRAWAT** .... Applicant

Through: Mr. Pradeep Rana, Mr. Gagan  
Bhatnagar, Mr. Randhir Kumar,  
Mr. Sunil Singh, Mr. Ankit Rana  
and Mr. Tushar Rohmetra,  
Advocates

versus

**STATE (NCT OF DELHI)** .....Respondent

Through: Ms. Rupali Bandhopadhyya, ASC  
for State with Mr. Abhijeet  
Kumar, Advocate  
Inspector Bijay Kumar PS  
Bawana

**CORAM:  
HON'BLE MR. JUSTICE ANISH DAYAL**

### **JUDGMENT**

**ANISH DAYAL, J.**

1. This application seeks regular bail in FIR 706/2022 P.S. Bawana under Section 25/35 of the Arms Act, 1959 (*'Arms Act'*) and Section 192/39 of the Motor Vehicles Act, 1988. As per the case of the prosecution, on 11<sup>th</sup> September 2022, secret information was received that a person was staying with illegal weapons in the house bearing Khasra No.112/6,7,8 Block-B, Vijay Nagar Colony, Bawana.

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### **Factual Background**

2. A raid was conducted on 11<sup>th</sup> September 2022, at that house and one Sachin was arrested and a country-made pistol and a live cartridge were recovered from his possession. Illegal weapons and rounds were also recovered from the two vehicles, a Mahindra Scorpio bearing number DL-8C-AT-0650 and an MG Hector bearing number DL-12-CR-2195, at the instance of Sachin. The vehicles were found registered in the names of the applicant/accused, (father of one Neeraj Bawana) and Aarti (wife of Neeraj Bawana). Scorpio car was found, modified as bulletproof. The details of recovery, per the recovery note filed by the State, are as under:

| SL. No. | RECOVERY                                                                                                                                                                                                                                                                                                                                     |
|---------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.      | Desi Katta, Avesth Hathiyaar (Left Pocket)<br>Live rounds – 8 MM KF engraved (Right Pocket)                                                                                                                                                                                                                                                  |
| 2.      | 1 Black Bag – 2 Desi Katta, 6 box having 10-10 live rounds, 5 live rounds engraved with letters 8 MM KF, 1 Magazine having 2 live rounds (engraved 7.62x25)<br><br>Small Country made Pistol having one live round in its barrel having diagonal length 25.5 cm and barrel length 7.4 cm and width 1.4 cm.<br>8 MM KF engraved on the bottom |
| 3.      | Desi Katta having Diagonal Length 40.5 cm and Barrel length 25.6 cm and wooden handle length 12.5 cm having two triggers                                                                                                                                                                                                                     |
| 4.      | 6 box having 10-10 live rounds similar in shape having colour red and golden. Diameter 2.2 and 6.1 cm length. Engraved with letters 12 SHAKTIMAN 12 EXPRESS on the Diameter and with letters SHAKTIMAN EXPRESS HIGH                                                                                                                          |

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|     |                                                                                                                                                                                                                                                                                                                       |
|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|     | VELOCITY 70MM SUPER MAGNA MADE IN INDIA 4.8 MM on the length                                                                                                                                                                                                                                                          |
| 5.  | 1 Box having 5 live cartridges of same type having length 7.4 cm and width 1.4 cm engraved with letters 8 MM KF                                                                                                                                                                                                       |
| 6.  | One Magazine having 2 live rounds having diagonal length of 12.8 cm and width 3.5 cm. The 2 live rounds having length 3.5 cm and width 1 cm engraved with S&B 7.62x25                                                                                                                                                 |
| 7.  | Black polythene having – Dessi Katta, 10 live rounds, 1 empty magazine, 1 small plastic box having 5 different cleaning rods for cleaning the barrel<br><br>Dessi katta having a Diagonal length of 41 cm and barrel length 25.5 cm and wooden handle length 13.5 cm. Handle having a cross design. Having 2 triggers |
| 8.  | 1 Magazine made of iron having diagonal length 11.7 cm, width 2.9 cm                                                                                                                                                                                                                                                  |
| 9.  | 10 live rounds of Khakhi colour.<br>SPECIAL 05 mm 30-gram AMMUNITION FACTORY<br>KHADKI written on it.<br>Length 6 cm and diameter 2.2 cm                                                                                                                                                                              |
| 10. | 1 small plastic box having 5 different cleaning rods for cleaning the barrel                                                                                                                                                                                                                                          |

3. The FIR was registered and an investigation ensued. Sachin during interrogation disclosed that he had left his house 2-3 months ago and came to Delhi after being influenced by gangster Neeraj Bawana to join his gang. He reached Neeraj Bawana's house and met his father who called two boys namely Arvind and Sheenu and he was told to interact with them. He was taken to the house and told to stay there. Sachin stated that the applicant/accused used to come to this plot and show the weapons kept in the two vehicles and told him to keep the keys of the two cars and not to give them to anybody else except the applicant/accused, Sheenu and Arvind. As per the prosecution, this



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amounted to conscious possession of the said arms and ammunition by the applicant/accused.

4. Notices were served on the applicant/accused on 17<sup>th</sup> September 2022, 19<sup>th</sup> September 2022, 23<sup>rd</sup> September 2022, 28<sup>th</sup> September 2022 and 29<sup>th</sup> September 2022, but he did not join the investigation. He was finally arrested on 29<sup>th</sup> September 2022 and stated that there was an attempt to attack him 4-5 months ago and he was scared, so he got the Scorpio car from his friend Neeraj Thakran, and got it modified as bulletproof. Apprehending the threat and danger to their lives, his associates Arvind, Sheenu and Deepak brought illegal weapons on his direction and stored them in the vehicles. Applicant/Accused, Prem Singh turned out to be the owner of the house/plot, as well as the vehicle from which the bombs and ammunition were recovered. The other co-accused were declared as Proclaimed Offenders.

5. National Investigation Agency also raided the same premises the very next morning, in a case relating to the activities of Neeraj Bawana's gang, being investigated in FIR No. RC-38/2022/NIA/DLI under Section 120 B of the Indian Penal Code, 1980, and Sections 18, 18B, 20 of the Unlawful Activities (Prevention) Act, 1967.

6. Chargesheet has been submitted on 11<sup>th</sup> November 2023. Applicant/Accused had filed two regular bail applications before the High Court which have been dismissed by order dated 19<sup>th</sup> December 2023. Interim bail was granted by this Court *vide* order dated 22<sup>nd</sup> September 2023 on medical grounds.

7. On 16<sup>th</sup> May 2024, an application was moved for seeking interim bail on the ground that the applicant/accused was in the Intensive Care



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Unit of Safdarjung Hospital where the doctors had advised him to go for pacemaker implantation in order to control his bradycardia symptoms and was advised drug therapy to control his tachycardia.

8. Counsel for the applicant, at that stage, submitted that the applicant/accused be released on interim bail, as applicant/accused wished to take treatment from a super speciality hospital of his choice since they were in a position to afford treatment. Accordingly, this Court granted interim bail to the applicant/accused for a period of 8 weeks from that date.

9. A period of 8 weeks was exhausted on 11<sup>th</sup> July 2024. However, as per the report received from the Jail Superintendent dated 18<sup>th</sup> July 2024, the applicant/accused had not surrendered.

10. Counsel for the applicant stated that the surrender was not possible since he was not being released from the hospital post his surgery for the pacemaker which was conducted on 11<sup>th</sup> July 2024. A report dated 16<sup>th</sup> July 2024 has been placed on record signed by Dr. Ankit Jain, DM Cardiology, Department of Cardiology, VMMC & Safdarjung Hospital stating as under:





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go back to a government hospital despite having made a submission that they would take treatment at a private hospital, the ASC for the State submits that the applicant/accused is prone to making false statements and misleading the Court.

13. In further support of this, she points out the order dated 06<sup>th</sup> October 2023, passed by this Court in Bail Application No.3374/2023, wherein, in paragraph 12, the extension of interim bail was rejected in view of repeated violations of the terms of interim bail on previous occasions.

14. The request for interim bail was rejected by the Court *vide* order dated 18<sup>th</sup> July 2024. However, considering the medical report from the hospital, that was to be verified, the Court directed that the applicant /accused be taken into custody at the hospital and upon clearance by the medical team, be transferred to jail.

15. Subsequently, it was informed that the applicant/accused was discharged from the hospital and taken into custody on 30<sup>th</sup> July 2024 and has now filed the instant application seeking regular bail.

**Submissions on behalf of the Applicant**

16. Counsel for the applicant contends that the applicant/accused is a senior citizen of 65 years of age, has medical ailments, and has clean antecedents. During the period of interim bail granted on medical grounds, a pacemaker was implanted. Applicant/Accused has been languishing in jail for the past 23 months, and cognizance has not yet been taken by the Trial Court, due to the absence of the FSL report as required under Section 39 of the Arms Act. The matter is now listed before the Trial Court on 28th October 2024.



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17. As regards the applicant/accused not joining the investigation despite the service of notice, it is contented that he did join on 30<sup>th</sup> September 2022 and was thereafter arrested the same day. It was further contended that the vehicles belonged to the applicant/accused and his daughter-in-law and four *kattas* had been recovered at the instance of the co-accused. There was no recovery from the person of the applicant/accused. The chargesheet was filed on 11<sup>th</sup> November 2023 under Section 25 of the Arms Act, and 18 months have since elapsed. He had been accused for the first time and accordingly would have the benefit of Section 479 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*'B.N.S.S.'*) which, as per the Supreme Court's decision in ***Re: In-Human Conditions in 1382 Prisons***, in Writ Petition (Civil) No 406/2013 dated 23<sup>rd</sup> August 2024, is stated to have a retrospective effect.

18. The contravention of Section 25 (1B)(a) of the Arms Act, read with Section 3, carries a punishment of not less than 2 years which may extend to 5 years, and the applicant/accused has already been in custody for about 2 years. The provisions of Section 167(2) of the Code of Criminal Procedure, 1973 (*'Cr.P.C.'*) would also apply. The supplementary charge sheet came to be filed on 28<sup>th</sup> August 2024.

19. Sanction under Section 39 of the Arms Act, filed with the supplementary charge sheet, pertains to the case registered under Section 25 (1B)(a) of the Arms Act, which is in contravention of Section 3 of the Arms Act. Therefore, the punishment is a minimum of 2 years and a maximum of 5 years.

20. The implication under Sections 5 and 7 of the Arms Act would import the definition of '*prohibited ammunition*' and '*prohibited arms*' defined in Sections 2 (h) and 2 (i) of the Arms Act. Prohibited arms



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include firearms that are designed or adapted to shoot continuously (as an automatic weapon) or any weapon that discharges noxious liquid gas whereas, prohibited ammunition includes those adapted to contain noxious liquid gas or other such things and includes rockets, bombs, grenades, shells, etc. It is submitted that even under this definition, the recovery of the *cache* from the applicant/accused would not fall within this purview, and therefore, Section 7 would not come into the picture. If at all, the possession by the applicant/accused of firearms and ammunition would be in contravention of Section 3 and, therefore, punishable for 2-5 years under Section 25 (1B)(a) of the Arms Act.

21. Prosecution submits that Section 7 of the Arms Act would apply, for which contravention is punishable with imprisonment for life, as per Section 25 (1AA), and up to fourteen years, as per Section 25 (1A). It was contended that neither there has been ‘manufacture’, ‘use’, ‘sale’, ‘transfer’, ‘possession for sale’ etc of arms and ammunition inviting contravention of Section 5 of the Arms Act, and did not have in ‘possession prohibited arms and prohibited ammunition’ for the contravention of Section 7 of the Arms Act. Reliance was placed on the decision of the High Court of Bombay in *Sunderlal Tuhiram Parashar v NIA* in Criminal Appeal No.380/2020 dated 23<sup>rd</sup> August 2021, wherein it was observed that the country-made pistol hardly satisfies the description of prohibited arms.

22. As regards the prosecution's contention that the decision of the Supreme Court in *Judgebir Singh @Jasbir Singh Samra @ Jasbir & Ors. v. National Investigation Agency* 2023 SCC OnLine SC 543 applies, the applicant's counsel stated that there is no quarrel with the



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same, but they are entitled to seek a speedy trial in accordance with their fundamental rights under Article 21 of the Indian Constitution.

23. Recoveries in this case have been pursuant to disclosure and would not fall under Section 27 of the Indian Evidence Act 1872, rendering disclosure under Section 25 of the Indian Evidence Act 1872 irrelevant. The dismissal of the earlier petition for bail by the High Court was countered by relying on the observation in the decision of this Court in *Gayatri Devi v. State* 2011 SCC OnLine Del 4061, as it was observed that there were changed circumstances; and also, on the decision of the High Court of Madhya Pradesh in *Mohan Raikwar v State of Madhya Pradesh* 1999 SCC OnLine MP 104, wherein it is stated that each day's detention should be taken as a relevant consideration.

24. Serious charges cannot be a reason to deny regular bail; for this, reliance was placed on *Prabhakar Tewari v. State of U.P* 2020 SCC OnLine SC 75. Absconding co-accused can also not be a ground for denying bail, as referred to in the decision in *Navendu Babbar v. State of NCT of Delhi*, 2020 SCC OnLine Del 2345 in Bail Application No. 913/2020. Continuous incarceration and delay in the trial are violative of Article 21 of the Constitution and cannot be a ground to deny bail; for this, reliance has been placed on various orders of the Supreme Court, including *Kalvakuntla Kavitha v. Directorate Enforcement* 2024 SCC OnLine SC 2269; *Jalaluddin Khan v. Union of India* 2024 SCC OnLine SC 1945; and *Manish Sisodia v. Directorate of Enforcement* 2024 SCC OnLine SC 1920.

**Submissions on behalf of the State**

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25. The offence alleged under Section 25(1)(a) of the Arms Act carries a punishment of not less than seven years, extendable to life imprisonment when read with Section 5 of the Arms Act. Further, the alleged offences under Section 25(1A) provide for a punishment extendable up to fourteen years of imprisonment, while Section 25(1AA) prescribes a punishment extendable to life imprisonment when read with Section 7 of the Arms Act.

26. The house and one vehicle were in complete control of the applicant/accused, along with the use of a second vehicle. The house of the applicant/accused was also on the radar of the National Investigation Agency and all the evidence points out that the applicant/accused was in conscious possession of the arms seized.

27. Applicant/Accused herein has evaded five notices under Section 41A of the Cr.P.C. dated 17<sup>th</sup> September 2022, 19<sup>th</sup> September 2022, 23<sup>rd</sup> September 2022, 28<sup>th</sup> September 2022 and 29<sup>th</sup> September 2022 before being arrested on 29<sup>th</sup> September 2022. Further, the offences under which the present FIR has been lodged entail a minimum punishment of 7 years and a maximum of imprisonment for life.

28. ASC stated that it is the case of the prosecution that considering the seriousness of the offence and magnitude of weapons recovered, if convicted, the applicant/accused would definitely be awarded the maximum punishment, i.e. imprisonment for life.

29. ASC submits that a close examination of categories 1, 2, 3, and 7 of the recovery note reveals the presence of a large consignment of *desi kattas* and a pistol, clearly indicate an impending gang war.



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30. ASC on behalf of the State stated that the FSL report has been received, sanction has been granted by the Deputy Commissioner of Police on 27<sup>th</sup> August 2024, and a supplementary charge sheet has been filed on 28<sup>th</sup> August 2024. The Trial Court has issued production warrants against the applicant/accused.

31. ASC references the order dated 06th October 2023 in Bail Application No. 3374/2023, wherein, in paragraph 12, this Court denied the extension of interim bail due to repeated violations of its terms. Additionally, in the order dated 14th December 2023 in Bail Application No. 3662/2022, this Court observed that the learned Magistrate granted interim bail for 30 days without verifying the medical records and accordingly set aside the said interim bail. It was further noted that the interim bail was obtained from the Magistrate while the bail application before this Court was still pending, without the Court being informed.

32. Reliance was placed by the State on an earlier bail dismissal order by this Court dated 19<sup>th</sup> December 2023, where the Court had traversed in detail about the facts, circumstances and legal issues that had arisen.

33. With respect to the delay in the trial, it is submitted that the delay arose due to the absence of the requisite sanction under Section 39 of the Arms Act, which could not be obtained without the FSL report. Despite efforts by the police to expedite the process with the FSL Agency, the delay occurred due to a backlog of pending cases. Reliance was placed on the decision in *Ranjan Dwivedi v. Central Bureau of Investigation*



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2012 SCC OnLine SC 611, which stated that it has to be seen on a case-to-case basis and is a balancing process. Reliance was also placed on the period of incarceration and Section 436A of Cr. P.C. which is equivalent to Section 479 of B.N.S.S., and also on its proviso, which stated that there was discretion to be exercised by the Court. The decision of the Supreme Court in *Manish Sisodia v. Central Bureau of Investigation* 2023 SCC OnLine SC 1393, was also on the trial being expedited since a reasonable time had elapsed; it emphasised that prolonged pre-trial detention should not be punitive and highlighted the right to bail in cases of undue delay. The High Court of Bombay in *Somnath Bhivaji Gaikwad v. State of Maharashtra and Another* 2024 SCC OnLine Bom 1124, stated while the right to a speedy trial is fundamental and recognized under Section 436A of the Cr. P.C, the Court retains the discretion to extend an undertrial's detention beyond half the maximum punishment period, if necessary, particularly when public interest or trial complexities, such as potential interference with witnesses or evidence tampering.

### **Rejoinder**

34. Applicant's counsel relied upon *Sheikh Javed Iqbal v. State of U.P* 2024 SCC OnLine SC 1755, to state that *Gurwinder Singh v. State of Punjab and Another* 2024 SCC OnLine 109, was not good law in that a mere delay in trial cannot be used as a ground for appeal, particularly in light of the three-judge decision in *Union of India v. K. A. Najeeb* 2021 SCC OnLine SC 50.

### **Analysis**



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35. For the analysis of the present matter, particular emphasis is placed on the applicability and interpretation of Section 25, along with Sections 3, 5, and 7 of the Arms Act, which governs the unlawful possession, acquisition, and use of arms and ammunition, forming the crux of the allegations against the Applicant/Accused. These sections are extracted as under:

***“Section 25. Punishment for certain offences.***

*(1) Whoever--*

*(a) manufactures, obtains, procures], sells, transfers, converts, repairs, tests or proves, or exposes or offers for sale or transfer, or has in his possession for sale, transfer, conversion, repair, test or proof, any arms or ammunition in contravention of section 5; or*

*(b) shortens the barrel of a firearm or converts an imitation firearm into a firearm 3[or convert from any category of firearms mentioned in the Arms Rules, 2016 into any other category of firearms in contravention of section 6; or*

*(d) brings into, or takes out of, India, any arms or ammunition of any class or description in contravention of section 11,*

*shall be punishable with imprisonment for a term which shall not be less than [seven years but which may extend to imprisonment for life] and shall also be liable to fine.*

*(1A) Whoever acquires, has in his possession or carries any prohibited arms or prohibited ammunition in contravention of section 7 shall be punishable with imprisonment for a term which shall not be less than [seven years but which may extend to fourteen years] and shall also be liable to fine.*



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*[Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than seven years.].....*

*(1AA) whoever manufactures, sells, transfers, converts, repairs, tests or proves, or exposes or offers for sale or transfer or has in his possession for sale, transfer, conversion, repair, test or proof, any prohibited arms or prohibited ammunition in contravention of section 7 shall be punishable with imprisonment for a term which shall not be less than [ten years but which may extend to imprisonment for life and shall also be liable to fine].....*

*(1B) Whoever--*

*(a) acquires, has in his possession or carries any firearm or ammunition in contravention of section 3; or*

*(b) acquires, has in his possession or carries in any place specified by notification under section 4 any arms of such class or description as has been specified in that notification in contravention of that section; or*

*(c) sells or transfers any firearm which does not bear the name of the maker, manufacturers number or other identification mark stamped or otherwise shown thereon as required by sub-section (2) of section 8 or does any act in contravention of sub-section (1) of that section; or*

*(d) being a person to whom sub-clause (ii) or sub-clause (iii) of clause (a) of sub-section (1) of section 9 applies, acquires, has in his possession or carries any firearm or ammunition in contravention of that section; or*

*(e) sells or transfers, or converts, repairs, tests or proves any firearm or ammunition in*



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*contravention of clause (b) of sub-section (1) of section 9; or*

*(f) brings into, or takes out of, India, any arms or ammunition in contravention of section 10; or*

*(g) transports any arms or ammunition in contravention of section 12; or*

*(h) fails to deposit arms or ammunition as required by sub-section (2) of section 3, or*

*sub-section (1) of section 21; or*

*(i) being a manufacturer of, or dealer in, arms or ammunition, fails, on being required to do so by rules made under section 44, to maintain a record or account or to make therein all such entries as are required by such rules or intentionally makes a false entry therein or prevents or obstructs the inspection of such record or account or the making of copies of entries therefrom or prevents or obstructs the entry into any premises or other place where arms or ammunition are or is manufactured or kept or intentionally fails to exhibit or conceals such arms or ammunition or refuses to point out where the same are or is manufactured or kept,*

*shall be punishable with imprisonment for a term which shall not be less than [two years but which may extend to five years and shall also be liable to fine] and shall also be liable to fine:*

*Provided that the Court may for any adequate and special reasons to be recorded in the judgment impose a sentence of imprisonment for a term of less than [two years] .....*

*(emphasis added)*

.....

**“Section 3. Licence for acquisition and possession of firearms and ammunition.**

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[(1)] No person shall acquire, have in his possession, or carry any firearm or ammunition unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder:

*Provided that a person may, without himself holding a licence, carry any firearm or ammunition in the presence, or under the written authority, of the holder of the licence for repair or for renewal of the licence or for use by such holder.*

*[(2) Notwithstanding anything contained in sub-section (1), no person, other than a person referred to in sub-section (3), shall acquire, have in his possession or carry, at any time, more than [two firearm]:*

*Provided that a person who has in his possession more firearms than three at the commencement of the Arms (Amendment) Act, 1983 (25 of 1983), may retain with him any three of such firearms and shall deposit, within ninety days from such commencement, the remaining firearms with the officer in charge of the nearest police station or, subject to the conditions prescribed for the purposes of sub-section (1) of section 21, with a licensed dealer or, where such person is a member of the armed forces of the Union, in a unit armoury referred to in that sub-section.*

*[Provided that a person who has in his possession more firearms than two at the commencement of the Arms (Amendment) Act, 2019, may retain with him any two of such firearm and shall deposit, within one year from such commencement, the remaining firearm with the officer in charge of the nearest police station or, subject to the conditions prescribed for the purposes of sub-section (1) of section 21, with a licensed dealer or, where such person is a member of the armed forces of the Union, in a unit armoury referred to in that sub-*



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*section after which it shall be delicensed within ninety days from the date of expiry of aforesaid one year:*

*Provided further that while granting arms licence on inheritance or heirloom basis, the limit of two firearms shall not be exceeded.]*

*(3) Nothing contained in sub-section (2) shall apply to any dealer in firearms or to any member of a rifle club or rifle association licensed or recognised by the Central Government using a point 22 bore rifle or an air rifle for target practice.*

*(4) The provisions of sub-sections (2) to (6) (both inclusive) of section 21 shall apply in relation to any deposit of firearms under the proviso to sub-section (2) as they apply in relation to the deposit of any arm or ammunition under sub-section (1) of that section.]”*

*(emphasis added)*

.....

**“Section 5. Licence for manufacture, sale, etc., of arms and ammunition.**

**[(1)] No person shall--**

**(a) [use, [manufacture, obtain, procure]] sell, transfer, convert, repair, test or prove, or**

**(b) expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof.**

*any firearm or any other arms of such class or description as may be prescribed or any ammunition, unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder:*

*[(2)] Notwithstanding anything contained in sub-section (1), a person may, without holding a*

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*licence in this behalf, sell or transfer any arms or ammunition which he lawfully possesses for his own private use to another person who is entitled by virtue of this Act or any other law for the time being in force to have, or is not prohibited by this Act or such other law from having in his possession such arms or ammunition:*

*Provided that no firearm or ammunition in respect of which a licence is required under section 3 and no arms in respect of which a licence is required under section 4 shall be so sold or transferred by any person unless--*

*(a) he has informed in writing the district magistrate having jurisdiction or the officer in charge of the nearest police station of his intention to sell or transfer such firearms, ammunition or other arms and the name and address of the person to whom he intends to sell or transfer such firearms, ammunition or the other arms, and*

*(b) a period of not less than forty-five days has expired after the giving of such information.]”*

*(emphasis added)*

.....

**“Section 7. Prohibition of acquisition or possession, or of manufacture or sale of prohibited arms or prohibited ammunition.**

*No person shall--*

*(a) acquire, have in his possession or carry; or*

*(b) [use, manufacture] sell, transfer, convert, repair, test or prove; or*

*(c) expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof,*



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*any prohibited arms or prohibited ammunition unless he has been specially authorised by the Central Government in this behalf.”*

(emphasis added)

36. The prime thrust of the applicant’s counsel is regarding the offence that would be triggered by the seizure of this *cache*. As evident from the recovery note the seizure is of four country-made pistols/ *kattas* along with live rounds/ live cartridges/ live magazines, as well as a plastic box and a barrel. It is not disputed that the said recovery was from the premises which were owned by the applicant/accused, at least one vehicle namely MG Hector registered in the name of the applicant/accused and another Scorpio vehicle registered in the name of his daughter-in-law.

37. In the disclosure an explanation was given that the said arms have been collected apprehending a threat to the applicant/accused himself, however, this seems quite specious as also untenable since it cannot provide legitimacy to acquiring unlicensed arms and ammunition. Having recovered this *cache* of arms from the premises where another raid was conducted by the National Investigation Agency (while investigating a case related to activities of the applicant/accused’s son, one of Neeraj Bawana’s gang).

38. The focus of the arguments in support of the plea for bail was whether this would invite contravention of Section 25(1B)(a) carrying a punishment of 2 years extendable to 5 years, in contradistinction to the offence under Section 25 (1)(a) or Section 25(1)(A) or Section 25



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(1)(AA) which invites a punishment of not less than 7 years and extendable to life.

39. The chargesheet and supplementary chargesheet both are filed for charges under section 25/35 of the Arms Act of which cognizance is yet to be taken. It is only post cognizance and the charges when framed, that it can be concluded as to which specific section of the Arms Act would be said to subsist. Till then, it would be difficult to accept either the assertion of the applicant/accused or that of the State, in terms of which offence is specifically triggered. Though in such circumstances, arguably benefit could be given to the applicant/accused considering his detention is as an undertrial, the Court cannot ignore the other attending facts and circumstances.

40. Not only the recovery is of a very large *cache* of arms and ammunition, which are dangerous by their very nature, but the recovery is evidently from vehicles owned by the applicant/accused and his daughter-in-law, parked and stationed at the property of the applicant/accused. The aspect of conscious possession *prima facie* would be against the applicant/accused. There are no arguments raised by the applicant/accused counsels for diluting or doubting the elements of conscious possession.

41. What then is to be considered is conduct of the applicant/accused during the investigation that ensued. Post the registration of the FIR, notices were served on the applicant/accused on 17<sup>th</sup> September 2022, 19<sup>th</sup> September 2022, 23<sup>rd</sup> September 2022, 28<sup>th</sup> September 2022 and 29<sup>th</sup> September 2022, but he did not join the investigation and was finally arrested on 29<sup>th</sup> September 2022.



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42. Thereafter two bail petitions were dismissed by this Court by judgement dated 19<sup>th</sup> December 2023. Thereafter interim bail applications were filed before MM Rohini Court and before the ASJ, Rohini Court as per Status Report, on the ground that applicant/accused had to attend the marriage ceremony of the grandson of his brother. These were also dismissed by MM and ASJ on 09<sup>th</sup> April 2024 and 10<sup>th</sup> April, 2024

43. As noted above, *firstly*, there were violations of the terms of interim bail condition granted on a previous occasion including 22<sup>nd</sup> September 2023 as noted by the Court in 06<sup>th</sup> October 2023; *secondly*, the interim bail granted by MM on 04<sup>th</sup> December 2023 on medical grounds was without calling Status Report from Investigating Officer verifying the medical situation of the applicant/accused, as noted by order dated 14<sup>th</sup> December 2023 of this Court.; *thirdly*, on 16<sup>th</sup> May 2024, the interim bail application was moved before this Court on the basis that applicant/accused was in the Intensive Care Unit of Safdarjung Hospital and had been advised for pacemaker implantation, and sought release in order to take treatment from a private hospital, 8 weeks were granted which exhausted on 11<sup>th</sup> July 2024 but he chose not to get admitted in the private hospital but the day before the bail period was to expire he got admitted in Safdarjung Hospital (Department of Cardiology), which treatment he was refusing while in custody; *fourthly*, this Court was prompted to reject the request for interim bail by order dated 18<sup>th</sup> July 2024 and directed the applicant/accused to be taken into custody from the hospital post-discharge by the medical team which eventually concluded on 30<sup>th</sup> July 2024; *fifthly*, regular bail has already



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been dismissed by this Court on 19<sup>th</sup> December 2023 by a detailed reasoned judgement.

44. In these circumstances, the request, even on medical conditions, has to be seen through a stricter prism and in the opinion of this Court therefore, cannot give him the benefit of bail, at this stage. Though the applicant's counsel states that the evidence which were recovered were of only *desi kattas* and some rounds, the ASC's contention that there was a large accumulated consignment of arms and ammunition which potentially imposed a threat to the members of society, has to be taken into consideration. The Court cannot shut its eyes to this kind of recovery of arms and ammunition and admit the applicant/accused to bail, merely on technical grounds.

45. The Supreme Court in ***Prasanta Kumar Sarkar v Ashis Chatterjee and Another*** 2010 SCC Online SC 1242, reiterate the factors to be borne in mind while considering an application of bail, which are extracted as under:

*“9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously, and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:*

*(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*



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- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.”

(emphasis added)

46. This Bail Application is, therefore, dismissed. These observations are for the purposes of assessing the plea of bail only and the respective contentions will finally be subject to proceedings in trial.

47. Pending applications are rendered infructuous.

48. Judgment be uploaded on the website of this Court.

**(ANISH DAYAL)**  
**JUDGE**

**OCTOBER 4, 2024/SM/tk**