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

\# **CNR No. DLHC010985322024**

\+ CRL.M.C. 10215/2024

MALIK KHUSROO .....Petitioner

Through: Petitioner in person (through VC).
Mr. Nipun Arora, Adv. (through VC).

versus

STATE (NCT OF DELHI) .....Respondent

Through: Mr. Manoj Kumar, APP for the State with SI Vipin Kumar PS IGI Airport.

CORAM:
HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

O R D E R

% 09.10.2026

1. Hybrid mode.

2. By way of the present petition, the petitioner seeks quashing of the FIR bearing no. 842/20247, registered at Police Station Indira Gandhi Internation Airport ('IGI Airport') Delhi, for offence punishable under Section 25 of the Arms Act, 1959 and all consequential proceedings emanating therefrom.

3. The brief facts, as per the prosecution case are, that on 29.10.2024, petitioner was travelling to Madina via Kuwait from IGI Airport, Delhi & during security check, through the baggage scanning machine, check-in bag of the petitioner was scanned and image of ammunition was detected therein. On physical check, 2 live ammunition (Mark 45 Auto S&B); 1 empty case (Mark 45 Auto S&B); and 2 empty case (Mark 45 Auto MFS) were allegedly

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found in the bag. Upon inquiry by the CISF officials, the petitioner failed to produce any valid licence or authorization for carrying the said ammunition.

4. It is further submitted that complainant SI/Exe- G Balaji (CISF No.150405474 S-2) Coy, CISF Unit IGI Airport, New Delhi had handed over a written complaint to SHO PS IGI Airport that 02 live ammunition (Mark 45 Auto S&B) and 01 empty case (Mark 45 auto S&B) and 02 empty case (Mark 45 auto MFS) were recovered from the hand baggage of the petitioner, who claimed to have a valid license in his possession for carrying ammunitions. Pursuant thereto, Xerox copy of boarding pass and his passport were taken, X-ray image of the live ammunition and Xerox copy of the Ammunition image were taken. The live ammunition which were recovered from the possession of the petitioner were put on a white page and the sketch of each of the cartridge was prepared. Thereafter, both the live cartridges and all the three empty cases were put into two small plastic boxes separately which were wrapped with a white piece of cloth and sealed with the seal of 'IGIA11'. The sealed pulanda was taken into police possession, in accordance with law. On the basis of the above facts, the present FIR bearing no. 842/82024 was registered at Police Station IGI Airport for commission of offence punishable under Section 25 Arms Act, 1959.

5. Aggrieved by the aforesaid FIR, the petitioner has preferred the present petition for quashing of the present FIR.

6. While praying for quashing of FIR and the criminal proceedings emanating therefrom, the learned counsel for the petitioner argued that petitioner had no knowledge regarding the presence of the aforesaid ammunitions/cartridges in his bag. He came to know only when informed by

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the security officials of the IGI Airport about the same. It is further submitted that petitioner had no intention to carry live ammunitions/ cartridges and the recovered live cartridge cannot be used for any purpose without a firearm and it, therefore, does not attract any offence in the absence of any knowledge of conscious possession.

7. It is submitted that petitioner is a man of repute and is running a business under the name and style of "Malik Perfumes Industries Private Limited" and was travelling to Madinah for pilgrimage purposes *via* Kuwait from IGI Airport, Delhi. It is submitted that petitioner has deep roots in the society and has clear antecedents with no involvement in any criminal activity whatsoever. It is submitted that petitioner was not carrying the said ammunition in his bag intentionally and could not check his baggage while packing and leaving for the airport in a hurry. It is further submitted that petitioner is valid licence holder of the firearm in respect of the ammunition recovered from his possession.

8. It is vehemently argued by learned counsel for the Petitioner that the petitioner holds a valid Arms Licence and the two bores / live ammunition which were recovered at the time of physical check at the Airport, are of the same bore of the weapon / pistol of which Petitioner is a licence holder and have direct connection, therefore the petition for quashing of FIR, may be allowed. It is submitted that arms licence annexed with the record clearly reflects that petitioner was earlier holding a pistol bearing No. l561993 which he sold and in lieu thereof had purchased another pistol make "BKEX199" Glock Made In Austria, with .45 Pistol Cartridges and the cartridges recovered from the possession were also of the same bore i.e .45

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bore.

9. Learned APP for the State has opposed the present petition. It is submitted that the recovered ammunition was sent to FSL, for expert opinion and the report received from the FSL is there on record, which clearly establish that .45 bore live cartridges were sent to FSL, which were recovered from the possession of the Petitioner.

10. This Court has heard and considered the arguments addressed on behalf of the petitioner as well as State, and has perused the material available on record.

11. 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 none-the-less 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*

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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."

12. 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 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."

13. In **Chan Hong Saik Thr. Spa: Arvinder Singh v. State & Anr.: 2012** SCC OnLine Del 3320, following observations were made by a Coordinate 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. ****

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> *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. ****
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> *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..."*

14. It can be very well seen that Courts have viewed and taken into account the conscious possession as possession ignoring the mere custody of a particular object to equate or treat or bring into the realm of any offence. Thus, mere possession / custody in itself without there being any mental awareness of the custody or possession does not mean, as contemplated *qua* the offence with which the Petitioner is proposed to be prosecuted.

15. In the present case, there is nothing on record to suggest that petitioner was in conscious possession of the 02 live cartridges /ammunition & 03 empty cases and that he was aware of the said fact in any manner. Mere recovery of cartridge itself is not sufficient to prove the offence in the absence of any element of conscious and deliberate possession. It is apparent from the record that the petitioner was unaware of the fact that the cartridges were in his bag. It is also a matter of record that no weapon was recovered from the petitioner to connect him with any such intention to use the recovered cartridge(s) for committing any offence.

16. In view of the above discussion, this Court is of the opinion that no offence is made out against the petitioner as alleged under the Arms Act.

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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 petition is, therefore, allowed and the FIR bearing no. 842/2024 registered at PS IGI Airport, Delhi, for offences punishable under Sections 25 Arms Act, 1959 and all consequential proceedings emanating therefrom are hereby quashed.

17. Accordingly, the present petition is disposed of.

VIMAL KUMAR YADAV, J

OCTOBER 9, 2026/*bj*

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