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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(CRL) 1073/2024**
GAGAN AND ANR Petitioners
Through: Mr.Asad Iqbal, Adv.

versus

THE STATE OF NCT OF DELHI THROUGH Respondent
Through: Mr.Sanjay Lao, SC with
SI Amit Solanki, SI Pratima.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **30.04.2024**

1. This petition has been filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') seeking quashing of FIR 246/2024 registered with Police Station: I.G.I Airport, Delhi under Section 25 of the Arms Act, 1959 (in short, 'Arms Act').
2. It is the case of the prosecution that on 01.04.2024, on scanning of the baggage of the petitioner no.1 and during its physical search thereafter, one ammunition was recovered.
3. The petitioner no.1 was travelling from Delhi to London by the Air India Flight No.AI-161 as she was not in possession of valid documents for the carriage of abovementioned ammunition. The subject case was registered against her.
4. The learned counsel for the petitioners submits that the said ammunition was in the baggage of the petitioner no.1 due to inadvertence. He submits that the husband of the petitioner no.1



holds a valid arms licence bearing No. DM/FGS/DUP/AMLH/0517/165 valid from 09.02.2022 to 08.02.2027.

5. On the other hand, the learned ASC submits that though the arms licence has been duly verified, the FSL regarding the matching of the ammunition that has been recovered from the baggage of the petitioner no.1 and its matching with the arms which has been duly licenced, is awaited.
6. I have considered the submissions made by the learned counsels for the parties.
7. This Court in the Order dated 31.12.2020 in W.P.(CRL) 754/2020 titled ***Adhiraj Singh Yadav v. State***, while quashing an FIR under Section 25 of the Arms Act and placing reliance on the judgment of the Supreme Court in ***Gunwant Lal v. The State of Madhya Pradesh*** (1972) 2 SCC 194 and ***Sanjay Dutt v. State through CBI Bombay (II)***, Crimes 1994 (3) 344 (SC), has held as under:

“9. It is the petitioner's case that he was not conscious of the fact that there the luggage carried by him contained live ammunition. He states that he was in a hurry and packed the luggage with his belongings oblivious of the fact that it also contained live ammunition.

*10. In ***Gunwant Lal v. The State of Madhya Pradesh*** : (1972) 2 SCC 194, the Constitution Bench of the Supreme Court has held as under:-*

“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 none-the-less 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 someone 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 (sic) 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.”

11. In *Sanjay Dutt v. State through CBI Bombay (II)*, *Crimes 1994 (3) 344 (SC)* the Supreme Court has observed as under:-

“20. 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. Accordingly, the ingredient of 'possession' in Section 5 of the TADA Act means conscious possession. This is how the ingredient of possession in similar context of a statutory offence importing strict liability on account of mere possession of an unauthorized substance has been understood.”

12. In view of the above, it is well settled that an offence under Section 25 of the Arms Act would not be made out in cases where the suspect was not conscious that he was in possession of live ammunition.

13. In view of the status report, Mr Mahajan, learned ASC appearing for the State also submits that there is no material to doubt the explanation provided by the petitioner. 14. This Court has in several cases held that unconscious possession would not attract the rigours of the said Act. [See: *Surender Kumar @ Surender Kumar Singh v. The State (GNCT of Delhi) & Anr.*: W.P. (Crl) 2143/2019 decided on 27.09.2019; *Aruna Chaudhary v. State & Ors.*: W.P. (Crl.) 1975/2019 decided on 25.09.2019 and *Paramdeep Singh Sran v. The State (NCT of Delhi) W.P.*: (Crl) 152/2019 decided on 29.08.2019)].”



8. In view of the above, I find that the petitioners have been able to make out a case for quashing of the FIR.
9. Keeping in view the above principles of law and the fact that the ammunition had remained in the baggage of the petitioner no.1 due to inadvertence and, therefore, the possession was unconscious in nature, the FIR No. 246/2024 registered with Police Station: I.G.I Airport, Delhi under Section 25 of the Arms Act is quashed, subject to the condition that the petitioners shall deposit costs of Rs.35,000/- jointly and severally with “*The Blind Relief Association, Delhi*” State Bank of India, IOC Branch, Lodhi Road, New Delhi, Account No.30003044419, IFSC Code: SBIN0006564, within a period of four weeks from today, and file proof of such deposit with the Registry of this Court and also supply a copy thereof to the IO, within the said period.
10. The petition stands disposed of.

NAVIN CHAWLA, J

APRIL 30, 2024
RN/AS

Click here to check corrigendum, if any