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

+ **W.P.(CRL) 814/2024**

JYOTIRMAYA NAND

.....Petitioner

Through: **Mr. Rohit Yadav, Mr. Vikas Nian,
Mr. Vishvendra Singh and Mr. Neeraj
Yadav, Advocates**

versus

STATE OF NCT OF DELHI THROUGH SHO PS IGI AIRPORT

.....Respondent

Through: **Ms. Rupali Bandhopadhy, ASC for
State with Mr. Abhijeet Kumar and
Mr. Anurag Arora, Advocates along
with SI Saroj Yadav, PS: IGI Airport**

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Date of Decision: 03rd February, 2025

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT(ORAL)

1. The present petition has been filed under Article 226/227 of the Constitution of India read with Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 [erstwhile Section 482 of Code of Criminal Procedure, 1973] seeking quashing of FIR No. 495/2023 dated 16.08.2023 registered at Police Station (P.S) IGI Airport, Delhi for offence under Section 25 of the Arms Act, 1959 ('Arms Act').

2. Learned counsel for the Petitioner states that the alleged incident occurred within the jurisdiction of Police Station IGI Airport during which, the Petitioner was travelling from New Delhi to Indore from Air Vistara, Flight Number UK-913 on 16.08.2023.



2.1. He states that during the scanning of the Petitioner's baggage, 35 live cartridges and four (4) Empty Shells were recovered. He states that in these facts, the subject FIR i.e., FIR No. 495/2023 under Section 25 of the Arms Act was registered at Police Station IGI Airport.

2.2. He states that during interrogation the Petitioner had produced his valid arms license which is valid for the State of Uttarakhand. He states that subsequently, after the interrogation, Investigating Officer ('I.O') had released the Petitioner without making any arrest.

2.3. He states that the presence of the live cartridges and Empty Shells in the bag was not within the knowledge of the Petitioner, and it appears that it was inadvertently left behind in his baggage by his servant while packing his bag.

2.4. He states that the Petitioner had no intention to conceal the said live cartridges and Empty Shells otherwise he would not have handed over his bag for X-ray screening, wherein the live cartridges and Empty Shells can easily get detected.

2.5. He further states that the live cartridges recovered from the check-in-baggage of the Petitioner without there being any firearm does not ipso facto amount to commission of an any crime.

2.6. He further places reliance upon the judgement passed by the Coordinate Bench of this Court in **Chang Hong Saik Through SPA Arvinder Singh vs. State**, 2012 130 (DRJ) 504.

2.7. He reiterates that since the Petitioner was not in conscious possession of the live cartridges, therefore, he seeks quashing of the present FIR in question.

3. Ld. ASC for the State submits that the status reports dated 01.05.2024



and 13.08.2024 has been filed and placed on record of this Court.

3.1. She states that the arms licence of the Petitioner has been verified and she relies upon the submissions made at paragraph nos. 5 and 6 of the status report dated 13.08.2024, which reads as under: -

“5. That the recovered ammunition has been sent to FSL Rohini and FSL Result of the same was received vide report No. SFSL(DLH)/11764/BAL/1 110/23 Dt. 30.10.2023 wherein it is opined that the seized 35 (Thirty-Five) ammunitions & 04 (Four) Empty Fire cases are ammunition as defined in the Arms Act, 1959.

6. That verification of Arms License No. 781/Kotwali Haridwar/2020 (LN34045A7A71650/781/PS HARIDWAR) has already been obtained and found valid till 23.06.2028 in Uttar Pradesh state. Verification report is enclosed herewith for kind perusal please. It is further submitted that the investigation of the case has been completed. The petitioner not found involved in any criminal cases as per Dossier, SCRB, NCRB Record.”

3.2. She states on instructions from the I.O that the relevant State for which the license has been issued to the Petitioner is Uttarakhand and not Uttar Pradesh as stated in the aforequoted paragraph no. ‘6’ of the status report dated 13.08.2024.

3.3. She fairly states that in view of the fact that the Petitioner was not carrying any firearm and the fact that he, otherwise, has a valid arms license for carrying possession of the live cartridges and Empty Shells, therefore, the relief sought in the present petition can be considered by this Court in accordance with law.

3.4. She further states that the report from the State Crime Record Bureau (SCRB) and National Crime Records Bureau (NCRB) has been obtained and it shows that the Petitioner herein has no prior involvement in any criminal cases.



4. This Court has heard the submission of the parties.
5. Reading the status report shows that the Petitioner herein possesses an arms license issued by the District Magistrate, Haridwar, Uttarakhand for the state of Uttarakhand, which is valid till 23.06.2028. Further the Petitioner has taken a categorical stand that he was not in conscious possession of all the live cartridges and Empty Shells and this position is uncontroverted by the Respondent-State as well.
6. It is settled law that that the expression 'possession' occurring in the Section 25 of the Arms Act means possession having element of consciousness or knowledge of that possession. Therefore, where a person is not conscious of the live cartridges being in his possession, an offence under Section 25 of the Arms Act, 1959 would not be made out in view of judgments passed by the Constitution bench of Supreme Court in **Gunwant Lal vs. The State of Madhya Pradesh**, (1972) 2 SCC 194 and **Sanjay Dutt v. State**, (1994) 5 SCC 410.
7. In the present case though petitioner's bag contained 35 live cartridges and Empty Shells, however, no corresponding fire-arm was recovered from the bag. Thus, there was no threat to anyone at the Airport. In this regard, it would be relevant to refer to the Judgment passed by the Coordinate Benches of this Court in **Golap Saikia v. State (NCT of Delhi)**, 2017 SCC OnLine Del 7680 and **Narendra Kumar Gupta v. State of NCT of Delhi**, 2021 SCC Online Del. 2335, wherein it has been held that the absence of the fire-arm indicates that the petitioner was not having conscious possession of the live cartridges and further held that no offence under Section 25 of Arms Act is made out. The FIRs were therefore quashed by the Courts in such facts.



8. In the present case, the Petitioner is a valid license holder of a Fire Arm, which is valid in the State of Uttarakhand. The Petitioner, thus, validly owned and possessed 35 live cartridges and Empty Shells. However, though the Petitioner could not have carried the said live cartridges and Empty Shells outside the State of Uttarakhand, however, it is admitted that the Petitioner was not carrying the license fire arm during the travel. In the absence of the fire arm the Petitioner could not have used the live cartridges and thus as a matter of fact there was no threat to any person at the Airport. In these facts, applying the judgment of the coordinate Bench in **Golap Saikia** (supra) this Court is of the considered view that the Petitioner, who was otherwise a valid license holder for the cartridges cannot be said to have committed an offence under section 25 of the Arms Act and present FIR deserves to be quashed. Accordingly, FIR No. 495/2023 dated 16.08.2021 registered at P.S.: I.G.I. Airport, is hereby quashed, including all proceedings emanating therefrom.

9. The present petition along with pending application is disposed of.

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 3, 2025/rhc/ms