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

**Date of decision: 28.07.2022**

+ W.P.(CRL) 1110/2022

BAKSHI MOHEMMED RIYAZUDDIN ..... Petitioner  
Through: Mr Arun Satija, Adv.

versus

STATE NCT OF DELHI AND ANR ..... Respondents  
Through: Mr Amit Peswani, Adv. for Ms  
Nandita Rao, ASC for State  
SI Yogender, PS-IGI Airport

**CORAM:**  
**HON'BLE MR. JUSTICE JASMEET SINGH**

: **JASMEET SINGH, J (ORAL)**

1. This is a petition seeking quashing of FIR No.0023/2021 dated 23.01.2021, registered at P.S.- IGI Airport, under section 25/54/59 of Arms Act 1959 and all proceedings emanating therefrom.
2. The petitioner is an Indian resident and states that he is working with OCB (Oil Field Services) as a Material Coordinator and as part of his job profile, he has to go out of country once a month.
3. The petitioner mentions that on 21.01.2021 the employer of the petitioner had arranged Air-ticket to travel to Dubai from Dehradun via New Delhi by Air India on a PNR Z-1469. On 23.01.2021, when the petitioner was travelling from Dehradun to Dubai via New Delhi from Air India, Flight No. AI 1972, during physical checking of his baggage, 06 Ammunitions of

0.32 mm were recovered in the presence of Airline staff at IGI Airport, New Delhi.

4. In pursuance of the above, the petitioner was subsequently brought to the police station where the present FIR was registered against him. The FIR states that during physical search, 06 Ammunitions of 0.32 mm were recovered in the presence of Airline staff at IGI Airport, New Delhi.

5. Thereafter, the petitioner was asked to produce valid documents for the recovered ammunitions, but he was not in possession of the documents at that moment.

6. The case of the petitioner is that he was issued two boarding passes, one for travelling from Dehradun to New Delhi and the second for New Delhi to Dubai but he was advised to collect his check-in bag in New Delhi instead of Dubai due to COVID rules. If the bag of the petitioner would have been checked properly in Dehradun, the bullets would have been detected and there would be no case against the petitioner as he has a valid gun license in Uttarakhand.

7. The petitioner claims that he was neither aware nor had any knowledge about the presence of six bullets/live cartridges in the said baggage since he changed his bag at the last moment as his regular bag was broken.

8. The counsel for the petitioner further submits that the petitioner holds a valid gun license bearing No. LN34041A7A8FF19/1953/PS Dalanwala/Dehradun/2013 which is valid till 30.09.2022 and that these ammunitions were purchased by him on his own Arms Licence and the said purchase was also endorsed on his Arms Licence.

9. The status report handed over in Court today which is taken on record states that the Arms License of the petitioner was sent for verification vide letter no 3098/SO/DCP (DA-111) dated 08.07.2022. The verification report has been obtained and indicates that the petitioner's Arms License is valid upto 01.10.2022.

10. A coordinate bench of this Court in ***Sonam Chaudhary v. The State (Government of NCT of Delhi)*** [CRL.M.C. 471/2015] dated 06.01.2016, it was held that:

*“31. Recently, this Court in the case bearing Crl.M.C.No.4207/2104, titled as ‘Jaswinder Singh Vs. State Govt. of NCT of Delhi & Anr.’, decided on 11.08.2015, held that since the prosecution has failed to prove that the possession was conscious possession and, therefore, on the basis of mere possession of a live cartridge the proceedings cannot continue qua the petitioner under the Arms Act, 1959. Accordingly, while allowing the petition noted above, this Court quashed the FIR, summoning order and all proceedings emanating therefrom.*

*32. Thus, the law is well settled that ‘conscious possession’ is a core ingredient to establish the guilt for the offences punishable under Section 25 of the Arms Act.*

*33. Coming back to the cases in hand, the same are covered by the above said decisions of the Supreme Court as case of the prosecution is not that the petitioners were in conscious possession and, therefore, on the basis of mere possession of live cartridge/cartridges, the proceedings cannot continue qua*

*the petitioners under the Arms Act, 1959.*

*34. Therefore, applying the said principles of law, as discussed above, and considering the fact that the petitioners had left behind the live cartridge/cartridges in their luggage by mistake and/or inadvertent oversight, when they started their respective journeys and that the petitioners were not aware of the presence of the live cartridge/cartridges in their handbags till the same were detected by the security personnel during screening of the baggages at the concerned places, it can be safely inferred that the said possession does not fall within the ambit of 'conscious possession'. Admittedly, no firearm or weapon has been recovered from any of the petitioner and they have not extended any threat to any person or police official, hence, no offence under Section 25 of the Act is made out against any of the petitioner. Therefore, allowing continuance of the criminal proceedings against them would be an abuse of the process of Court.*

*35. Thus, the cases of the petitioners are squarely covered under the above said judgments and hence the entire proceedings, including the summoning order, charge-sheet, FIR need to be quashed."*

11. While deciding a similar matter titled '**Mitali Singh v. NCT of Delhi & Anr.**', decided 15.12.2020, W.P.(CRL) No. 2095/2020, this court made the following observation:

*"8. 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.*

9. *In Gunwant Lal v. The State of Madhya Pradesh : (1972) 2 SCC 194, the Constitution Bench of the Supreme Court has 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 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."*

10. *In Sanjay Dutt v. State through CBI Bombay (II), Crimes 1994 (3) 344 (SC) the Supreme Court has observed 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 unauthorized substance has been understood.””*

12. After a careful reading of the above judgements, it is clear that the element of “conscious possession” is a core ingredient for prosecuting the possessor under the Arms Act.

13. In view of the fact that there is no averment in the FIR that the Petitioner was aware or conscious and knowingly in possession of the ammunition in question and also that the petitioner has been able to make out a case that he was not in conscious possession of the recovered live ammunitions, I am of the view that this is a fit case for quashing. It is due a mishap that the live ammunitions remained in his bag and could not be detected earlier. It is pertinent to mention that the petitioner holds a valid arms license, as indicated in the Status Report dated 28.07.2022.

14. However, I am of the view that since the police machinery has been put in motion on account of the acts of commission & omission on behalf of the petitioner and useful time of the police which could have been utilised

for important matters has been misdirected towards these petty matters, therefore, the petitioner must do some social good for the society. The FIR No.0023/2021 dated 23.01.2021, registered at P.S.- IGI Airport, under section 25/54/59 of Arms Act 1959 is hereby quashed, subject to the petitioner providing a Kit comprising of 50 ml of mosquito repellent and 50 ml of hand sanitizer to each student at a government school/MCD school (comprising of minimum 200 students) identified by the Ld. APP in consultation with the I.O. concerned, within a period of ten days. On compliance,

15. The compliance should be done within 10 days. The petitioner will place on record a compliance report and the I.O. will verify the factum of the compliance.

16. List for compliance on 16.08.2022.

17. The petition is disposed of in the aforesaid terms.

**JASMEET SINGH, J**

**JULY 28, 2022**

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