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

+ **CRL.M.C. 5437/2022**

JAGDEEP SINGH AULAKH THROUGH HIS S.P.A.Petitioner

Through: **Mr. Rahul Malik and Mr. Harsimrat
Singh Randhawa, Advocates
alongwith petitioner (appeared
through VC)**

versus

STATE OF N.C.T. OF DELHI

.....Respondent

Through: **Mr. Naresh Kumar Chahar, APP for
the State alongwith IO**

CORAM:

HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

ORDER
02.04.2025

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1. The instant petition under Section 482 of the Code of Criminal Procedure, 1973 (hereafter 'Cr.P.C.') has been filed on behalf of the petitioner seeking quashing of FIR bearing no.0571/2018 dated 22.10.2018, registered at Police Station IGI Airport, Delhi for the offences punishable under Sections 25/54/59 of Arms Act, 1959 and the proceedings arising therefrom.

2. The petitioner is present before this Court through video conferencing and has been identified by his counsel, Mr. Rahul Malik, whose Vakalatnama is on record.

3. Brief facts of the present case, as per prosecution, are that on 22.10.2018, when the petitioner was travelling from New Delhi to



Vancouver by Air Canada, Flight Number AC-045, eleven (11) cartridges were recovered from his baggage in the presence of the petitioner and airline staff Ms. Neha Yadav, Senior Associate, DIAL Security and Vigilance Staff, I.G.I. Airport during check-in. Subsequently, in this regard, FIR bearing no. 0571/2018 was registered at P.S. IGI Airport.

4. The learned counsel appearing on behalf of the petitioner herein submits that the petitioner was carrying a bag that belonged to his brother while travelling to Canada, however, he was not aware that the said bag contained eleven (11) cartridges. He also states that the brother of the petitioner herein holds a valid Arms Licence.

5. The Investigating Officer (I.O.) states that the factum of the brother of the petitioner herein, possessing a valid Arms Licence, has been verified.

6. The learned counsel for the petitioner submits that the FIR in the present case can be quashed since recovery is of only 11 cartridges and no pistol or any other arm was recovered from him, and that the petitioner was never in conscious possession of the said ammunition and there were no suspicious circumstances other than mere recovery of the said ammunition from the bag of the petitioner.

7. This Court has heard the submissions and perused the material on record.

8. The Constitutional Bench of the Hon'ble Supreme Court in the case of ***Gunwantlal v. The State of Madhya Pradesh (1972) 2 SCC 194*** has explained the meaning of possession in the context of Section 25 of the Arms Act, 1959 and held as under:-

"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 someone 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 (sic) 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."

9. The above proposition of law was reiterated by the Hon'ble Supreme Court in *Sanjay Dutt v. State Through CBI Bombay (II) Crimes 1994 (3) 344 (SC)* and it was held 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



unauthorised substance has been understood.”

10. In *Chan Hong Saik Thr. Spa: Arvinder (supra)*, following observations were made by a Co-ordinate bench of this Court:

“38. In the present case, single live cartridge which is found without any fire arm and specially at the stage when he was to leave this country to his native country.

39. The case of the prosecution is not that he extended any threat to any of the authority or the fire arms or ammunition was found with any of this group persons including his own son who was travelling with him.

43. Single live cartridge cannot be used for any threat purpose without fire arms. Value of the same in the market is also not attractive. It cannot be used for any third purpose. If the intention of the petitioner was not of either of the purpose mentioned above, then he cannot be held guilty and punished for the charge framed against him.

45. Though, the petitioner has not admitted recovery of the cartridge and claimed trial, however, even if it is admitted, in my considered view, he cannot be punished for the charge framed against him because a single cartridge without fire arm is a minor ammunition which is protected under clause (d) of section 45 of the Arms Act...”

11. It is not disputed that no weapon except for some ammunition as mentioned in the FIR was recovered from the present petitioner. There is nothing on record to suggest that petitioner was in conscious possession of the cartridge and was aware of the said fact. Mere recovery of cartridges itself is not sufficient to prove the offence in the absence of any intention. It is also a matter of record that no weapon was recovered from the petitioner to connect him with the intention to use the recovered cartridge for committing any offence. It is also the petitioner’s case that the bag that he



was carrying belonged to his brother, who holds a valid arms licence, which has been verified by the State.

12. In view of the above discussion, this Court is of the opinion that no offence is made out against the petitioner under Section 25 of Arms Act. This Court is further of the view that allowing continuation of criminal proceedings against the petitioner will be an abuse of process of law. The present petition is, therefore, allowed and proceedings emanating from FIR bearing no. 571/2018 under Section 25/54/59 Arms Act, 1959 registered at PS IGI Airport, New Delhi are hereby quashed, subject to petitioner depositing a cost of Rs. 20,000/- with the Delhi High Court Bar Association Employees Welfare Fund within a period of two weeks from date.

13. In view of the above, the present petition stands disposed of.

14. The order be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

APRIL 2, 2025/ns

[Click here to check corrigendum, if any](#)