



\$~21

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

+ W.P.(CRL) 1284/2024

SADHU SINGH

.....Petitioner

Through: Mr.Rohit Yadav, Adv.

versus

THE STATE OF NCT OF DELHI THROUGH SHO, P. S. IGI
AIRPORT

.....Respondent

Through: Mr. Yasir Rauf Ansari, ASC
(Criminal) for State and Mr. Alok
Sharma, Advocate with SI Amit
Kumar, PS IGI Airport

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

18.12.2024

%

1. Present petition has been filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure seeking for quashing of FIR no.229/2024 under Section 25 of the Arms Act registered at PS IGI Airport.
2. Briefly stated the facts as per the Status Report are that on 26.03.2024 during search of check-in baggage at around 01:39 hours of the petitioner traveling from New Delhi to Amsterdam by KLM Royal Dutch Airlines Flight No. KL-872, one undeclared live cartridge was recovered from his bag. Upon asking the accused for valid documents he was not in possession of valid documents for carriage of the above-mentioned ammunition. Thus FIR no.229/2024 under Section 25 of the Arms Act PS IGI Airport was lodged. The recovered live cartridge was



sent to FSL, and the investigation is still in progress.

3. Learned counsel for the petitioner submits that it was an unconscious possession. It has further been submitted that, in fact, the petitioner had borrowed the bag from his nephew Mr. Sukhjeet Singh who holds a valid arms license till 16.11.2025 of 12 bore DBDL and 32 bore revolver. Learned counsel for the petitioner also submits that the petitioner has no intention and the possession was unconscious.
4. Learned additional standing counsel submits that arms license of Sukhjeet Singh is verified, and it is found to be valid till 16.11.2025 in the jurisdiction of Punjab and Haryana.
5. Petitioner claims that he was not in 'conscious possession' of the cartridges, and possession simpliciter is not enough to attract Section 25 of the Arms Act. In ***Sonam Chaudhary & Ors. v. The State (Govt. of NCT of Delhi) and Ors.***, 2016 SCC OnLine Del 47, this Court has held that in the expression "conscious possession" occurring in Section 25 of the Arms Act, the word "possession" means possession with requisite mental element and mere custody does not amount to an offence under the Arms Act. It is further urged that case of the Petitioner is squarely covered by several judgments of this Court and relies on the decisions in ***Dhanwant Kaur v. State & Anr.***, 2016 SCC OnLine Del 5492; ***Jagat Singh v. The State (N.C.T of Delhi)***, W.P. (Crl.) 309/2020, decided on 03.02.2020; ***Ram Prakash Mishra v. The State (N.C.T of Delhi)***, W.P. (Crl.) 674/2020, decided on 11.03.2020; and ***Raj Mulk v. The State (NCT of Delhi)***, W.P. (Crl.) 1007/2022, decided on 21.09.2022.
6. 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."

7. The Co-ordinate Bench of this Court in ***Chan Hong Saik Thr. Spa: Arvinder Singh v. State***, 2012 SCC OnLine Del 3320 held that the recovery of a single cartridge without any firearm is 'minor ammunition' which would be protected by the provisions of the Arms Act, 1959. Recently also a similar view was taken by the Co-ordinate Bench of this Court ON 08.11.2024 in ***Jagdev Singh v. State of NCT of Delhi*** W.P(CRL 3488/2024.
8. The factual matrix of the instant case reveals that solitary recovery of one live cartridge/ammunition has been effected from the possession of the petitioner, sans any accompanying arms or weapons. The conspicuous absence of any firearm, coupled with the recovery of isolated cartridges, is strongly suggestive of unconscious possession. The aforesaid factors, when viewed holistically, demonstrate that the essential ingredient of *mens rea* appears to be conspicuously absent in the case at hand.
9. Petitioner has taken a categorical position that he was not in conscious



possession of the live cartridge, and this position is uncontroverted by the Investigation Officer. In this view of the matter, Petitioner rightly contends that his case is squarely covered by several decisions of this Court, some of which have been mentioned above.

10. In view of the aforesaid decisions, the uncontroverted position taken by the Petitioner that he was not in conscious possession of the live cartridge, which remained in his hand baggage and the factum of the revolver being licensed, this Court is of the view that present FIR deserves to be quashed. Accordingly, FIR no.229/2024 under Section 25 of the Arms Act registered at PS. IGI Airport and all other proceedings emanating therefrom are quashed.
11. The present petition along with all the pending applications stand disposed of.

DINESH KUMAR SHARMA, J

DECEMBER 18, 2024

Rb/kr..