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

+ **CRL.M.C. 3354/2023**

SOURABH KAPOOR

..... Petitioner

Through: Mr.Gourav Arora, Advocate

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Laksh Khanna, APP for State with
SI Tilak Raj

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

% **14.05.2024**

CRL.M.A. 14757/2024 (for early hearing by the petitioner)

1. By way of present application, the petitioner/applicant seeks early hearing of the petition.
2. Issue notice.
3. Learned APP for the State accepts notice and submits that he has no objection to the prayer made in the application.
4. For the reasons stated in the application and in view of the no objection given by the other side, the same is allowed.
5. The application is disposed of.

CRL.M.C. 3354/2023

1. With the consent of the parties, the petition is taken up for hearing today itself.
2. By way of the present petition filed under Section 482 Cr.P.C., the



petitioner seeks quashing of FIR No.55/2021 registered under Sections 25/54/59 of the Arms Act at P.S. Kashmiri Gate Metro, Delhi.

3. Briefly stated, the facts relevant for adjudication of the said petition are that on 23.12.2021, the petitioner arrived in Delhi from Ludhiana and was supposed to board a train from Delhi to Madhya Pradesh on the very same day. When the petitioner put his baggage for checking in the X-ray/scanning machine at Chandni Chowk Metro Station, two live cartridges were found inside his baggage and resultantly, the subject FIR came to be registered.

4. Learned counsel for the petitioner states that the petitioner was not in 'conscious possession' of the two live cartridges inasmuch as the cartridges were left inside the baggage mistakenly and without his knowledge. He contends that the petitioner holds a valid arms licence issued by the office of Commissioner of Police, Ludhiana and that the two live cartridges found in the baggage belonged to the said licensed weapon. Lastly, it is stated that the petitioner has no prior involvements of any kind and has clean antecedents.

5. Learned APP for the State, on instructions and while referring to the Status Report placed on record, confirms that the petitioner holds a valid arms license. Reference in this regard is made to the copy of the letter dated 08.02.2022 issued by Incharge, Arms Licensing Unit, CPO, Ludhiana, wherein the said factum has been duly verified. He further confirms that the petitioner is not involved in any other case.

6. The present case deals with the issue of possession of or carrying of any firearm or ammunition in contravention of Section 3 of the Arms Act. In its various judicial pronouncements, the Supreme Court has categorically observed that to make out an offence under Section 25 of the Arms Act, the



possession must be ‘conscious possession’ meaning thereby that offender had the knowledge and was not unaware of it.¹ In Gunwantlal (Supra), it was observed that there has to be an element of intention, consciousness or knowledge. It was held that:-

“xxx

5. ...*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*

¹ Gunwantlal v. State of Madhya Pradesh, (1972) 2 SCC 194



control over the gun, while the person to whom physical possession is given holds it subject to that power and control....

xxx”

7. Further, in Sanjay Dutt v. State Through CBI, Bombay (II)², a Constitutional Bench of the Supreme Court elucidated the meaning of possession to be conscious possession and not mere custody, lacking any knowledge or intention to use. It was observed:-

“xxx

19. 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 unauthorised substance has been understood. (See Warner v. Metropolitan Police Commissioner, (1969) 2 A.C. 256 and Sambasivam v. Public Prosecutor, Federation of Malaya, (1950) AC 458.

xxx”

8. Admittedly, the arms license of the petitioner relates to a pistol of .32 bore, which matches with the cartridges found in his baggage. It has been contended on behalf of the petitioner that the said cartridges had mistakenly come into his baggage while he was packing his clothes and that he had failed to check the same before leaving his place in Ludhiana. In view of the aforesaid, it can be concluded that the petitioner was not in ‘conscious



possession' of the live cartridges found in the baggage, which is a necessary constituent for the offence under Section 25 of the Arms Act.

9. Considering the aforesaid factual and legal position, this Court is of the considered opinion that continuation of the criminal proceedings against the petitioner would be an abuse of the process of law. Consequently, the petition is allowed and FIR No. 0055/2021 registered under Sections 25/54/59 Arms Act at Police Station Kashmiri Gate Metro, Delhi and the consequent proceedings emanating therefrom are accordingly quashed. The petition is disposed of accordingly.

10. The date already fixed i.e., 16.08.2024 is cancelled.

MANOJ KUMAR OHRI, J

MAY 14, 2024

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² (1994) 5 SCC 410