



\$~22

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

+ **W.P.(CRL) 2455/2022**

RAJINDER SINGH GILL

.....Petitioner

Through: Mr.Aamir Chaudhary, Ms. Sakshi
Yadav, Advs.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Ms. Rupali Bandhopadhyay, ASC
with Mr. Abhijeet Kumar, Adv. with
SI Suresh Chand Meena, PS IGI
Airport.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

18.11.2024

%

1. This is a petition under Article 226 of the Constitution read with Section 482 Cr.P.C. praying this Hon'ble Court to pass necessary orders and directions thereby quashing and cancelling the FIR No.343/2022 registered at PS IGI Airport and all the proceedings emanating therefrom.
2. Learned counsel for the petitioner submits that the petitioner is 55 years of age, a USA citizen, and a former security personal in the USA who travelled to India in August 2021 to perform the last rites of his mother. It has been submitted that while going back, during the security check at Indira Gandhi International Airport New Delhi, a live cartridge was found in his baggage leading to the registration of the present FIR.



3. Learned counsel for the petitioner submits that the possession of totally unconscious and it was inadvertent error that a live cartridge remained in the baggage of the petitioner. Learned counsel submits that the petitioner is a valid License Holder for Firearms with FSC No.3451355 issued by the State of California, Department of Justice, California, USA and asserts that the discovery of cartridge was accidental with no malicious intention.
4. Learned APP for the State has opposed the quashing of present FIR and has submitted that one live bullet was found from the possession of present petitioner on which the present FIR was lodged. It has been submitted that during the interrogation, the petitioner could not provide any satisfactory reply or justification regarding the illegal possession of live cartridge. Learned APP for the State submits that the live cartridge has been sent to the FSL and the report is still awaited.
5. Learned APP has also submitted that the verification of Arms License FSC No 3451355 issued by the State of California, Department of Justice, California, USA could not be completed as the USA Embassy vide communication dated 24.07.2024, informed that they cannot reveal any information regarding USA citizen to anyone without USA citizen prior written consent absent other legal authorization. Learned APP submits that Embassy has asked the investigating agency to work directly with the attorney with the Attorney of the petitioner to obtain necessary information.
6. It is not disputed that the petitioner was found in possession of only one live cartridges while he was in enroute back to USA vide



Amritsar. The petitioner has asserted that he has a valid Arms License FSC No 3451355 issued by the State of California, Department of Justice, California, USA. However, the USA agency has not verified the license in the absence of authorisation from the petitioner. It is a matter of the record that the petitioner was not carrying any arm, and a mere live cartridge could not have been used independently.

7. In **Narender Kumar Gupta v. State of NCT of Delhi** 2021 SCC OnLine Del 2335, it was inter alia held as under;

“6. It is well settled that where a person is not conscious of the ammunition in his possession, an offence of under Section 25 of the Arms Act, 1959 would not be made out in view of judgments Surender Kumar @ Surender Kumar Singh v. The State (GNCT of Delhi): W.P.(Crl.) 2143/2019 decided on 27.09.2019; Aruna Chaudhary v. State : 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), therefore, Section 25 Arms Act was converted into Section 30 Arms Act as the Petitioner was holding a valid Arms License.

7. The fact remains that this Court in Chan Hong Saik (Supra) quashed the FIR by holding that a single cartridge without firearm is a minor ammunition which is protected under clause (d) of Section 45 of the Arms Act. The larger Bench referred above did not agree with the opinion of this Court but however, opined that the possession of the ammunition was unconscious and there was no arm with the accused and there was no threat to anyone, therefore this Court has rightly quashed the FIR.

8. In the case in hand, it is not the case of the prosecution that there was fire arm recovered from the petitioner or there was any threat to anyone at the Airport.

9. Thus, in the present case also, the possession of the



ammunition was unconscious and there was no threat to anyone.”

8. The Coordinate Bench of this Court in **Sakshi Negi v. State of NCT of Delhi** in CRL.M.C. 5630/2022 vide order dated 02.04.2024 where a live cartridge was recovered from the possession of the petitioner following the judgment of **Narender Kumar Gupta** (Supra).

9. In **Sakshi Negi** (supra), it was *inter alia* held as under;

13. The above ratio will squarely apply to the facts of the present case as well. What has been recovered from the petitioner is only one live cartridge, without any firearm. The possession of the ammunition does not appear to be conscious possession. There was no threat to any other person. The petitioner has also produced an Arms License of her uncle, Mr.Chandra Prakash Thareja. Though, as per the report received, the said license was valid till 11.10.2002, the said certificate merely states that the last renewal from the said office was till that date. Be that as it may, once the possession of only one cartridge and that too without a firearm is found, and the same is not found to be a conscious possession, and there was no threat to any other person at the airport, applying the principle laid down by this Court in Narender Kumar Gupta (Supra) and the order dated 11.03.2024 passed in CRL. M.C. 1965/2024, titled Mukesh Kumar Puri v. The State (NCT of Delhi), the FIR deserves to be quashed.

10.It is a settled principle that the consciousness or knowledge of possession is a sine qua non to prosecute an accused under the Arms Act, 1959 vide a catena of judgments. The Apex court established the same in **Gunwant Lal v. The State of Madhya Pradesh**, (1972) 2 SCC 194 wherein it was *inter-alia* held as under:

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

11. Moreover, in **Sanjay Dutt v. State** (1994) 5 SCC 410, the Supreme Court also held that the true meaning behind the very first ingredient of ‘possession’ of any such arms, etc. is that the same is inclusive of a mental element, i.e. that mere possession is not enough, there must be awareness of such possession.
12. In the present case, the petitioner was in possession of the ammunition with no firearm; however, it is established that he lacked any



consciousness or awareness as to the nature of his possession.

13. Accordingly, the present petition is allowed. The FIR No.343/2022 registered at PS IGI Airport under Section 25 of the Arms Act and all consequential proceedings emanating therefrom against the petitioner are quashed, subject to the condition that the petitioner shall deposit costs of Rs.50,000/- with the “*Delhi High Court Staff Welfare Fund, UCO Bank, Delhi High Court, A/C 15530110074442, IFSC Code UCBA0001553*”, 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.

14. With the above directions, the present petition stands disposed of.

DINESH KUMAR SHARMA, J

NOVEMBER 18, 2024

Pallavi/HT