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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(CRL) 3066/2024 & CRL.M.A. 29762/2024
YASHO MADHAV BHARTIAPetitioner
Through: Mr. Devinder Singh, Advocate.
versus

STATE GOVT OF NCT OF DELHI & ANR.Respondents
Through: Mr. Anand V. Khatri, ASC for the
State.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

% **ORDER**
21.10.2024

1. The instant petition under Article 226 of the Constitution of India, 1950 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter “BNSS”) has been filed by the petitioner praying for quashing of FIR bearing No. 0725/2024 registered at Police Station IGI Airport, for offences punishable under Sections 25 Arms Act, 1959 (“Arms Act” hereinafter).
2. Brief facts of the present case are that on 24th September, 2024, while travelling from Delhi to USA via Dubai on Flight No. EK-513, one undeclared ammunition was discovered in the petitioner’s checked in baggage, on the basis of the said ammunition, the instant FIR under Section 25 of the Arms Act was registered against the petitioner.
3. Learned counsel appearing for the petitioner submitted that the petitioner is a 20 year old student, who is pursuing mechanical engineering stream at the University of California, Santa Barbara, and has been residing alongwith his college friend namely, Mr. Hunter Jack Cornett.



4. It is submitted that the aforesaid friend is holding an Annual Hunting License bearing GO ID: 1045679046 which was issued to him by the State of California, Department of Fish and Wildlife. The validity of the same is from 1st July, 2024 to 30th June, 2025. It is further submitted that the petitioner mistakenly took the stationary box of his friend before his departure from USA to India on 8th August, 2024 as he was residing with him, due to which, one undeclared ammunition/bullet got unconsciously packed in his luggage. It is submitted that the same was not detected at the USA airport as well as at the IGI airport, New Delhi, at the time of his arrival in India. It is also submitted that the petitioner has a clean antecedent and the chargesheet in the present case has not been filed.

5. Learned counsel for the petitioner placed reliance upon a catena of judgments including the judgment passed by the Hon'ble Supreme Court in ***Gunwantlal v. State of M.P.*, (1972) 2 SCC 194** and submitted that the petitioner was not in the conscious possession of the said ammunition.

6. Therefore, it is prayed that no offence under Section 25 of the Arms Act is made out against the petitioner and thus, the reliefs be granted as prayed for.

7. *Per Contra*, learned ASC appearing on behalf of the State vehemently opposed the instant petition and submitted to the extent that pursuant to the recovery of the said ammunition from the checked in baggage of the petitioner, the captioned FIR under Section 25 of the Arms Act was registered. It is further submitted that in the FIR it has been stated that the measurement of the recovered cartridge was found to be approximately 6.5 cm and the diameter of the bottom bullet was approximately 1.1 cm. Therefore, the petitioner was carrying the said ammunition and a *prima*



facie case under Section 25 of the Arms Act is made out against him.

8. Heard learned counsel for the parties and perused the record.

9. The petitioner has contested that the instant FIR may be quashed in view of the fact that the petitioner was unaware about the possession of the recovered ammunition and thus, offence under Section 25 of the Arms Act is not made out against him.

10. At this juncture, this Court deems it apposite to discuss the law *qua* the meaning of *conscious possession* in the context of Section 25 of the Arms Act.

11. It is pertinent to state that the ingredient of *possession* under Section 25 of the Arms Act includes the factor of a mental element and the same is a pre-requisite to establish a case under the aforesaid provision as mere custody without awareness of the said possession does not constitute an offence under Section 25 of the Arms Act.

12. It is relevant to state that the Hon'ble Supreme Court in various cases has categorically observed the aforesaid principle. In ***Gunwantlal v. State of M.P., (Supra)***, the Constitutional Bench of the Hon'ble Supreme Court has observed as follows:

“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.



Similar, 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....”

13. Furthermore, the above stated principle has been affirmed in a catena of judgments including the judgment passed by a Coordinate Bench of this Court in ***Sonam Chaudhary v. State (Govt. of NCT of Delhi)*, 2016 SCC OnLine Del 47**, wherein the FIR pertaining to the offence under Section 25 of the Arms Act was quashed and it was held that live cartridge recovered was an inadvertent oversight and the petitioners therein were unaware of the said possession, therefore, it does not fall within the purview of conscious possession.

14. Therefore, the aforesaid judicial *dictum* reflects that the law with respect to *conscious possession* is well settled as the same is a pre-requisite and an essential ingredient to be established upon recovery of ammunition



to constitute an offence under Section 25 of the Arms Act.

15. In the present case, while travelling from Delhi to USA via Dubai, one undeclared ammunition was found in the checked in baggage of the petitioner and it is contended that he was unaware of the said possession. In view of the aforesaid facts and circumstances as well as the law discussed above, this Court is of the view that the recovery of the ammunition in question was without the knowledge of the petitioner and therefore, the essential ingredient for constituting an offence under Section 25 of the Arms Act is not established.

16. Therefore, this Court is of the considered view that the no fruitful purpose will be served by punishing the petitioner for being in an unconscious possession of a single live cartridge without firearm.

17. In view of the above stated facts and circumstances, as well as the above discussion of law, this Court finds sufficient reasons to allow the present petition and quash the FIR registered under Section 25 of the Arms Act.

18. Accordingly, FIR bearing No. 0725/2024, dated 24th September, 2024 registered at Police Station - I.G.I. Airport, under Section 25 of the Arms Act, 1959 and all consequential proceedings emanating therefrom are quashed.

19. The petition alongwith pending applications, if any, stands disposed of.

CHANDRA DHARI SINGH, J

OCTOBER 21, 2024

NA/sm

Click here to check corrigendum, if any