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

+ **W.P.(CRL) 4025/2024**

KUSUM SHARMA

.....Petitioner

Through: Mr. Rahul Rai, Adv.

versus

STAE GOVT. OF NCT OF DELHI AND ANR.Respondents

Through: Mr. Amol Sinha, ASC for the State
and SI Saveen Kharb, PS IGI Airport.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

23.12.2024

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CRL.M.A. 38826/2024

1. Exemption allowed, subject to all just exceptions. Application stands disposed of.

W.P.(CRL) 4025/2024

2. The present petition has been filed under Article 226 of the Constitution of India r/w Section 528 BNSS seeking quashing of case FIR No. 127/2024 under Section 25 Arms Act registered at PS IGI Airport and all other proceedings emanating therefrom.
3. Learned counsel submits that the petitioner was travelling from Delhi to Pune with her daughter, and during the physical checking, the 02 live ammunition and three empty cartridges were recovered from the baggage, and this led to the registration of the present FIR. It is submitted that it was an unconscious possession. It has been submitted



that, in fact, the petitioner had borrowed the bag from her brother-in-law, Sharawan Kumar Sharma. Her brother-in-law holds a valid arms license, which was issued by the office of the sub-division magistrate, Ghaziabad, Uttar Pradesh. It has further been submitted that the live ammunition and empty cases could not have been used independently as an arm.

4. Issue notice. Learned ASC for the state has accepted the notice and on the instruction of the I.O. states that the license of Sh. Sharawan Kumar Sharma has duly been verified.
5. Petitioner claims that she was not in 'conscious possession' of the cartridges, and possession simpliciter is not enough to attract Section 25/30 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. (CrI.) 309/2020, decided on 03.02.2020; **Ram Prakash Mishra v. The State (N.C.T of Delhi)**, W.P. (CrI.) 674/2020, decided on 11.03.2020; and **Raj Mulk v. The State (NCT of Delhi)**, W.P. (CrI.) 1007/2022, decided on 21.09.2022.
6. Petitioner has taken a categorical position that she was not in conscious possession of the live cartridges, and this position is uncontroverted by



the Investigation Officer. In this view of the matter, Petitioner rightly contends that her case is squarely covered by several decisions of this Court, some of which have been mentioned above. In ***Ram Prakash Mishra*** (supra), this Court has quashed the FIR registered under Section 30 of the Arms Act on the ground that Petitioner claimed that he was not in conscious possession and the live cartridges had remained in his hand bag, which position was not refuted by the State. The same view was taken by this Court in ***Gurveer Singh v. State***, 2022 SCC OnLine Del 1585. Further, 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.

7. The factual matrix of the instant case reveals that solitary recovery of two live cartridges/ammunitions 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.
8. In view of the aforesaid decisions, and the factum of the revolver being licensed, this Court is of the view that present FIR deserves to be quashed. Accordingly, FIR No. 127/2024 under Section 25 Arms Act registered at PS IGI Airport, is hereby quashed, including all proceedings emanating therefrom.



9. The present petition along with the pending application(s), if any, stands disposed of.

DINESH KUMAR SHARMA, J
DECEMBER 23, 2024/AR/HT..