



\$~51

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

% ***Date of decision: May 05, 2025***

+ CRL.M.C. 3153/2025 & Crl.M.A. 13871-72/2025

SUDIPTA KUMAR MANDAL

KESHABNAGAR, COSSIMBAZAR RAJ,
SIBDANGA BADARPUR, MUSHIDABAD,
WEST BENGAL – 742102

.....Petitioner

Through: Mr. Jaspreet Singhrai, Mr. Rohit
Nagpal & Mr. Shwetabh Kumar,
Advocates

Versus

STATE NCT OF DELHI
THROUGH SHO
PS IGI AIRPORT

.....Respondent

Through: Mr. Yudhvir Singh Chauhan,
Additional Public Prosecutor for
Respondent-State with WSI Jyoti
Singh

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. Petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*hereinafter referred to as "BNSS"*) seeking quashing of FIR No.310/2025 dated 12.04.2025 under Section 25 Arms Act, 1959 Police Station I.G.I. Airport New Delhi.



2. ***Briefly stated***, on 12.04.2025, the Petitioner/Sudipta Kumar Mandal was travelling from New Delhi to Dehradun, Flight Number AI-2907. While screening the Petitioner's baggage at Level-2 of Inline Baggage Screening Location, I.G.I. Airport and subsequently, upon physical search *two live cartridges* were recovered in the check-in baggage and the same was reported by DIAL Baggage Security Unit. Accordingly, FIR No.310/2025 was registered under Section 25 of the Arms Act, 1959.
3. The Petitioner has sought quashing of the said FIR *on the ground* that he was not aware of the existence of two live cartridges. The alleged recovery was purely inadvertent and was an unintentional mistake.
4. The Petitioner explained that the two recovered live cartridges from his possession were military-issue Self-Loading Rifle (SLR) ammunition belonging to his late grandfather, Shri Sudhir Kumar Mandal, who served in the Border Security Force (BSF) for more than 30 years. These cartridges, now obsolete and no longer in active use, remained unknowingly inside an old service suitcase that the Petitioner had borrowed for personal use but had not checked it before using the Suitcase.
5. The Petitioner contends that this incident stems from an innocent mistake devoid of criminal intent.
6. Reliance has been placed on Gunwantlal vs. State of Madhya Pradesh, AIR 1972 SC 1756 (1972) 2 SCC 194; Sanjay Dutt vs. State through CBI, Bombay (1994) 5 SCC 410 has held that mere possession without any consciousness of such possession would not constitute an offence under Arms Act.
7. It is submitted that the Petitioner is a student of B.Sc. (final year)



from Himalayan Institute of Technology, Dehradun, Uttarakhand having no criminal antecedents. The quashing of FIR and all proceedings emanating therefrom, is thus sought.

8. The **Ld. Public Prosecutor** has vehemently opposed the Petition on the ground that the Petitioner was caught with *two live cartridges* which is an offence under the Arms Act.

9. Submissions heard and record perused.

10. Admittedly, two live cartridges were recovered from the bag of the Petitioner during his baggage scanning at the I.G.I. Airport on 12.04.2025.

11. The pre-condition for an offence under the Arms Act, 1959 is the element of ***intention, consciousness or knowledge*** with which a person possessed the Firearm before it can be said to constitute an offence, as held by the Constitution Bench of the Apex Court in Gunwant Lal vs. The State of Madhya Pradesh, (1972) 2 SCC 194.

12. In Ritesh Taneja vs. State and Anr., 2022 SCC OnLine Del 971, it has been explained by the Co-ordinate Bench of this Court that it is the *conscious possession* of any firearm/ammunition which entails strict liability on the offender.

13. While deciding a similar matter, Co-ordinate bench of this court in Mitali Singh vs. NCT of Delhi &Anr., W.P.(CRL) No. 2095/2020 decided on 15.12.2020, observed, “*The courts have in a number of decisions held that the **conscious possession of an ammunition is sine qua non to prosecute the possessor under the Arms Act, 1959.***”

14. In Sanjay Dutt vs. State through CBI Bombay, (1994) 5 SCC 410, the Constitution Bench of the Apex Court had reiterated as under: -



“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. (See Warner v. Metropolitan Police Commissioner, (1969) 2 A.C. 256 and Sambasivam v. Public Prosecutor, Federation of Malaya, (1950) AC 458.”

15. In Gaganjot Singh vs. State, MANU/DE/3227/2014, the Co-ordinate Bench of this Court in similar facts, where a solitary live cartridge was recovered by the police from the Petitioner's bag which belonged to his uncle about which he expressed his lack of knowledge, it was held that the circumstances did not establish *conscious possession*. Relying on the decision in Gunwantlal, (supra), the FIR was quashed, and the Petitioner was discharged.

16. Similar, observations have made consistently by the Co-ordinate Bench of this Court in Narinderjit Kaur Singh vs. State (NCT of Delhi) decided vide W.P.(CRL) 1669/2017 and Nimesh Kumar vs. State of NCT of Delhi, decided vide W.P.(CRL) 3540/2017.

17. The circumstances in which the live cartridges were recovered from the Petitioner have been explained by him, who stated that he was not even aware of the cartridges in his suitcase. The ammunition belonged to his late grandfather who served in the BSF and was lawfully issued a SLR. The Petitioner was using his grandfather's old luggage and due to an oversight, failed to thoroughly check the luggage before placing his clothes therein.



These obsolete SLR cartridges remained unnoticed in the suitcase, ultimately leading to the present case.

18. The circumstances as explained by the Petitioner, clearly establish that there was *no criminal intent on his part*. It is evident from the explained circumstances that the recovery of cartridges from the bag of the Petitioner was without his knowledge and he did not have the requisite *men rea*. It is thus, held that the possession of two cartridges was not *conscious possession* and does not disclose commission of the offence punishable under Section 25 Arms Act, 1959.

19. Accordingly, ***FIR No. 310 /2025 under Section 25 of the Arms Act, 1959*** at Police Station I.G.I. Airport and all consequential proceedings emanating therefrom, are quashed.

20. The Petition along with Pending Application (s), if any, is disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

MAY 05, 2025

r